CHAPTER III

RESERVATION POLICY IN INDIA FOR ‘OTHER BACKWARD CLASSES’ AND OTHER ‘WEAKER SECTIONS’ OF SOCIETY

“I dislike any kind of reservation, more particularly in Services. I react strongly against anything leads to inefficiency and second rate standards....The only way to help a backward group is to give opportunities of good education...everything else is provision of some kind of crutches which do not add to the strength or health of the body...If we go in for reservations on communal and caste basis, we swamp the bright and able people and remain second rate and third rate...Let us help the backward groups by all means, but never at the cost of efficiency.”


“Trite arguments about efficiency and inefficiency are a trifle phoney.”

-----Justice Krishna Iyer

The benefits of the reservation were earlier decided to be provided in favour of the Scheduled Castes and the Scheduled Tribes by the constitutional makers, about which the study has already been done in the previous chapter. But a little later the door was wide opened to the “Backward Classes” as well for the advancement of the backward sections of the society on the ground that like the Scheduled Castes and the Scheduled Tribes these classes also remained victims of social and economic discrimination inflicted by Hindu society. So, the present chapter is devoted to study relating to the constitutional, moral, social and the political responsibility of the State for the social and the economic upliftment of the Backward Classes.

There is perhaps no other country in the world which has such a genius for creating torture and tribulations for itself as modern India—the inheritor of the age-old practice of self-flagellation. In our Constitution, the various provisions relating to reservation acknowledge that reservation is an integral part of the principle of the equality where inequalities exist. In this way, they accept that the inequalities in the society are a reality and there is also existence of unequal social groups which are variously described as “socially and educationally Backward Classes”.

In a society like ours, there exists forward and backward, higher and lower social groups, and the first step to achieve the social integration is to bring the lower or the backward social groups to reach the level of the higher or forward social groups. There is no more compelling goal than to achieve the unity of the country by integration of different social groups together. It means that transforming India into an egalitarian society and strengthening its unity and integrity will remain a myth as long
as the widening gap between the attitude of the rich and the poor, the high castes and the low castes, and the religious and ethnic majorities and the minorities towards each other is not changed significantly for the better. Only by giving equal status to all, this social integration can be achieved. According to Marc Galanter, Independent India has embraced the equality as a cardinal value against the background of valued, elaborate and clearly perceived in equalities. The constitutional policy of India to offset these inequalities proceeded from an awareness of the entrenched and cumulative nature of group inequalities. Because equality of opportunity and secularism would prove to be meaningless if a very large section of the society continued to remain poor and deprived of opportunities to secure political and administrative positions. This large section needed special safeguards and reservations. To bring all those who are considered the socially and economically backward on par with the rest of the society; it is a must that they should be assisted in all possible ways.

Article 14 of the Constitution contains the most precious democratic right of the equality before the law which constitutes the bed-rock of the fundamental rights of the citizens of India. But in a society, its humanness is always determined by the degree of protection which is provided by it to its deprived, less gifted and more vulnerable sections in order to maintain a balance between haves and the have-nots. Our Constitution also ensures due representation of the weaker sections (Scheduled Castes and the Scheduled Tribes) in the Parliament and State Legislators through the policy of the reservation of seats in their favour. It provides safeguards to them in the form of their induction into the State services and also recognized some special administrative safeguards to be provided in their favour. Indian Constitution has assigned a prominent role to and imposed heavy responsibility upon the shoulders of the State to assure a dignified life to each and every individual irrespective of what he deserves on meritian considerations.

The provisions envisaged in the Constitution requiring special attention and safeguards are not an exception to its general scheme but are an integral part of the Constitution and may be known as its basic structure. These special provisions provided in favour of weaker sections of the Indian society in fact represent the central ideology that worked in the mind of the Constitution-makers for the purpose of eradicating our age old social injustices through an enlightened constitutional order. Preferential policies may be considered as a means to create special
opportunities for some over and above the equal opportunities available in principle to all. The tension between ‘special opportunities for some’ and ‘equal opportunities for all’ cannot be ignored. In order to keep that tension under control so that it could not subvert the institutional system, these policies are required to be used judiciously and with restraint and certain limitations.

**Beneficiaries of the Reservation Policy**

There are three categories of the beneficiaries of the preferential treatment programmes. The Constitution has put the determination of the Scheduled Castes and Scheduled Tribes on the one hand and that of the Other Backward Classes of the people on the different footings. In the case Scheduled Castes and Scheduled Tribes Articles 341\(^9\) and 342\(^10\) are quite explicit. Both of these Articles provide the power for the identification of the Castes and Tribes to the President of India in consultation with the Governor of the State concerned and also a power for the alteration of the list whether by way of addition or deletion, is given to the Parliament. Not only this, the language used in Articles 341, 342, 366(24)\(^11\) and 366(25)\(^12\) provides the impression about the finality of the Presidential determination unless the Parliament chooses to interfere. But in case of Other Backward Classes, the Constitution leaves some uncertainty about the criteria to be applied in the determination of the Other Backward Classes of the people and also in respect of the authority with which the power of the determination is located. Consequently, these matters were left to be decided by the courts.

1. **Scheduled Castes**

   This is the first category in the list of beneficiaries of the policy of reservation in India. This term is defined in our Constitution under Article 366(24).

2. **Scheduled Tribes**

   This second category is the Scheduled Tribes. This term is defined under Article 366(25) of the Constitution.

3. **Other Backward Classes**

   This term “Other Backward Classes” is the third category. It appears in Articles 15(4) and 16(4) of the Indian Constitution. But this term of the three categories is the most loosely defined. The problems under this category are also different from the first two categories in many ways. The number of castes included
into this group are growing continuously and also expanding at the will of the politicians and at the public demand. In this category, the Shudra Varna and also the former untouchables converted from Hinduism to other religions are included. The criterion adopted for the classification of the socially Backward Classes is that whether the members of such class are “socially and educationally” worst off than the rest of the citizens, irrespective of the fact whether or not such class belong to the Scheduled Castes and Scheduled Tribes. So, the social and the educational backwardness must co-exist. The simple meaning of the educational backwardness is that the average of the population of the students in the particular class is below the State average. The citizens of India who can establish their claim of belonging to one of these identified “castes” and “tribes” are only entitled to get these special benefits from the Government. The publication of the Mandal Commission Report 1980 by the Government lists a total of 3,743 castes on a State-by-State basis of the Other Backward Classes above and beyond the Scheduled Castes and the Scheduled Tribes included in the earlier Government lists.

The policy of reservation in favour of the Scheduled Castes was implemented very early and systematically in the post-independence India, but the same arrangement could not be made in case of the Other Backward Classes. Extension of the benefits of the policy of the reservation to ‘Other Backward Classes’ did not win the Center’s approval until the ‘momentous’ decision by the National Front Government. Reservations for the Scheduled Castes and the Scheduled Tribes are directed basically towards the goal of greater equality overall. But reservations for the Other Backward Classes and for religious minorities are directed basically towards a balance of power.

The constitutional provisions provided in favour of the Backward Classes are both wide-ranging and varied. Their scope and their complexity cannot be understood in terms of purely formal principles. Their nature and significance can be appreciated only by relating them to the historical background from which they have emerged and the social context to which they were designed to apply. A Constitution may indicate the direction in which we are to move, but the social structure will decide how far we are able to move and at what pace. A written Constitution, and especially one that is written at a decisive turn in its history, has certain significance as an expression of what a society seeks to achieve for itself. The framers of Indian Constitution recognized the historical processes that were at work in India and the uneven
development of the various sections of the population of India. Therefore, they made adequate provision for the protection and betterment of Other Backward Classes also.

**Constitutional Provisions regarding Reservation in favour of Other Backward Classes**

Articles 15(4) and 16(4) were designed to permit the State to achieve equality among the disadvantaged sections of the Indian society by providing them unequal or preferential treatment in all its dealings and particularly in the area of education and public employment. Articles 16(1) and 16(4) are the restatements of the principle of equality under Article 14. But both of the Articles operate in the different fields.\(^{15}\) Provision of equality given under Article 16(1) is individual-specific and the provision of reservation provided under Article 16(4) and the 16(4-A) is enabling. The intention of inclusion of Articles 15(4) and 16(4) was to provide preferences to classes rather than to individuals in order to compensate them for the disadvantages they had to suffer in the past. However, the ‘protective discrimination’ is not a device to consolidate and protect a group’s separate integrity.\(^{16}\) The objective of reservation provision is to uplift the Backward Classes—socially, economically and educationally, by liquidating their backward condition so as to bring them into the mainstream of National life.

**Clause 4 of Article 15**

Article 15 is an instance of the right of equality which is generally stated in Article 14. While Article 14 is available to all the persons, Article 15 is available to the citizens only.\(^{17}\) Article 15(4) is the provision that permits the State to provide for reservations and other special provisions that benefit Scheduled Castes, Scheduled Tribes and Other socially and educationally Backward Classes of citizens. The State has a great leeway in prescribing method or choosing the means to give preference in the area by Article 15(4).

Article 15(4) did not form part of the Constitution as it originally stood in 1950. Clause (4) was inserted by the Constitution (First Amendment) Act, 1950\(^{18}\) by the Parliament which constituted of the same Members as the Constituent Assembly.

**Scope of Clause 4 of Article 15**

This clause was added in 1951 as a result of the decision of the Supreme Court in Champakam\(^{19}\) because of unfortunate observation to the effect that the State was
not authorized to give preferential treatment outside the area of public appointment.
The object behind this clause is to bring Articles 15 and 29 in line with Articles 16(4),
46 and 340, and to make it constitutional for the State to reserve seats for the
Backward Classes of the citizens, Scheduled Castes and Tribes in the public
educational institutions, as well as to make other special provisions to tone up the
spirit of the Objective Resolution of the Constituent Assembly which states among
other things that ‘adequate safeguards shall be provided (for minorities, backward and
tribal areas and depressed and other Backward Classes) as may be necessary for their
advancement’. This amendment was made with the object of overriding the decision
in the State of Madras v. Champakam, to the effect that Article 46 does not control
the Article 29(2) and the Constitution does not intend to protect the interest of the
Backward Classes in respect of their admission to the educational institutions. But the
amendment would not sanction any communal order. Though the reservation would
be validated by this amendment for the Backward Classes, Scheduled Castes and
Tribes, it would not support the distribution of seats according to the communities so
as to discriminate between the classes who are not included in the Backward.

Reservation is protective discrimination and beneficiary of reservation is
necessarily a minor or smaller group of persons which deservedly stand in need of
protection or push-up because of historical, geographical, economic, social, physical
or similar such handicaps. Clause (4) is an exception to Clause (1) as it forbids
discrimination on the ground of the ‘race’ or ‘caste’. It is also an exception to Article
29(2). On one hand, the Constitution forbids discrimination on the grounds of race
or caste etc. so that the old iniquitous situation may not be continued; on the other
hand it permits these very criteria for correcting evil consequences flowing from their
past misuse. But Clause (4) cannot be so extended as to destroy the security
guaranteed in Clause (1). The onus of proof is on the State to establish that the
reservations are for the socially and backward classes of citizens and to discharge this
burden, the State has to establish that all the classes in the categorization are de facto
socially and educationally backward. If the test of backwardness is objectively
satisfied, only then the authorities can protect the discriminatory provision under
Clause (4). Mere good faith of authorities cannot be the defense. The term “special
provisions” is of wide amplitude. The term special provisions granted under Article
15(4) are not only confined to positive action programmes but include within its ambit
‘reservation’ for the Scheduled Castes, Scheduled Tribes and socially and
educationally backward classes in the educational institutions and other walks of the life. This policy of protective discrimination should be in the national interest and in the interest of the community or the society as a whole.

The special provision provided under Article 15(4) is merely an enabling provision and the State has the discretion to provide for reservations. It means that a writ filed by any of the members of the Scheduled Castes, Scheduled Tribes and socially and educationally backward classes, praying the court to direct the State to provide for reservation cannot be sustained. The reservation of the seats by the Government for the members of the Backward Classes will not be applicable if such members already secure the reserved number of seats by the open competition on their merit; it will be called in aid only to the extent of their deficiency on the merit list. For the purpose of special preference, any differentiation or classification must not be unduly unfair for the persons left out of the favoured groups. The State would not be justified in ignoring altogether advancement of the rest of the society in its zeal to promote the welfare of the Backward Classes. This special provision should proceed objectively through striking a reasonable balance between several relevant considerations. Since the making of such kind of provision is a constitutional mandate under Article 46, post, the doctrine of promissory estoppel will not bar the State from providing special provisions like reservations. Institutional reservation is not provided and guaranteed by the Constitution or constitutional principles. A certain degree of preference for the students of the same institution is permissible but such preference has to be kept in limits. But the reservation on an institutional basis is not permissible in the institutes of super-specialization.

In making special provision for the weaker sections for the higher education, more emphasis should be on efficiency and less on reservation because the standards of education cannot be weaken by the State or the efficiency of the scholars cannot be lowered. National interest would suffer if qualified and competent students were excluded from admission into the institution of higher education. So, there should be no reservation for the admission to the highest technical courses, called 'super-specialties'. Reservation can be made only subject to the periodical review e.g., on year to year basis but on the other hand, the State could not deny providing reservations in the agricultural institutes which was provided in the medical colleges. The State was held entitled to take its own decision whether citizens had ceased to belong to reserved category and review its reservation policy objectively
from time to time. Even if the caste was a test for the determination of the backwardness among Hindus, but it was not an obligation to apply that test and a determination of backwardness based predominantly if not solely on the basis of caste was invalidated.

As a rule, reservation in excess of the 50% of the available seats is invalid. On the other hand, reservation less than 50% would be upheld but how much less than 50% would depend upon the relevant prevailing circumstances in each case. But 68% reservation of the seats in the technical institutions such as Engineering and Medical Colleges in Mysore was struck down upon the forgoing reason. In granting remission pursuant to Section 432(1) of the Criminal Procedure Code to the convicted women and prisoners belonging to the Scheduled Castes and Scheduled Tribes, the invocation of Article 15(4) is wholly unjustified. However, the benefit obtained by these people was permitted to be retained.

Clause 4 of Article 16

Scope of Clause 4 of Article 16

It is a settled law that provisions for reservation may be made either by law enacted by the Legislature or by an executive Order issued in the exercise of its executive power by the State without any legislative support. Under Article 16(4), in every case, when State decides to provide for the reservation then there must exist two circumstances, namely, “backwardness” and the “inadequacy of representation”. In inadequacy has to exist factually and backwardness has to based on the objective factors. It means that it is not a case of subjective satisfaction of the Executive to determine about the backwardness but this determination must be founded on the objective tests e.g., social, economic and other relevant criteria and it will also be subject to judicial review. While extending the scope of reservation of appointments or posts in favour of Backward Class of citizens which in the opinion of the State, is not adequately represented in service under the State, the court was of the opinion that the term ‘reservation’ could take various forms which might consist of preferences, exemptions, concessions, extra facilities, etc. consistently with Article 335. The apex court has now made it very clear that reservation is the highest form of special provision, while preferences, concession and exemption are lesser form. But in the case of particular Backward Class, the Government may decide about not to provide for the reservation but to provide a certain preference or concession in their favour.
and the court may not interfere in this policy decision. In this sense, Clause (4) of Article 16 is exhaustive of the special provisions that can be made in favour of Backward Class of citizens. An affirmative action programme provided under Article 16(4) is meant to translate the constitutional guarantees given to the Scheduled Castes, Scheduled Tribes and Other Backward Classes into reality by necessary State action to protect and nurture these classes of citizens so as to enable them to shake-off the heart-crushing burden of a thousand years deprivation from their shoulder and to claim a fair proportion of participation in the administration. In the case of the executive order providing for reservation, it will be effective from the moment it is made and, in order to enforce it, it is not necessary to enact a law or to incorporate it into a Rule made under Article 309. Statutory bodies are bound by the reservation policy. Unless specifically approved by the Government, scientific and technical posts are not excluded from getting the benefits under the policy of the reservation, which was not acceded.

Normally Reservation implies a separate quota which is reserved for a special category of people. But to provide reservation to a Backward Class is not a constitutional mandate. It is the prerogative of the State concerned: if it is so desired, with the purpose of providing opportunity of advancement in the society to certain Backward Classes which includes the Scheduled Castes also, for reserving seats in the public services of the State under Article 16(4) of the Constitution. The Backward Class which may be provided with the benefit under Article 16(4) of the Constitution must consist of a single homogeneous group—the element of homogeneity is the backwardness characterizing the class. The thread or the link holding the class together must be the backwardness of its members which can never be supplemented by castes.

Clause (4) is not in the nature of an exception to Clauses (1) and (2), but it has been held as an instance of classification implicit in and permitted by Clause (1). So, it served one mode of reconciling the claims of backward people and the opportunity for the free competition which the other sections of the community ordinarily exercised. The entire field covered by Clauses (1)-(2) is not covered by the Clause (4). As regards the conditions of service relating to employment like salary, increment, gratuity, pension and also the age of the superannuation, even in regard to the backward Classes of citizens, there can be no exception. Hence, Article 16(4) is exhaustive of all the reservations that can be made for the Backward Classes as such,
but is not exhaustive of reservations that can be made for classes other than Backward Classes under Article 16(1). So, the only matter covered by the Clause (4) is a provision in respect of the reservation of appointments to be provided to the Backward Classes of the citizens because Clause (4) of Article 16 the reservation is provided in the State employment for a “class of people” which must be backward. No quota can be created in the common pool in favour of the candidates other than those covered under this clause. Article 16(4) does not enable the State to reserve the posts on the communal lines. Clause (4) should be strictly construed and in a manner that does not make the guarantee and security provided under Clause (1) altogether illusory or nugatory. It means that the State cannot reserve all the appointments under the State or even a majority of them in the interests of the Backward Classes of citizens. If the benefits of the reservation are not percolating to them equitably, then measures are required to be taken to see that they are given such adequate or additional training in order to enable them to compete with others but the same would not mean that this Article can be utilized for creating monopolies or unduly distributing the legitimate rights of the other employees in the process of rationalizing the reservation to the Scheduled Castes. In other words, it can be said that the doctrine of equality of opportunity under Clause (1) shall be reconciled in the favour of the Backward Classes under Clause (4) in such a manner that the latter shall not unreasonably encroach upon the field of the equality while serving the cause of the Backward Classes. It means that the Court will only come forward to interfere when the percentage of reservation is not reasonable or adequate, having regard to the opportunities of the employment of the general public to the cadre of service in question, the population of the entire State, the strength of the different communities in the State, the extent of the backwardness and the other factors of the like nature. Reservation at the time of the promotion cannot be given retrospectively. Reservation is dynamic and flexible concept a transitory measure. But in order to watch constantly the departure of the principle of equality under Article 16(4) and Article 16(4-A), any further limitations on the power and discretion of the State Government in respect of the policy of reservation come in the form of the Article 335 because in the matter of due representation in the services for the Backward Classes or Scheduled Castes or Scheduled Tribes, the maintenance of the efficiency of the administration is of paramount importance. Therefore, the interpretation of Article 16(4) has also to be made in the background of Article 335 that Government
is the sole judge both of the necessity of the reservation and also of its impact on general efficiency of the administration.\textsuperscript{72}

Article 16(4) confers no constitutional right upon the members of the Backward Classes to claim reservation. It follows that it is only an enabling provision\textsuperscript{73} and it confers a discretionary power upon the State by this provision to make a reservation of appointments in the interest of the Backward Classes of citizens not adequately represented either qualitatively or numerically, in services of the State.\textsuperscript{74} But this Article enjoins the State to take certain positive action in order to lessen the inequality. So, Article 16(4) confers power coupled with duty.\textsuperscript{75} It is duty and obligation on the part of the administrative authorities to meticulously implement the policy of the reservation.\textsuperscript{76}

Under the policy of reservation, benefits provided do not apply to initial recruitment only but it also extends to the promotions; however the efficiency of the administration might be impaired due to the reservation provided at the promotions.\textsuperscript{77} It is within the power of the Court to uphold a relaxation of the efficiency requirement for the purpose of the promotion where there is provision for the training and coaching of the promtees of this category of persons in order to bring them up to the level and standard of the others. So, providing reservation for the promotion to the higher posts, which require higher degree of efficiency as well as grant of relaxation in passing marks, would be covered by Article 16(4).\textsuperscript{78}

Under Article 16(4) equality plays the dominant role. Looking at the ground of reality, the equality “in fact” is to be decided. There will be reverse discrimination when the reservation extends beyond the cut-off point. Legislation regarding Anti-discrimination has a tendency of going towards de facto reservation. So, a numerical benchmark is the surest immunity against charges of discrimination.\textsuperscript{79} The Parliament has inserted by the Constitution (Eighty-first Amendment) Act, 2000 in the Fifty-first year of the Republic of India the clause (4B) after clause (4A) of Article 16.\textsuperscript{80} The ceiling limit of 50% on the current vacancies continues to remain the same. With the insertion of this new clause, the State is authorized to consider the unfilled reserved vacancies as a separate class which now cannot be taken into consideration together with the vacancies of the year in which they are being filled up to determine the ceiling of 50% of the total vacancies of that year. Because providing such reservation beyond 50% would be violative of Article 16(4-B).\textsuperscript{81} This clause enables the State to carry forward the unfilled reserved vacancies to be filled in any succeeding years so
as to remove the backlog notwithstanding the rule of 50% ceiling. It is an enabling provision. Article 16(4-B) lifts the ceiling of 50% on carry-over vacancies.

**Article 340 of the Constitution**

Besides the Scheduled Castes and Scheduled Tribes, the protections are provided by the Constitution for the “Backward Classes of citizens”. The term “Backward Classes” is not defined in the Constitution. Unlike Scheduled Castes, these classes are found amongst all the religious groups-Hindus, Muslims and Christians etc. It is left for the Central and the State Governments to specify the classes which are to be regarded as “Backward Classes” for the purposes of the Constitution. Article 340 clause (1) empowers the President to appoint a Backward Classes Commission, consisting of such persons as he thinks fit in order to facilitate the task of identifying the classes to be regarded as backward.

**Concept of Reservation in favour of Backward Classes**

There are two most contentious issues about providing the reservations in favour of Other Backward Classes of persons,

I. Determination of status of the Backward Classes.
II. Extent/quantum of the reservations.

**I. Determination of status of the Backward Classes**

It is not a not a simple matter to determine the status of the socially and educationally backward as in evolving the proper criteria for the determination of the status of the socially and educationally backward, a number of sociological and economic considerations come into play.

**Who are the Other Backward Classes?**

The claims of the Backward Classes of citizens in the public services were considered by the Constituent Assembly, the leaders of the Nationalist Movement along with the minorities but the meaning to the term “Backward Classes” was far from being clear and was used very vaguely and variously. The expression ‘Backward Classes’ appeared for the first time in the 1870s in Madras Presidency, a region which was plagued by a movement of non-Brahmin made up of lower Castes except for the untouchables. In the year 1916, in the Indian Legislative Council, the definition of the term “Depressed Classes” was discussed and it was decided that the Criminal and Wandering Tribes, Aboriginal tribes and the even the untouchables would be included
with in the definition of the term “Depressed Classes”. This term was also explained by Sir Henry Sharp and he included in the term classes pursuing “unclear profession” or those belonging to “unclean castes” whose touch or even shadow is polluting and also in this term, classes who were backward, educationally poor and despised. The Government of Mysore, on the basis of report submitted by the Miller Committee, issued the orders for the extension of some special facilities in favour of backward sections of the society in respect of education and recruitment in the services at the State level. In 1919, the term “Depressed Classes” were also defined by the Southborough Committee and this Committee applied the criteria of untouchability and excluded primitive or aboriginal tribes and economically Backward Classes. But, the term “Depressed or Backward Classes” included all the castes and communities except Brahmins in the Southern Provinces. In 1928, the term Backward Classes was defined by the Hartog Committee which was set up by the Government of Bombay under the chairmanship of Mr. O. B. Starte as including Castes or Classes which are educationally backward and the depressed classes, aboriginals, hill tribes and criminal tribes. In 1928, the list was expanded to include even the less advanced of the inhabitants of the British India, presumably other backward castes. But the Depressed Classes were excluded this time by the Indian Central Committee 1929. The exclusion of the Depressed Classes by Indian Central Committee from the list can only lead one to believe that the Backward Classes were distinguished from untouchable, the former including Backward Castes communities. In 1930, a Bombay Committee insisted that only untouchables should be included in the term ‘Depressed Classes’ and the larger group should be designated as “Backward Classes”. This committee again recommended the division of this larger group into three sub-headings: Depressed Classes (Untouchables); Aboriginal and Hill Tribes and Other Backward Classes (including wandering tribes) and it also recommended that the whole category of the Backward Classes should be renamed as intermediate classes. According to Simon Commission the term Backward Classes refers to the ‘intermediate castes’.

The United Provinces Hindu Backward Classes League which was founded in 1929 were of the view that the term ‘depressed’ included a connotation of untouchability in the sense of causing pollution by touch as in the case of Madras and Bombay and also that many communities were reluctant to, identify themselves as ‘depressed’. The term ‘Hindu Backward’ was suggested by the league as a more
suitable nomenclature. The list of 115 castes submitted included all candidates for the untouchable category as well as a stratum above. They were described as low socially, educationally and economically. In 1937, Travancore discarded the nomenclature ‘depressed classes’ and substituted the term ‘Backward Communities’ to include all educationally and economically backward communities. The term ‘Backward Classes’ was used in Madras to refer the strata given above i.e., the untouchables. In 1934, the Madras Provincial Backward Classes League was founded for the purpose of securing separate treatment from the “forward non-Brahmin communities”. In November 1947 separate reservations were provided for these backward Hindus in the Madras service.\textsuperscript{88}

The terms like Backward Classes, Backward Communities, forward non-Brahmin Communities, Backward Hindu and so on were used by the various organizations like, Bombay Social Reform Association 1903, Bahiskrit Hitakarini Sangh 1924, Madras Provincial Backward Classes League, 1934, United Provinces Hindu Backward Classes League, 1929. So it is clear that on the national level, no definite meaning was granted to the term ‘Depressed Classes’ or “Backward Classes”. Sometimes only untouchable were intended to be included in this term and sometimes this term was so expanded to include aboriginals, hill tribes and wandering criminal tribes. Sometimes all the Backward Castes and Committees were made to be included in this term and sometimes a larger segment of the economically and educationally backward people were included in this term. Although the meaning of Backward Classes varied from State to State, representatives from Madras, Mysore and Bombay by the time of Constituent Assembly were of the view that this term Backward Classes were all but not the Brahmins, in Madras the Backward Classes were referred to a stratum of non-untouchable Hindu castes, and in Bombay the Backward Classes were not only Scheduled Castes and Scheduled Tribes but also others who were economically, educationally and socially backward.\textsuperscript{89} But locally this term was defined by the Provincial Committee or Caste-Associations responding to the local conditions and exigencies.\textsuperscript{90} It has been aptly observed by Marc Galanter that the

“Question of who were the Scheduled Castes was debated and roughly settled before Independence within the executive and without the participation of the courts. But who are the Backward Classes is a post-independence question which the constitutional recognition of the category made one of all-India scope.”\textsuperscript{91}
The term ‘Scheduled Castes’ was used in the Government of India Act 1935 to connote Depressed Classes as meaning such castes, races or tribes corresponding to the classes of persons formerly known as the depressed classes.92 This meaning was continued in the Indian Independence Act 1947. But under the Government of India Act, 1935 the main benefit of political representation in the Provincial Assemblies and Federal Legislature was extended to the Scheduled Castes and Scheduled Tribes. In 1936, for various provinces there was notification of the separate lists of the Scheduled Castes. At the same time, there was replacement of the term ‘Primitive Tribes’ by the ‘Backward Tribes’ and in respect of Provinces, where these tribes were substantially represented, there was the notification of their lists. After the Independence, the Constitution of 1950 also defined the Scheduled Castes in terms of Castes, race and tribes.93 However, as stated earlier, no where in the Constitution, the term “Socially and Educationally Backward” has been defined. When Ambedkar, the chairman of the drafting committee of the Constitution, was asked about the criteria to be followed to determine the social and educational backwardness, explained,

“We have left it to be determined by each local Government. A Backward Community is a community which is backward in the opinion of the Government”.

As a result, social scientists have come out with varying definition of who should be and who should not be called Other Backward Classes. Different Commissions and Committees are also set up by a number of State Governments in order to define the criteria for the backwardness and also to recommend measures to remove it. In this respect, there is no consensus even among different State Governments.94

**Constitutional Assembly Debates**

The debates of the constituent assembly are very helpful to know the real and true intention behind the framing of article 16 at the time of inclusion of the policy of reservation in the Constitution of India in favour of Other Backward Classes. The debate in the constituent Assembly took place on November 30, 1948 regarding the draft Article 10 and in particular clause 3, thereof (corresponding to clause (4) of article 16). This debate helps us to appreciate the background and objective underlying article 16, and in particular clause (4) thereof. The original intent comes out clear and loud from these debates on one hand and on the other hand, at the time
of the drafting of Article 16(4) (Article 10(3) of the Draft Constitution) a considerable discussion about the identification of ‘Backward Classes’ was made for whom a special provision for reservation in jobs was made in the Constitution.

According to some members this term meant only the ‘Untouchables’ specially the delegates from the Northern States believed that the Backward Classes meant only the untouchables,95 but according to some members this term included a broader group of people who were educationally, economically and socially backward regardless of their religion, race or caste and according to some, it only included the members of historically disadvantaged groups. The drafting committee decided to confine the policy of reservation only for the Backward Classes and not for any religious or linguistic minority. So, the use of the word “Backward” before the word “Classes” was inserted in the Draft Constitution by the Draft Constitution by the Drafting Committee. Some members wanted to define the term ‘Backward’ because the term was too vague. The debates of the Constituent Assembly as a whole, reflect multiplicity of the views on the meaning of the term “Backward Classes” including a view that the term educational or economic backwardness of the people of India without taking care of one’s caste, religion or race.

The use of the terms “castes and communities” repeatedly by Ambedkar show that by Backward Classes he meant nothing but Backward Communities and Castes, who had suffered centuries of oppressions and disabilities on the ground of being belonging to a particular caste, community or religion. But these were the personal views of Dr. Ambedkar. The meaning and true import of the words of Hon’ble Ambedkar is that the word ‘Backward’ means when a person or community who has so far been outside the administration should be provided with the benefits of the reservation but as soon as the community reached up to a level of advanced person or community it should give way, so that the next real deservers could come forward to get the benefits of this policy. The formula of creamy layer which is itself based on the economic criteria emerged impliedly in these provisions and it was the real and true ambitions of the Constitution makers’ themselves.

So, it is clearly indicated that even at the time of the constitutional debates, the term “Backward Classes” could not be clearly defined. At the time of the making of the Constitution there is little doubt that it was generally agreed that the Other Backward Classes would be castes and communities who were backward due to historical reasons.96
The study of the constitutional debates shows that the result was compromise which has been spelled out above that the constitutional provisions were nothing but a sort of compromise between the conflicting demands and aspirations. But it was also decided that the policies of reservation would have to be so arranged that the advancement of the Backward Communities could only be achieved without materially affecting the right to equality of opportunity which would need striking of a balance between the two rival claims—equality and equalization.

It is very interesting to note that the provisions regarding reservation in our Constitution which explicitly singles out some specific castes for the special preferential treatment, contradicts the prohibition provided in the document on the discrimination based on caste, race, and other such type of criteria. In addition to this, the caste system in India itself is at odds with its strict hierarchy dictated by birth with the ideals of equality and the social justice. The Constitution of India provides great liberties to the individual States to determine the quantity and the limits of the reservation and also to decide what, for example, qualifies as the “maintenance of the efficiency of the administration”. The clause in the Constitution giving the States the full power and the authority to formulate and then to implement the policy to facilitate “the advancement of any socially and educationally Backward Classes of citizens,” is also decidedly vague. In addition to it, no concrete definition of the word “Backward” is provided either.

**Parliamentary Debates**

On January 26, 1950 India ended its “Dominion” status; put in effect its new Constitution after becoming a republic. With an entire section dedicated to the “Fundamental Rights,” the Constitution of India prohibits any discrimination based on religion, race, caste, sex and place of birth (Article 15(1)). There was an extension of this law to all public institutions, like Government-run educational institutions, to access to hotels and restaurants, public employment and public well, tanks (manmade ponds for the water supply and bathing), and roads. Significantly, Article 15, which prohibits any kind of discrimination, also contains a clause which allows the Union and the State Governments to make “any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes.” Similarly, Article 16, calling for “equality of opportunity in matters of public employment,” includes clauses allowing the
“reservation of appointments of posts in favour of any Backward Class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”. This language was added in 1951 within the weeks of decision pronounced by the Supreme Court outlawing quotas at the time of admissions in the school.

During constitutional debates, an amendment was proposed to be made by K. T. Shah to clause (2) of draft Article 9 (which is now clause (3) of Article 15) to add the word “or Scheduled Castes, or Backward Tribes, for their advantage, safeguard and betterment” which was opposed by Ambedkar on the apprehended ground that if a clause like Article 16(4) was introduced in Article 15 too, the State could open separate educational and other facilities exclusively for the Scheduled Castes and Scheduled Tribes thereby offending the equality guarantee contained in Articles 14, 15 or 29.⁹⁷ Because he had the knowledge of the prevalence of the practice of segregating Negroes from educational and other public facilities in America with the tacit permission of the US Supreme Court.⁹⁸

When Constituent Assembly had rejected Shah’s amendment, it perhaps had not conceived that court might strike down measures of compensatory discrimination in the absence of the express provisions in the Constitution. The reason behind the omission of Article 15(4) by the Constituent Assembly was that the Assembly might have felt that Article 46 was wide enough to include all the compensatory measures to benefit the Backward Classes including the preferences provided to those people in the educational sphere even without violating Article 14 or 15. But because no provision was incorporated by the drafters of our Constitution in Chapter IV requiring the State to secure to the Backward Classes adequate representation in the public services. Rather Article 16(4) was incorporated in Part III of the Constitution by way of abundant caution. Article 15(4) was added by First Amendment made in the year 1951. The object behind adding this Article in the Constitution was simply to authorize the State to make preferences in favour of the Backward Classes in all its dealings. The pace of amendment is indicative of the fact that there was strong political support for the reservations.

The debate was also centered on the question as to who were the “socially and educationally Backward Classes” and why the Parliament chose to depart from the language used in Article 16(4)?⁹⁹ Therefore, Prof. K. T. Shah gave a suggestion to make an amendment for adding the word ‘economically’ along with the words “socially and educationally” on the ground that the aim of Article 15(4) should be to
remove economic backwardness.\textsuperscript{100} K. T. Shah’s suggestion to add the word “economically” was rejected by Nehru on the ground that the words “socially and educationally backward Classes” were bodily lifted from Article 340 and the word “economically” would cause a lot of confusion in future.\textsuperscript{101} Nehru conceded that recognition to castes and communities went against formal equality and non-discrimination yet an exception to all this was essential to overcome historical injustice.\textsuperscript{102} Nehru believed that in order to achieve equality for the Backward Classes, the principle of absolute equality had to be sacrificed. He realized that in raising the Backward Classes, equality was the ultimate objective but the paradox was that:

“In trying to attain equality we come up against certain principle of equality laid down in the Constitution. That is very peculiar position. We cannot have equality because we cannot have non-discrimination for if you are thinking of raising those who are down, you are somehow affecting the status quo, undoubtedly. You are thus said to be discriminating because you are affecting the status quo”.\textsuperscript{103}

In the mind of the a number of members of the Constituent Assembly there was a considerable suspicion that Article 15(4) might be misused by the local State through creating communal quotas and so perpetuating casteism and communalism in the country. The Select Committee, however, assured that Article 15(4) is:

“Not likely to be and cannot indeed be misused by any Government for perpetuating any class distinction against the spirit of the Constitution by treating non-Backward Classes as Backward with object of conferring privileges on them”.\textsuperscript{104}

So, the intention of the Constitution Drafters is echoed with the assurance given by the Select Committee to help the really needy and Backward Classes instead of promoting the interest of the individuals and the groups of people belonging to the advanced category in the name of caste or religion.

Therefore, it is very much clear from the constitutional debates on the Articles 15(4) and 16(4) and analysis of the history of the ‘reservations’ that the drafters themselves were not very clear about the exact meaning and definition of the term “Backward Classes”. Again it is indicated through the practice adopted by the State regarding ‘reservation’ prior to the independence that the Backward Classes were
largely listed by ‘castes’ and ‘communities’. Even after the Constitution came into force, this practice continued.\textsuperscript{105}

From the above analysis, one thing is very much clear that the main object of the compensatory discrimination was to just counterbalance the disadvantages suffered by some classes for the past wrongs due to the reason of unequal social structure of the Indian society. It was contemplated that the historically disadvantaged classes could be compensated for the past losses only through affirmative action programmes. It was also clarified by the debates that under Articles 15(4) and 16(4) preference had to be given to ‘Classes’ instead of giving to the individuals but the policy clearly was not conferring benefits on all the members of a disadvantaged class but only to those who were utterly deprived through the past discrimination. Only to identify the legitimate and deserving beneficiaries, the word ‘Classes’ was used simply as a convenient device.

The chief draftsman, Dr. Ambedkar always tried to equate Backward Classes with castes and communities. Ambedkar clarified that the Backward Classes will be designated by each State Government. Some others\textsuperscript{106} also preferred the determination of the Backward Classes at the local level than at the central level by the President appointed Backward Classes Commission under Article 340 because of the variations in the local conditions.

The aim of Articles 16(4) and 15(4) was just to eliminate inequalities associated with traditional social structure. The groups or classes entitled to preferences were not merely economically poor but also social groups associated with disabilities and backwardness due to heredity or unjust social conditions. Therefore, according to the constitutional drafters, Backward Classes had to be designated by ‘Castes’ and “Communities” who were the victims of inherited inequalities.

**Backward Classes Commissions**

The Constitution of India is loudly solicitous about the welfare of the Backward Classes of the society of India. Only after independence, the term Other Backward Classes was tried to be defined by the Government of India in order to make special provisions for their upliftment. The Indian Government desired to find out the criteria to be adopted for identifying the social and educationally backward classes in order to totally remove the age old social discrimination and also to infuse a spirit of respectability through the elimination of sense of high and low position in the
society, which itself is direct denial of democracy so that this age old discrimination in the Indian society meted out to the weaker sections might be eliminated by providing these people with every type of incentives. In reality, for the economically, socially and educationally Backward Classes, our Government wanted to do something special.

What the Constitution of India says about the Other Backward Classes is the obligation of the State to set up a Commission in order to investigate the conditions of the socially and educationally Backward Classes and the difficulties under which they labour and also to make recommendations in respect of the steps that are required to be taken for removing such difficulties and for improving their lot and over all condition. In order to give the required publicity, the Commission’s Report is to be presented to the President of India which would be laid before Parliament along with a memorandum giving explanations about the executive action. Since the enforcement of the Constitution, keeping in mind the object of the advancement and upliftment of the Backward Classes and in deference to the provisions provided under Article 340 of the Constitution itself, two Backward Class Commissions have been set up by the Government of India:—

1. One under Kaka Kalelkar in 1953;
2. The other under Bindhyeshri Prasad Mandal in 1978 (reporting respectively in 1955 and 1980).

1. Kaka Sahib Kalelkar Commission

On January 29\textsuperscript{th} 1953, by a Presidential Order under the provisions of Article 340 of our Constitution the First Backward Classes Commission was set up under the Chairmanship of Shri Kaka Saheb Kalelkar, M.P. Its report was submitted on March 30\textsuperscript{th} 1955. With the aim of full social equality, the Government of India desired to devise the different ways and means so that the “UPEKSHIT” (suppressed) could become able at the earliest to raise their heads and to come in the mainstream shoulder to shoulder with the rest of the Indian population. Therefore, to fulfill this purpose the Commission had been appointed. It was also visualized by an eminent anthropologist, N. K. Bose that the particular purpose of the Backward Classes Commission was to devise the measures to eliminate some specific inequalities which were related to caste. Therefore, the Commission was advised for removing all the inequalities but those associated with the caste. The Indian Government prepared the
basis for the full social equality by appointing this Commission because it was the
will and desire of the whole of the nation to cut down the chain of the hierarchy of
caste and its consequent social discrimination.

The Kaka Kalekar Commission had a broad-based membership. Even from
non-backward communities, the members were included in this Commission. This
fact injected a wider perspective to it within which it viewed the problem. There were
certain objects and the terms of reference of the Commission for the achievement of
which it was constituted. This Commission was also shouldered with the
responsibility to make certain recommendations.

In order to achieve its objective, the Commission was vested with certain
powers. In 1951 Census, there was abandonment of the caste enumeration. This
was done by the Government in order to discourage and to totally eliminate, in the
working of the State Government, the sense of caste consciousness. So, the
Commission was not successful in getting the whole of the information in respect of
inadequacy of representation of the Backward Classes in the services because the
figure of Government employees on the basis of their caste along with the percentage
of their representation for some years could be supplied by only few States.
Therefore, because of this reason, the Commission had to make its conclusion on the
ground of existing list about the Backward Classes which was prepared and delivered
by the different State Governments as well as the Ministry of Education. The
communities about whom the Commission had no data at all were even included in
the list of the Backward Classes and to those communities; the Commission had to
give the benefits of doubt. The list of the Backward Classes was enlarged with this
additional inclusion. In the list even few financially well-off communities were also
included due to their educational backwardness.

It was felt by the Commission that “Our society was built essentially on the
medieval ideas of birth, caste and social hierarchy, but not on an economic
structure.” But, the Commission desired to “dissociate the caste from the social
backwardness at the present juncture.” The following criteria for the identification
of the socially and educationally Backward Classes was formulated by the
commission so set up after proper sitting and sorting the facts collected by it:--

(1). in the traditional caste hierarchy of Hindu society, the low social position
of the person.
(2). among the major section of a community and caste, the lack of general educational advancement.

(3). in the Government service inadequate or no representation.

(4). in the area of trade, commerce and industry, inadequate representation.

A list of 2399 backward castes or the communities was also prepared for the whole of India by the commission, out of which 837 castes or communities were classified as ‘most backward’. The Commission was against including the Muslims in the list of the Backward Classes. But the Christians who were converted from Scheduled Castes and also were subjected to the caste prejudice, untouchables among the Sikhs and Gurkhas found in Uttar Pradesh, Bihar and West Bengal who were socially and educationally backward were recommended by the Commission to be included in the list of the Backward Classes. Some important and noteworthy measures recommended by the commission were as follows:

1. In the census of 1961, to undertake caste-wise enumeration of population;

2 In the traditional caste hierarchy of the Hindu society, to relate social backwardness of a class to its low position;

3. To treat all the women as a class as “Backward”;

4. For qualified students belonging to the Backward Classes reserving 70 percent seats in all the technical and professional institutions;

5. For Other Backward Classes, reserving minimum vacancies in almost all the Government services as well as local bodies on the following scale:¹¹⁶

   Class I . . 25%  
   Class II . . 33-1/3 %  
   Class III . . 40%  

   In addition to it, in the medical, scientific and technical institutions, 70% reservation was recommended by the Commission.¹¹⁷

The economic backwardness was also emphasized by the Commission to be taken into consideration for finding out the ability of the community to be eligible for taking advantage of the incentives and opportunities available under the policy of reservation.¹¹⁸ Certain recommendations¹¹⁹ were made to improve the lot of the Backward Classes particularly in the rural areas. The Constitution required the administrative efficiency to be consistent with the amelioration measures for these communities, the Commission failed to produce a unanimous report. Separate notes of dissent were submitted by five out of the eleven members of this Commission.¹²⁰
Rather, an equivocal stand was taken on this issue by Shri Kaka Kalelkar, the Chairman of the Commission. Though a formal minute of dissent was not recorded by him in his forwarding letter to the President of India; he was opposed to the acceptance of the caste as the criterion for the identification of the backwardness. Regarding several other prominent recommendations which were made by the Commission, he also expressed his reservations.

**Practicability of the Recommendations of the Commission**

The report submitted by the Commission was examined in detail by the Government and after that its copy was laid down before each House of the Parliament along with a Memorandum of action\(^{121}\) to be taken on 3\(^{rd}\) September, 1956 in accordance with the provisions of Article 340(3) of the Constitution.

But the report of the Commission on this point was not unanimous. In fact, there was divergence of opinion on this issue. It was stated about the acceptance of the caste as the basic criteria to be adopted for the identification of the backwardness of these strata of the society that the caste system was the greatest hindrance in the progress of an egalitarian society. On the basis of the Census 1951, in the list prepared by the Commission, there were 2399 communities and out of those 930 communities accounted for an estimated population of 11.5 crores, another 7 crores were Scheduled Castes and Scheduled Tribes. A large number of castes and communities were regarded as backward by the Commission and it was opined that such a multitude would swamp the really needy and no special attention and adequate assistance would be received by them (really needy persons). By this, the conditions provided under Article 340 of the Constitution would not be fulfilled.

It was considered essential by the Government in view of the above that for the specification of the socially and educationally Backward Classes, some kind of positive workable criteria was necessary to be adopted in order to make further enquiries and investigations in this regard with the aim of making good the deficiencies which were noticed in the findings of the Commission.

Incidentally, the Parliament did not discuss the Commission’s report. When the Memorandum was presented to the Parliament, after that the efforts were made by the Government for discovering criteria other than the caste which could be practically applicable for the purpose of determination of the Backward Classes. Ad-hoc surveys were asked to be conducted by the Deputy Registrar General in order to
watch whether backwardness could be related to the occupational communities at the place of caste, such a survey was conducted but the desired criteria could not be found out. On 7.4.1959, the State representative discussed the matter at a conference and also reviewed it at a meeting of State officers convened by the Ministry of Home Affairs, but even then these efforts did not result into emergence of any consensus. Ultimately, a decision was taken by the Central Government that neither all lists of the Backward Classes on all India bases nor any kind of reservation made for any group of these people other than the Scheduled Castes and the Scheduled Tribes in Government services at the Central level should be drawn up. As a result, all the State Governments were addressed by the Ministry of Home Affairs on August 14th, 1961.

In 1965, the Backward Classes Commission finally discussed its report in the Parliament. Once again, the caste criteria was rejected by the Central Government in the determination of the backwardness because adopting the caste criteria is not only contrary to the first principle of the social justice but also to the Constitution itself. Once again the economic criteria were endorsed by the Central Government because in the opinion of the Government the report based upon caste criteria would perpetuate the caste system. Those States were applauded by whom these economic criteria were adopted. Towards the identification of the Backward Classes, the Commission failed to suggest practicable and positive criteria. Really speaking, there were grave flaws of methodology and serious types of internal contradictions in the report presented by Kaka Saheb Kalelkar Commission.

In the thirty pages forwarding letter to the President, it was observed himself by the Chairman that there were so fragmentations in the conceptual design of the report that there was logic in the report itself for its rejection. There was ambiguity in the report and nothing was clear how by applying caste criteria, the lists of Backward Classes were derived. On the list prepared by the Ministry of Education in 1949, the conclusion drawn by the Commission was based for the purpose of grants of Scholarship etc. not to the Socially and Educationally Backward Classes as per the provisions provided under Article 340 of the Constitution but to the “Other Educationally Backward Classes”. But, inspite of condemning the caste system, it was made a predominant factor by the Commission itself in the identification of the Backward Classes. So, the determination of the Government for the creation of the casteless society could not be appreciated by the Commission. The report of the
commission had also to face severe criticism because different percentages of the reservation were recommended by Kaka Kalelkar Commission in the educational institutions and the Government services etc. in favour of the Backward Classes. But it did not give any explanation of the rationale for the fixation of the different percentages for the different group of posts, so the approach appeared somewhat arbitrary. The real weakness of the Report was its internal contradictions.

In fact, the Commission was in favour of dissociating the caste from the social backwardness as the adoption of the caste criteria for the identification of the Backward Classes was inimical to the creation of a casteless and classless society. The pre-occupation of the Government with the economic criteria for the determination of the backwardness was quite understandable but this substitution of caste by economic criteria might have resulted in ignoring the genesis of the social backwardness in the society of India.

It is quite evident that the objectives for the achievement of which this Commission was formulated, could not achieved by it. For a certain period of time, the politics of the backwardness was shelved but with the failure of the Commission in providing equitable and practical solution of the problem heralded a new political environment to prosper the same thing which was termed by the Chairman of the Commission himself as repugnant to democracy and was repudiated.

2. Mandal Commission

The First Backward Classes Commission had proved to be a failure in the achievement of its objective of identification of the Backward Classes clamoring for special treatment. It failed to provide us any practicable and equitable criterion for identifying a group of people as socially and educationally backward and also could not tell the importance of the term backwardness. So, no clear social policy could be conceptualized in relation to the compensatory discrimination in favour of the Backward Classes of citizens.

Then in 1977, in the election manifesto, there was a promise made by the Janata Party to reduce the discrimination through the reservation of 25 to 33 percent of the Government services in favour of Backward Classes in education and in the self-employment which was recommended by the Kaka Kalelkar Commission. This manifesto objected towards calling for an end to the caste destinations and also promise was made through it for the establishment of an independent and autonomous
Civil Rights Commission which would be competent enough to ensure that Minorities, Scheduled Castes, Scheduled Tribes and Other Backward Classes would not suffer any kind of discrimination or inequality.

A new Backward Classes Commission was decided to be appointed by the Janata Party Government after getting its victory in the election held in 1977 for determination of criteria to define the socially and educationally Backward Classes. In February 1978, a Backward Classes Commission was appointed by the President of India on the advice of the Council of Ministers by exercising the powers conferred by Article 340 of the Constitution of India on him. The Chairman of the Commission was Shri B. P. Mandal who was appointed along with five other members of the commission on certain specific terms of reference of the Commission.

In addition to it, the Commission was also empowered to make enquiries or examine the recommendations made by the Backward Classes Commission which was appointed earlier and whose Chairman was Kaka Kalelkar. This commission could also examine the considerations standing in the way of the acceptance by the Government of the recommendations made by the earlier Backward Classes Commission.

In order to achieve its objectives and to fulfill its duties, the Commission adopted the test of objective criteria and field surveys were conducted by it for determining the criteria for the identification of the Backward Classes. Data was collected and analyzed on the basis of 1891 and 1931 Census in order to get a frame for the purpose of linking the traditional occupations by caste. Law Institute of India, New Delhi was also engaged in order to take due cognizance of the judicial pronouncements relating to Other Backward Classes for formulating the recommendations to be made by it for identifying Backward Classes and also for their upliftment to suggest various measures.

After following the above mentioned exercise, eleven indicators or criteria for the determination of the social and educational backwardness were evolved by the Commission. These eleven indicators were grouped i.e. Social, Educational and Economical under three Broad heads. They were:

A. Social

1. The Castes/Classes which were considered as socially backward by the others.
2. The Castes/Classes which were mainly dependant upon manual labour for their livelihood.

3. The Castes/Classes where in the rural areas, at least 10% males and 25% females got married at the age below 17 years which was above the State average. Similarly, in the urban areas at least 5% males and 10% females were married above the State average.

4. The Castes/Classes where the females participated in work at the rate of at least 25% which was above the State average.

B. Education

1. The Castes/Classes where the number of the children who never attended the school and are in the age group of 5-25 years, is at least 25% above the State average.

2. The Castes/Classes where the rate of the drop-out of the student with in the age group of 5-15 years is at least 25% which is above the State level.

3. The Castes/Classes, amongst whom, the proportion of matriculates is at least 25% which is below the State average.

C. Economic

1. The Castes/Classes where the average value of assets of family is at least 25% which is below the State average.

2. The Castes/Classes where number of the families who live in the Kuccha house is at least 25% which is above the State average.

3. The Castes/Classes where for more than 50% of the households, the source of the drinking water is beyond the half of kilometer.

4. The Castes/Classes where the number of households which have taken the consumption loan is at least 25% which is above the State average.

As a result of the application of this criterion, identification of the maximum of the well known socially and educationally backward castes was made as backward.

Recommendations

The Mandal Commission spread itself more widely than the First Backward Classes Commission as against the identification of 2399 Backward Classes by the First Backward Classes Commission; no fewer than 3743 castes were identified by this Commission as Backward Classes and it was concluded boldly by the Mandal
Commission that almost 52 percent of the population of India comprised the Backward Classes. Accordingly, it was argued by the Mandal Commission that under the Central Government 52% of all the posts should be reserved for the Backward Castes. But the recommendation of the Mandal Commission was against the earlier judgment of the Supreme Court which in no case could go beyond the limit of 50%. In view of this legal constraint, the Commission was compelled to recommend a reservation of 27 percent only inspite of the fact that their population was almost twice of that (27%) figure. The reservation in favour of the Backward Classes at this rate should be applicable not only to the technical and professional institutions but to all the Government services in the Centre as well as in all the States.

In the selected areas, where there was high concentration of the Other Backward Classes, special educational facilities which were designed at upgrading the cultural environment of the students in a phased manner were recommended to be created. It was also recommended that vocational training should be given the preference in the matter of placing the special emphasis. In the technical and professional institutions, separate coaching facilities should be provided to the students belonging to the strata of Other Backward Classes for enabling them to reach at par with the students coming from the open quota.

The Commission also recommended that special programmes for increasing the skills of the artisans at the village level should be prepared and from the financial institutions, subsidized loans should be granted to those artisans in order to set up small scale industries. For promoting the participation of the Other Backward Classes in the business and the industrial life in the country, a distinct network should be created by almost all the Governments at the State level of financial and technical institutions.

Radical land reforms were also recommended to be provided the highest priority by all the States. As the Backward Classes comprising the tenants, small land-holders, agricultural labor, village artisans, etc., for their sustenance were dependant mainly on the rich peasantry. Therefore, the Other Backward Classes would never be in real sense independent unless and until these types of production-relations were altered through making structural changes and through implementing the land-reforms throughout the country.

At that time, in the absence of any assistance provided by the Centre to any State and due to the lack of the resources for the implementation of any welfare
programmes for the Backward Classes, a number of the State Governments were helpless to undertake more objective programmes of the development of this category of persons. Therefore, it was recommended by the Mandal Commission that special welfare programmes designed for the Other Backward Classes should be financed to the same extent and in the same manner by the Central Government as was done in the case of the Scheduled Castes and the Scheduled Tribes.

Along with the general recommendations made by the Commission in respect of the quantum of reservation, the following overall scheme of the reservation was proposed by it in favour of Other Backward Classes:-

1. The Other Backward Classes candidates who were recruited on the ground of merit in the open competition should not be allowed to be adjusted against the quota of 27% of their reservation.
2. At all the promotional level also, the above stated reservation quota should be made to apply.
3. Reserved quota which remained unfilled in the previous years should be carried forward for a period of at least three years and should be de-reserved after that period of three years.
4. For direct recruitment, the relaxation in the upper age limit should be provided to the candidates belonging to the Other Backward Classes in the same manner in which it was provided to the Scheduled Castes and the Scheduled Tribes.
5. By the concerned authorities, a roster system should be adopted for each and every category of posts in the same manner in which it was adopted regarding the candidates belonging to the Scheduled Castes and Scheduled Tribes.

It was also recommended that the above stated scheme of the reservation should be applicable in its Toto to all kinds of recruitment to the public sector undertakings at the Central as well as at the State Governments level, as also to the nationalized banks. All the undertakings under the private sector receiving financial help in one form or in the other from the Government should also follow the same scheme for the recruitment of its personnel. This scheme of reservation should also cover all the universities and affiliated colleges. It was imperative to give proper effect to above stated recommendations that the Government should make adequate statutory provisions in order to bring amendments in the existing enactments, rules and procedures etc. to the extent these provisions were not in consonance with the scheme of the reservation.
The best catalyst of the change is the education. Educating the people belonging to this category is the surest way of improving their self image and the status in the society. So, it was recommended that an intensive and time bound programme should be initiated for adult education in the areas where there was concentration of the population belonging to the Other Backward Classes. Secondly, in these areas, residential schools should be set up in order to provide a climate for the serious studies for the students of Backward Class category. In these schools, the facilities like free boarding and lodging should be provided in order to attract the students of this category. It was also recommended by this Commission that there should be the reservation of the seats in favour of Other Backward Classes students in all scientific, technical and professional institutions which were run both by the Central and State Governments.

In respect of the period of operation of the recommendations of the Commission, the commission recommended that there should be made the review of the whole of the scheme after twenty years.

**Government’s actions on the recommendations of the Mandal Commission**

In 1990, for the implementation of the recommendations of the Report of the Mandal Commission tangible steps were taken by the Government. The Government took the historic step, on the basis of the Mandal Commission’s Report, on 6th August, 1990 by introducing reservation of 27% for the Backward Classes in the civil posts and services under the Central Government and Public Sector Undertakings and Financial Institutions by issuing formal order in Office Memorandum No. 36012/31/90-Estt. (SCT) dated 13th August 1990. But the said Memorandum was questioned through the filing of a number of writ petitions in the Supreme Court along with the applications for staying the operation of the Memorandum. In a landmark judgment, in Writ Petition (Civil) No. 930 of 1990 – Indira Sawhney v. Union of India and Others, dated 16/11/1992, the following guidelines were issued by the Supreme Court:-

1. Backward class of citizen in Article 16(4) can be identified on the basis of caste and not only on economic basis.
2. Article 16(4) is not an exception to Article 16(1). It is an instance of classification. Reservation can be made under Article 16(1).
3. Backward classes in Article 16(4) are not similar to as socially and educationally backward in Article 15(4).

4. Creamy layer must be excluded from Backward Classes.

5. Article 16(4) permits classification of Backward Classes into Backward and more Backward Classes.

6. A Backward class of citizens can not be identified only and exclusively with reference to economic criteria.

7. Reservation shall not exceed 50%.

8. Reservation can be made by ‘Executive Order’.

9. No reservation in promotions.

10. Permanent Statutory body to examine complaints of over-inclusion/under-inclusion.


12. Disputes regarding new criteria can be raised only in the Supreme Court.

3. **Permanent Backward Classes Commission**

   Under the same judgment, the Supreme Court directed the Government of India, various State Governments and Administrations of Union of Territories for the constitution of a permanent statutory body in the nature of a Tribunal or Commission to entertain, examine and to make recommendations on making requests and on the complaints, about the over-inclusion and under-inclusion of the Backward Classes in the list of the Other Backward Classes.

   In accordance with the direction issued by the Supreme Court, the National Commission for Backward Classes Act 1993 (Act No. 27 of 1993) was enacted by the Government of India to set up at the Centre, the National Commission for the Backward Classes. On 2nd April 1993, the Act came into effect and the Commission was constituted by the Government of India by its notifications No. 12011/34/BCC(C)/Pt.I on 14th August 1993, with the first team of five members for tenure of three years. According to Section 9(2) of the Act, the advice given by the Commission shall ordinarily be binding on the Government (Central) and Section 10 provides for the powers of the Commission while performing its functions. Section 11 provides periodic revision of the lists which shall be made by the Central Government and under sub-section 2 of Section 11, while undertaking such revision; the Central Government is required to consult the commission. After considering the
indicators/criteria formulated by the Mandal Commission and the different Commissions set up by the different State Governments in the past and other relevant materials, certain guidelines were formulated for the consideration of the requests for the purpose of inclusions in the list of the Other Backward Classes.

4. Commission for Economically Backward Classes

On 6th January, 2004 the Commission for Economically Backward Classes has been constituted through a resolution with the following terms of reference:

1. to elicit the views on the subject of the State Governments/Union territories and others;
2. to recommend the measures and quantum of reservation;
3. to suggest the criteria for the identification of economically Backward Classes; and
4. to present a Report to the President of their deliberations and recommendations.

The tenure of the Commission was extended upto 31st March 2010.

Central Lists of Other Backward Classes

The Department of Personnel & Training vide its Office Memorandum dated 8.9.1993 inter alia, in pursuance of the Supreme Court’s judgment in Indra Sawhney v. Union of India case, directed that,

“The Other Backward Classes would comprise, in the first phase, the castes and communities which are common to both the lists (i.e., in the report of the Mandal Commission and the State Government’s lists). A list of such castes and Communities is being issued separately by the Ministry of Welfare.”

Accordingly, vide Resolution dated 10.9.93 of the then Ministry of Social Welfare the first Central List of Other Backward Classes was issued in respect of 14 States. Vide Notification dated 19.10.1994 and 24.5.1995, lists for another 7 States and 4 Union Territories were issued by the then Ministry of Welfare. Since the first notification of the common list on 10.09.93 and in August, 1993, the constitution of the National Commission of Backward Classes till date 1993 such entries (by way of castes, their synonyms, sub-castes etc.) have been notified in the Central List of Other Backward Classes for 22 States and 6 Union Territories through 24 resolutions. The changes in the Central List of Other Backward Classes are made by the Central
Government on the advice of the National Commission for Backward Classes from time to time.

**Inclusion of more and more Castes in the Other Backward Classes**

There has been a 90% increase in the number of the centrally notified Other Backward Classes in 1993 from 1257 castes to 2297 castes in 2006. The reason behind such an inclusion is that certain States like West Bengal, Orissa and the Rajasthan have only after Mandal I happened to enumerate Other Backward Classes, there have also been instances of muscling into the central list of the dominant castes purely due to their political clout.\(^{130}\)

During the year 2009-10, 11 letters of advices for the inclusion/addition/modification/corrections to the Central list of Other Backward Classes has been tendered by the National Commission for Backward Classes which are under consideration.\(^{131}\)

After the 1931 census, the Caste-wise census was discontinued. Hence, on the population of Other Backward Classes in the country, the census data is not available. However, the Other Backward Classes population had been estimated at 52% of the total population by the Mandal Commission while it has been estimated to be 41% by the National Sample Survey Organization, based on its 61\(^{st}\) round survey (2004-05) as stated in its Report “Employment & Unemployment situation among Social Groups in India.”\(^{132}\) However, now the Census of India, 2011 is being conducted on caste lines.

**II. Extent/ Quantum of Reservation**

**Valid Reservation and its Extent**

Second most contentious issue relating to the policy of reservation is the quantum of the reservations which has become a knotty socio-political issue of the day. Because there are limited opportunities available in the country and due to that reason, there is keen competition and the Governments also feel pressurized for indulging in all kinds of reservations for all kinds of groups apart from the reservations for the Scheduled Castes, the Scheduled Tribes and the Backward Classes. In the different Supreme Court decisions, the opinions about the quantum of the reservation were different. But the rationale of such a turn around was articulated by Justice Krishna Iyer,

> “The expression, ‘nothing in this article’ is a legislative device to express its intention in a most emphatic way that of the power
conferring there under is not limited in any way by the main provision but falls outside it. It has not really carved out an exception but has preserved a power untrammeled by the other provisions of the article”.

In India, the extent of the reservation which is to be made is primarily a matter to be decided by the State itself and also subject to judicial review. Otherwise, the excessive reservation, which is factual position in India, renders the guarantee of the equality granted under Article 16(1) or Article 335 meaningless. According to the normal rule, the reservation under Article 16(4) should not exceed 50 percent of the appointments or the posts which are to be made in any particular year.\textsuperscript{133} Otherwise, Clause (1) of Article 16 would become illusory. However, it was clarified by the Apex Court that that rule applicable to the ‘vertical reservation’ that reservation must not exceed 50% does not apply to the horizontal reservation in favour of women and handicapped.\textsuperscript{134} Another drawback of the excessive reservation is that the reservation has to be used in a limited sense otherwise there will be perpetuation of the casteism in the country due to excessive reservation. Excessive reservation makes an inroad into the principle of equality in Article 16(1). If under any State enactment, the excessive reservation is found then such an enactment is liable to be struck down because it will amount to the derogation of the above constitutional requirements.\textsuperscript{135} Because the main object behind providing benefits under reservation is to transcend caste and not to perpetuate it. The concept of the “extent of the reservation” is context specific like merit but it is not an absolute concept.\textsuperscript{136} Further roster, has to be post-specific and not vacancy based.\textsuperscript{137}

Clause (4) is too wide to include not only reservation but also relaxation of the standard at the competitive examinations, in favour and in the interest of the members of Backward Classes\textsuperscript{138} or preferences or exemptions to be regarded ancillary to the reservation.\textsuperscript{139} If a person takes the plea that the reservation is unreasonable, in that case, then the burden of establishing that fact is also on the person taking the plea. It means that the reservation cannot be struck down on hypothetical grounds. Under Clause (4), for making reservation ‘each year’\textsuperscript{140} of the recruitment is required to be considered separately, and by making a general rule the problem cannot be solved without keeping in mind its repercussions from year to year.\textsuperscript{141} But on the other hand, injustice cannot be caused to a candidate who is selected on merit for the current year, in remedying injustice to a candidate wrongly excluded in a previous year.\textsuperscript{142} For a Backward Class, once a decision has been taken to reserve vacancies, then unless the
avenues for fulfilling it have been explored and have failed, the programme affected to that end should not be disturbed.\textsuperscript{143} In case of only one post in the cadre there can be no reservation with reference to that post. In case of three posts, if one was occupied by a general candidate and the other by a Scheduled Castes candidate, it was held that the third post could not go to the reserved candidate.\textsuperscript{144} Reservation presupposes availability of at least more than one post in the cadre\textsuperscript{145} but it was held subsequently that in promotion the provision for reservation to such a post by way of rotating the vacancies as per the roster point would not be violative of Article 16(1).\textsuperscript{146}

The limit of 50 percent is applicable only to ‘reservation’ and it cannot be made applicable to exemptions, concessions or relaxations, if any, given to the Backward Classes, under Article 16(4).\textsuperscript{147} Also the concession cannot be provided to the beneficiaries retrospectively.\textsuperscript{148} The rule of 50 percent a year should be taken as the unit and not the entire strength of the cadre or service as the case may be.\textsuperscript{149} To fill the reserved seats in a particular year if the suitable candidates are not available, then the reserved quota cannot be carried forward to the next year, so as to exceed the 50 percent limit for the reservation.\textsuperscript{150} The reserved vacancies cannot be carried forward beyond the period of three years and at the end of which they lapse\textsuperscript{151} and cannot be revived and cannot be filled retrospectively through the application of the relaxed norms.\textsuperscript{152} But when, in case, within the period of three years, the reserved candidate became eligible for the promotion, then the general category ad hoc promotee could not be entitled to be regularized.\textsuperscript{153} Mandated by Article 335, it is an extension of the principle of providing facility and opportunity in order to secure adequacy of the representation to the Scheduled Castes and Scheduled Tribes.\textsuperscript{154} By inserting Clause (4-B) to the Article 16 by treating the unfilled vacancies as a separate class, the controversy of ‘carry forward, has been set at rest [vide the Constitution (Eighty-First Amendment) Act, 2000].

It was held by the Supreme Court that inter se ranking among the reserved category candidate obtaining selection on the basis of the merit (open candidates) and those other candidate obtaining selection only on the basis of reservation (“quota candidates”) was to be determined on the basis of their inter se merit and more meritorious amongst them were to be provided first choice of the posts, each service being treated separately, because reserved category (“open candidates”) though higher
in merit had got posting in lesser important service. Such a result was held to be unjust and hence rearrangement in the appointment was directed.\textsuperscript{155}

**Exclusion of Creamy Layer**

The main purpose behind Article 16(4) is just to ameliorate backwardness of the group.\textsuperscript{156} The directions were issued in the case of Indira Sawhney v. Union of India and Others, dated 16/11/1992, to the Government of India for specifying the basis to apply the relevant and requisite socio-economic criteria to be adopted for the exclusion of the socially advanced persons/sections (cream layer) of the society from the Backward Classes. In identifying a class as Other Backward Class, socially advanced (referred to as the ‘cream layer’) should not remain the part of the Backward Class and should be excluded by appointing a commission.\textsuperscript{157} But the terms of reference at the time of appointing the commission may be subject to judicial review.\textsuperscript{158} It means to convey the fact that the backwardness of a class cannot be permanent. There should, therefore, be a permanent Commission\textsuperscript{159} and it should be constituted at the Union and the State levels, in order to make a periodic revision of the list of the Other Backward Classes, and also to examine complaints about the wrong or non-inclusion of the groups or the classes in that list.\textsuperscript{160} On the other hand, it is the duty of the Commission to fix standards of proper income, property or status for the identification of the ‘cream layer’,\textsuperscript{161} but it should lay down the whole of the emphasis on the social advancement, even though the extent of the income or the property can be taken as a measure of the social advancement.\textsuperscript{162} It is again necessary that for the purpose of achieving its goal, the benefits of the reservation must reach the poorest and the weakest sections of the class. The creamy layer should be excluded by adopting the means test, which is, therefore, imperative to skim off the affluent section of the Backward Class.\textsuperscript{163} This creamy layer in a caste is not socially or educationally backward, but it is on par with forward classes, so from the purview of the reservation it has to be excluded otherwise it would be violative of Articles 14, 16(1) and 16(4).\textsuperscript{164} Therefore, the persons who are ceased to be members of the socially and educationally Backward Class should not be allowed to obtain the benefits under the policy of the reservation.\textsuperscript{165} Determination of the creamy layer is a part of the constitutional scheme.\textsuperscript{166} Even legislation based on the equity must answer the tests of equality clauses contained in Articles 14, and 16 of the Constitution.\textsuperscript{167}
The problem of the Backward Classes is, in its most general form, the problem of achieving equality in a world permeated by inequality. The significance of the category ‘Backward Classes’ lies not only in its size and extent, but also in the special Indian way of defining its boundaries. For a proper understanding of the problem of the Backward Classes, it is required to be viewed in several perspectives, notably those of the social sciences and of the legal studies.

In accordance with the direction issued by the Supreme Court in respect of the exclusion of the socially advanced persons or sections from the lists of the Other Backward Classes, an expert committee was constituted by the Government of India under the headship of the Justice R. N. Prasad (Retired) along with three other members comprising two officers with administrative experience and a social scientist in order to find out the criteria to be adopted for identifying the socially advanced persons or sections (creamy layer) and for the exclusion of that ‘Creamy Layer’ from the list of Other Backward Classes. The report was submitted by the Committee on March 10, 1993. The Office Memorandum Number 36012/22/93 of Department of Personnel and Training, dated 8th September, 1993 inter alia provided that the sons and daughters of persons having gross annual income of Rs. 1 lakh or above for a period of three consecutive years would fall within the creamy layer and would not be entitled to get the benefit of reservation available to the Other Backward Classes. The term ‘Creamy Layer’ was defined by the Committee as,

“when a person becomes able to shed off all the attributes of social and educational backwardness and employment has been secured by him or some trade or profession of high status has been engaged by him and he is now at a stage at which he is not in need of any kind of reservation”.

**Review of Income Criteria**

The first review to be made about the income criteria in order to exclude the socially advanced persons or strata of the society from amongst the Other Backward Classes was entrusted to the National Commission of Backward Classes on December 6, 2003. The Report was submitted by the Commission on 23rd January, 2004 and in that report, it was recommended that income limit for the determination of the socially advanced persons or sections of the society belonging to the Other Backward Classes should be raised from 1 lakh to 2.5 lakhs. This recommendation of the Commission
was accepted by the Government along with another recommendation that the future Periodic Review of the Income criteria should be taken up every three years or earlier on the demand of the situation. The Government raised the limit of income to Rs. 2.5 lakhs through the notification vide Department of Personnel & Training Office Memorandum No. 36033/3/2004- Estt. (Res.) dated 9th March, 2004. The Commission was entrusted the job of providing suggestions or recommendations on some other issues relating to the creamy layer criteria. After that, from the public side, there had been demands, particularly from the members and the organizations/associations of the Backward Classes of persons for raising the income limit of Rs. 2.5 lakh to a reasonable level taking into account increase in the price index, Gross Domestic Product, devaluation of the rupee and the increase in the overall price index etc. Later on, according to the Office Memorandum No. 36033/3/2004-Estt., (Res.) dated 14th October, 2008 issued by the Ministry of Personnel, Public Grievances & Pensions, and Department of Personnel and Training, it was decided to increase the income limit for the determination of the creamy layer amongst the Other Backward Classes from Rs. 2.5 lakh to Rs. 4.5 lakh per annum. From 3rd October, 2008, the provisions of this Office Memorandum were to take effect. The revised income ceiling for admission has also been implemented to all Central Institutions by the Ministry of Human Resource Development.

The justification of the Supreme Court behind the exclusion of the creamy layer from the ambit of the reservations at the first place is the elimination of the socially and educationally advanced sections among the castes so that the most deserving and the poorest of the poor can come forward to get the benefits of this policy of reservation and at the second place, the beneficiaries as they moved out of the ladder, will have to be phased out of the reservations. With this enhancement, a larger number of Other Backward classes earlier excluded from reservation benefits were now covered. But with the increase in the income ceiling of the creamy layer time and again, there seems to be no effort for phasing the forward category out of reservations but continue them in perpetuity.

**Reservation for the Other Backward Classes in the Higher Educational Institutions**

On the 27th of May 2006, the Prime Minister’s Office constituted an Oversight Committee for monitoring the implementation of Mandal case judgment. He also
directed that the Committee would, inter alia, look into some important aspects and submit its report by 31st August, 2006.  

On the implementation of the new reservation policy, on the recommendation of the Oversight Committee in the Higher Educational and Department-Related Parliamentary Standing Committee on Human Resource Development vide its 186th report, the Central Educational Institutions (Reservation in Admission) Act, 2006 was placed providing for the reservation in admission of the students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes in the Higher Educational Institutions. In a landmark judgment regarding reservation in favour of the Backward Classes in the educational Institutions maintained and aided by the State Governments in a writ petition (Civil) No. 265 of 2006 – Ashoka Kumar Thakur v. Union of India and Others dated 10th April, 2008, a Constitution Bench of the Supreme Court of India (comprising Hon’ble Justice K. G. Balakrishnan, Chief Justice of India, Hon’ble Justice Arijit Pasayat, Hon’ble Justice C. K. Thakker, Hon’ble Justice R. V. Raveendran and Hon’ble Justice Dalveer Bhandari) upheld the Central Educational Institutions (Reservation in Admission) Act, 2006 (5 of 2007), providing 27% of the seats in the Central Educational Institutions in favour of the Backward Classes and it was further held that,

“determination of criteria for the identification of the ‘Other Backward Classes’ is by giving reference to a caste by the Central Government, the ‘Creamy Layer’ shall be excluded from such caste.”

Under this Act, the following scheme of reservation has been provided: i) SC – 15%, ii) ST – 7.5% and iii) OBC – 27%.

As a result of this scheme, now under reservation about 50% of the seats have come in all the Central Educational Institutions including institutions of higher learning and professional institutes like Indian Institute of Technology, All India Institute of Medical Sciences and Governmental Medical and Engineering colleges. However, the following institutions are excluded from the purview of reservation under the Act- institutions in tribal areas, research institutions as specified in the Schedule to the Act, minority institutions and super-specialty courses as may be specified by the Central Government. It may be noted that in the various decisions, it has been held by the Apex Court that there can be no reservation in super-specialty courses. But, the super-specialty courses are not specified by the Act and to the
discretion of the State, it has been left for determining the super-specialty courses which from the purview of reservation are to be excluded.

**Constitution of the Backward Classes Commission in the State of Punjab**

In the State of Punjab in 1951, a Committee on the Backward Classes was appointed by the Punjab Government and on the basis of the recommendations of this Committee, 14 Castes were declared which constituted 2% of the State population as Other Backward Classes. On the basis of the economic, social and educational backwardness, the identification was done by the Government and 2% of the seats in the Punjab Government services were reserved in favour of the Other Backward Classes. Regarding the admission to the educational institutions also similar concession was granted.

In 1965, an Evaluation Commission was appointed by the State Government and the Chairman of this Committee was Shri Brish Bhan for reviewing the concessions to be provided to Backward Classes. The Report of this Committee was submitted in August 1966 and this Committee recommended the following measures:

1. The rationalization of the list of the Backward Classes should be made so that the classes or the castes could be excluded which were no longer backward and,

2. In the educational institutions the 2% reservation of the seats should be enhanced to 5 percent.

It was also observed by the Committee that in services the reservation provided was not serving any useful object and in the matters of education concessions should be given by the Government. But the recommendation of the Committee was not accepted by the Government on abolishment of the reservation regarding services. In fact, both in services and in the educational institutions, the reservation quota was raised to 5%.

In 1975-76, the Punjab Vidhan Committee on welfare of Scheduled Castes, Scheduled Tribes and the Backward Classes in its Fourth Report, recommended that in services 15% reservation should be made for the Other Backward Classes. After the examination of this recommendation, it was pointed out by the State Government that there was already 25% reservation for the Scheduled Castes and 20% for the ex-servicemen. Because the maximum limit of 50 percent could not be exceeded, so it was not possible to provide seats in favour of the Backward Classes more than 5
percent. Out of the 37 castes provided in the list of the Scheduled Castes for the State of Punjab, for the purpose of reservation in the services in their favour, 50% reservation of the reserve quota was provided in the direct recruitment to Balmiki, Mazbhi Sikh with the contention that among the Scheduled Castes provided in the list, these castes are more backward. According to the Volume II of Fourth Report issued by the Commission in the State of Punjab, again it was reiterated that on the entry of these castes (Balmiki, Mazbhi Sikh) during the last five years into the services, survey should be conducted by the State Government.

Legislations in the State of Punjab in favour of the Other Backward Classes

On 27th March, 2006 by the Department of Legal and Legislative Affairs, in the State of Punjab through issuing a notification vide No.6- Legislation/ 2006 an Act The Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 (Punjab Act No. 6 of 2006) was enacted in order to provide for the fixation of the fee, regulation of the admission and also for providing reservation in private health sciences educational institutions in the State and in respect of the matters in connection with that or incidental thereto. Section 6 of the Act provided for the reservation of the seats in all the private health science educational institutions for the purpose of the admission in the category of open merit and category of the management, for the advancement of the socially and educationally Backward Classes of the citizen of India or in respect of the Scheduled Castes and Scheduled Tribes to the extent of the notification by the State Government from time to time in the Official Gazette with the condition that such reservation shall not be applicable to the minority category in the minority private health sciences educational institutions.

The policy of the reservation to be made applicable for getting admission to the Teaching Departments for the session 2007-2008 was provided.172 Again, in the notification No. 33-Leg. /2006 dated 5th October, 2006, the Punjab Scheduled Caste and Backward Classes (Reservation in Services) Act, 2006 was enacted by the legislation of the State of Punjab providing for reservation in the services in favour of the members of the Scheduled Castes and Backward Classes. The provisions of section 4 (1), (2), (3), (4), (5), (6), (7) and (8) of Section 4 along with (1) and (2) of Section 5 were provided in respect of the percentage of reservation in the Act. Section
4 (1) provides for the reservation to be made in favour of the members of the Scheduled Castes and Backward Classes under all the establishments at the time of appointments in the services. (2) of Section 4 explains about the percentage of the reservation in Group ‘A’, Group ‘B’, Group ‘C’ and Group ‘D’ services to be twenty-five percent for filling the vacancy by direct recruitment or by the transfer in case of the Scheduled Castes. Under (3) and (4) of Section 4, it is provided that in Group ‘A’ and Group ‘B’ services, the percentage to fill the vacancies by promotion is fourteen percent and in Group ‘C’ and Group ‘D’ services, it (the percentage of the reservation to fill the vacancies again by promotion) is twenty percent respectively. Under (5) of Section 4 elucidates fifty percent of the vacancies of the quota reserved for Scheduled Castes to be offered in case of direct recruitment in favour of Balmiki and Mazbhi Sikhs, if available. Clause (6) of Section 4 explains about the implementation of the reservation to be made by reservation of the vacancies by means of a running roster. (7) and (8) of Section 4 tell about the applicability of the reservation to the adhoc vacancies, short term vacancies, daily wages staff, work charged establishment and the staff engaged on basis of the contract and also to proforma promotion and to the appointment by way of transfer respectively.

Similarly, (1) and (2) of Section 5 provides that the candidature of a candidate belonging to the category of the Scheduled Castes and of a candidate belonging to the category of the Backward Classes respectively is required to be supported by a certificate of caste identification issued for the State of Punjab from time to time under the Constitution (Scheduled Castes) Order, 1950, notified by the President of India.

Under (1) of Section 6, the provisions in respect of the implementation of backlog of the vacancies are discussed. Under this section, it is clarified that the backlog reserved vacancies will be filled up in the succeeding year or years and the ceiling of the fifty percent shall not be applicable to such class of vacancies and these vacancies will not be considered together with the vacancies of the year for the purpose of the determination of the ceiling of the fifty percent reservation of that specific year. The backlog or carried forward reserved vacancies shall be calculated keeping in view in each cadre or service, the total number of the vacancies for the Scheduled Castes. Under Section 7 of this Act, the provisions regarding de-reservation of the reserved vacancy are provided and explained.
Types of the reservation policy in India

This range of the preferential treatment programs can roughly be divided into three broad categories.

I. Reservation in the Legislative Bodies

Under Article 330 of the Constitution, for the purpose of providing protection in terms of representation in the political affairs, the members of the Scheduled Castes and Scheduled Tribes category are provided reservation of seats in the Lok Sabha in proportions to their population in particular States for ameliorating their social, economic and political conditions. This reservation of these categories of people in Lok Sabha and legislative assemblies of the States ensures presence of their minimum representatives in the legislative bodies. But this kind of political reservation is not provided under any of the provisions of the Constitution of India in favour of the persons belonging to the Other Backward Classes. It means the people belonging to the category of Other Backward Classes are totally excluded from the list of the beneficiaries of the political reservation in India.

II. Reservation in the Educational Institutions

Provisions for the reservation in the educational institutions to the depressed and deprived sections of the Scheduled Castes and Scheduled Tribes have been provided explicitly under Article 15(4) of the Indian Constitution. The State is specifically barred from discriminating against any citizen on the bases of race, caste, sex, place of birth or any of them under Article 15(1). On the other hand, Article 15 (4) also lays down that the State is not prevented from providing any special provision for the advancement of any socially and educationally Backward Classes. This expression “making any special provision” is clearly an open ended provision and Government can go on granting really a whole array of facilities for the promotion of the interests of the socially and educationally Backward Classes, for example waiver of fees, waiver of age requirements, special coaching, grants, scholarships, loans etc. However, interestingly, the benefits to be provided under the provisions of Article 15(4) can only be availed for the purpose of providing reservations in the educational institutions. The position of the Other Backward Classes in the field of education with the help of this kind of reservation in their favour is as under:
### Table No. 1
**Literates as proportion of Population by Age Groups- 2004-05**

<table>
<thead>
<tr>
<th>Age groups</th>
<th>Gen (Literates)</th>
<th>OBC (Literates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-13 years</td>
<td>90.2</td>
<td>80.8</td>
</tr>
<tr>
<td>14-15 years</td>
<td>95.7</td>
<td>87.5</td>
</tr>
<tr>
<td>16-17 years</td>
<td>95.0</td>
<td>85.2</td>
</tr>
<tr>
<td>18-22 years</td>
<td>91.4</td>
<td>76.9</td>
</tr>
<tr>
<td>23 years and above</td>
<td>74.0</td>
<td>50.6</td>
</tr>
<tr>
<td>Total</td>
<td>80.5</td>
<td>63.4</td>
</tr>
</tbody>
</table>

**Source:** Estimated from NSSO 61st Round, Schedule 10 (2004-05), as quoted in Sachar Committee Report, Page 54.

The Table Number 1 reports, computed from the NSS 61st Round data (2004-05), age specific literacy rates. In the category of the age-groups between 6 to 13 years, literacy rate was 90.2 percent in proportion to their population. For Other Backward Classes category people this rate was, in the year 2004-05, 80.8 percent.

The literacy rate, for the General category of people in the age-groups of 14-15, was 95.7. It had increased in comparison to the earlier age-group of 6-13. It means more and more children of this category approached the school for the education purposes. For the same age-groups of 14-15, the literacy rate for the Backward Classes of people had increased from 80.8 to 87.5 percent. This increase was higher in comparison to the increase shown by the literacy rate of the General category of persons but the literacy rate for the Backward Classes of people was still less as compared to the literacy rate for the General Category of people i.e., 95.7 percent.

In the age-group of 16-17 years, the literacy rate for the General category of persons became 95.0 percent which was almost the same as was for the age-group of 14-15 years. For the Backward Classes of people, in this age-group, the literacy rate became 85.2 percent which decreased in comparison to the literacy rate in the age-group of 14-15. It means in case of the Other Backward Classes, there was slight drop-out in this age-group.

The literacy rate for the General category in the age-group between 18-22 years was 91.4 percent which is showing a slight decrease in the literacy rate in the age-group for this category of people. For the Backward Classes of people, in the same age-group, the literacy rate decreased to 76.9 percent and this was a sharp decline in the literacy rate for this category of persons. But, the decrease in the literacy rate for the General category of people is less as compared to the decreases shown by the Backward Classes of people.
In respect of the people belonging to the age-group of 23 years and above, there was again decrease in the literacy rate of General category of persons from 91.4 percent to the 74.0 percent. Similarly for the Backward Classes of people the literacy rate decreased from 76.9 percent to 50.6 percent. But decrease in the literacy rate for the Backward Classes of people was higher in comparison to the decrease in the literacy rate for the General category of persons.

It is clearly shown by the estimates that literacy rates for the General category of people have risen more sharply than for the Other Backward Classes of people; while the persons of the older age groups in the Other Backward Classes had much lesser literacy levels, these are comparatively much higher for General category of people in the older age. It means the drop-out in the Backward Classes of people is more at the higher education level as compared to the General category of people.

Table No. 2  
Graduates as proportion of Population by Age Groups-All India, 2004-05

<table>
<thead>
<tr>
<th>Age groups</th>
<th>Gen (Graduates)</th>
<th>OBC(Graduates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-30 years</td>
<td>18.6</td>
<td>6.5</td>
</tr>
<tr>
<td>30-40 years</td>
<td>16.8</td>
<td>4.6</td>
</tr>
<tr>
<td>40-50 years</td>
<td>14.6</td>
<td>3.2</td>
</tr>
<tr>
<td>51 years and above</td>
<td>9.8</td>
<td>1.9</td>
</tr>
<tr>
<td>Total</td>
<td>15.3</td>
<td>4.4</td>
</tr>
</tbody>
</table>


In the Table Number 2, a comparison between the General category of persons and the Backward Classes of people in relation to their Graduation Attainment Rate also reveals interesting results. General category of persons had a marginally higher Graduation Attainment Rate than the Backward Classes of people.

In the age-group of 20-30 years, the General category persons, 18.6 percent completed their graduate studies in the year 2004-05. As far as the Backward Classes of people are concerned, just 6.5 percent completed their graduate studies. It means that the Graduation Attainment Rate in proportion to their population for the General category of persons was higher in comparison to the Graduation Attainment Rate of the Backward Classes of people.

In the age-group between 30 to 40 years, the Graduation Attainment Rate for the General category falls slightly from 18.6 percent to 16.8 percent and for the Backward Classes of persons, this rate decreased from 6.5 percent to 4.6 percent. It means at this age-group, less and less persons belonging to the General category
completed their graduation and very less persons belonging to the Other Backward Classes completed their graduation level of education.

In the age-group of the people lying between 40-50 years, again there was decrease in the Graduation Attainment Rate of General category of persons from 16.8 percent to 14.6 percent. Similarly for the Backward Classes of people, this rate also decreased from 4.6 percent to 3.2 percent. So in both of the cases, the Graduation Attainment Rate decreased at this level of the age-group. The rate of decrease in case of General category is 2.2 percent whereas in case of Other Backward Classes of people this rate of decrease is 1.4 percent. It means more persons of General category failed to complete their graduation level at this level of the age-group as compared to the people belonging to the Other Backward Classes.

In case of the people belonging to the age-group of 51 years and above, there is sharp decrease in the Graduation Attainment Rate in the case of the General category from 14.6 percent to the 9.8 percent in comparison to the persons belonging to the Other Backward Classes category whose rate of the decreases in the Graduation Attainment Rate was just 1.3 percent because this rate decreased from 3.2 percent to 1.9 percent. However, at this age-group of 51 years of above the persons who completed their graduation level of education are much higher in case of the General category of persons as compared to the Other Backward Classes of people.

**Position of Other Backward Classes in Under Graduation Level**

One of the critical facets of the higher education is that entry, at each step of the educational pyramid beyond the elementary stage, is conditional on the successful completion of the preceding stage of education. For enrolment in the higher education, successful completion of the higher secondary education is essential. In relation to their share among those having a higher secondary certificate or equivalent qualification (26.5% in the urban India and 30.7% in rural India), the Other Backward Classes among those attending under-graduate program in the urban India in 1999-2000 had a share of a little over 25 percent (over 27 percent in the rural India). So, in Graduate enrollments, they are under-represented by less than 2 percentage points (in rural India, a little over 3 points). Other Backward Classes’ under-representation is under 4 percent in the urban India, while they are marginally over-represented in the rural India even among those attending under-graduate studies in the technical subjects (agriculture, engineering and medicine, taken together).\textsuperscript{173}
Reasons for the high drop-out rate among the Other Backward Classes

The caste-groups belonging to the Other Backward Classes include predominantly peasant and artisan castes. From the main stream education, these castes were never excluded. As formal education was not required by their profession, the target of the higher education was not pursued aggressively. This is similar to the business communities like Manwaris, Gurratis and Sindhis where minimal role was played by the formal education in their success. These communities had very low literacy rate till recently despite being very successful in business. In Shudra Varna, for most of the castes, formal higher education was not contributory to their earnings. Educational achievements did not translate into the economical achievements even after independence and for their survival; it was not a definite contributory factor. These castes were further discouraged by the unavailability of education. In the era of green revolution, the education was not pursued by the peasant castes and in the words of famous Dalit writer Chandra Bhan Prasad…..‘Preferred tractors over good schools’. Education was considered only for idles.

Reservations in the educational institutions and jobs understandably were provided as an effective instrument for helping the underprivileged sections of the society for overcoming social and economic handicaps. But from the data provided above, it is now quite clear that despite of providing reservation facilities in favour of the Other Backward Classes in the field of education and jobs, still there is wide spread under-representation of this category of people in the public employment. Even at the present period of time, in the high level of jobs there is less and less representation of this category of people. But at the lower level jobs, more and more people belonging to this category are employed. The reason is increased drop out rate of this category of people at the higher education level. Millions of school-going children belonging to the socially and economically Backward Classes join the ranks of drop-outs. So, only few more qualified and capable candidates remain available for the higher level of Government jobs inspite of the policy of reservation in their favour. More drop-out rate at the first place, among these people at high educational level is due to the lack of the provision of the quality education in the Government run schools. The primary duty of the State is providing quality primary and secondary education to all the children especially to the children belonging to the category of Backward Classes in India. However, recently, it has been revealed by a World Bank Study that there is very poor and deplorable condition of primary and secondary
education in India. The poor gross enrolment rate (GER) of students at the secondary level is brought to light by the report. The grim overall GERs is revealed by the report for Bihar (21%), Rajasthan (43%), Chhattisgarh (44%), Uttar Pradesh (49%), and even Haryana and Punjab, which have at lower secondary level, only about 50% GERs and at upper secondary level, lesser enrolments of 32% and 28% respectively. It is further revealed by the report that within 5 km radius as prescribed by the Government, only 65% of the villages have schools. At upper secondary level, in the listed 10 km radius, only 635 villages have schools. 19, 17 and 5 percent villages even in high-income States like Haryana, Punjab and Himachal Pradesh respectively do not have accessible secondary schools. At the second place, according to the Economic Census 2005, almost 51% of the businesses without hired workers are owned and controlled by the community of the Other Backward Classes (with the maximum of share of 38% out of 51%), Scheduled Castes and the Scheduled Tribes in the country. Majority of the people belonging to disadvantaged categories especially the Other Backward Classes are indulged in the self-employment activities. According to this Census, it is also clearly shown that 71% of the businesses of the Other Backward Classes are family run. This data conveys that Other Backward Classes in India have bulk of financial resources in their hands. With so much financial strength, if the high drop out rates among this category of people is shown, then this data indicates un-intention on the part of these people to gain education because there is no need of gaining formal education for carrying on their self owned business establishments and this in turn, resulted in the low representation of this category in the Government employment at the high level. Then, under these circumstances, the reservation benefits in favour of this category of people in the field of education and employment will be of no use for providing any kind of help in any way.

However, once a plateau was reached by the green revolution, and because of the diminished career options left for the artisan castes because of the reason of industrialization, education became important. This is reflected in abysmally low literacy in the older generation of Other Backward Classes, however a proportionally very high literacy in younger generations of Other Backward Classes. This point is evident from the set of data given in the two tables above. Therefore, from the two tables provided above, it is quite clear that like their forefathers, the present
generation of Other Backward Classes (particularly creamy layer among Backward Classes) is no longer educationally backward.

**Position of Other Backward Classes in Higher Education**

In the higher education, in the entire debate about the proposal for the reservation of 27% of the seats, in determining the percentage of reservations in the higher education, a key question of immense practical relevance has been overlooked. The question is whether in the higher education to the extent of 27 percent or more of the total enrollments, the Other Backward Classes of college going age with the qualifying level of education are under-represented. But, the truth is that in the field of higher education, the present generation of Other Backward Classes is very well represented. It is shown by the data that the extent of the Other Backward Classes under-representation is less, much less than 5 percent.

**Table No. 3.**

**Proportion of Population in Higher Education.**

<table>
<thead>
<tr>
<th>Age Group years</th>
<th>OBC share in total population of that age group</th>
<th>OBC share of students in that age group</th>
</tr>
</thead>
<tbody>
<tr>
<td>18-22</td>
<td>34.4</td>
<td>30.5</td>
</tr>
<tr>
<td>23 and above</td>
<td>35.1</td>
<td>29.2</td>
</tr>
</tbody>
</table>


Thus, from the data given above, it is clear that if the eligible age groups only are considered, hardly any under-representation is seen. Then the targets of providing current proposed 27% reservation seems to be pointless.

**Educational forwardness of the Other Backward Classes**

A look at the data produced by the Supreme Court judgment on the *Indra Sawhney v. Union of India,* easily proved the falsehood that the Other Backward Classes are actually educationally backward. The cut-off marks at the entrance level in favour of Other Backward Classes candidates in various courses has reached near the cut-off line for seats in the general quota as some survey conducted on the subject showed. A sample of such survey conducted for the State of Tamil Nadu by Era Sezhiyan and published in the issue of the “Hindu” dated 8th October, 1990 may be reproduced here:
Table No. 4.
Selection to Professional Courses at Anna University: Cut-Off Level.

<table>
<thead>
<tr>
<th>Courses of Study</th>
<th>Open Competition</th>
<th>Backward Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering Course (Anna University)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computer Science</td>
<td>97.98%</td>
<td>96.58%</td>
</tr>
<tr>
<td>Electronics</td>
<td>97.74%</td>
<td>96.58%</td>
</tr>
<tr>
<td>Electrical</td>
<td>95.84%</td>
<td>95.42%</td>
</tr>
<tr>
<td>Mechanical Engg.</td>
<td>95.78%</td>
<td>94.10%</td>
</tr>
<tr>
<td>Medical Course (University of Madras)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>M.B.B.S. Agricultural Course (Agricultural University, Coimbatore)</td>
<td>95.22%</td>
<td>93.18%</td>
</tr>
<tr>
<td>B.Sc. Agri. Veterinary (Tamil Nadu Veterinary and Animal Science University)</td>
<td>92.66%</td>
<td>91.96%</td>
</tr>
<tr>
<td>BVSc.</td>
<td>94.90%</td>
<td>93.48%</td>
</tr>
<tr>
<td>BFSc.</td>
<td>96.96%</td>
<td>95.58%</td>
</tr>
</tbody>
</table>

Source: AIR 1993 SC 638, Para 379.

Table Number 4 indicates clearly about the educational forwardness among the people belonging to the Other Backward Classes.

At the premier All India Institute of Medical Sciences (AIIMS), general category candidates were outpaced by the reserved category candidates for the first time ever in the selection process of nurses. It was made by most of them on the basis of merit. 69.84 percent reserved category students were selected out of the 1,482 candidates short-listed after written tests. In all, 3,801 general category and 3,087 reserved category applicants (1,063 students) have to the selected (candidates list made it) which is much higher than the general students (434 students).

It was said by sub-dean, administration, Dr. Sunil Chumber that they were following guidelines of the Supreme Court in the selection process. The examination committee according to Dr. Dinda was still unsure about the number of vacancies for each category in the backlog. However, with the list, the anti-reservation activists were unhappy. The Chairman, youth for equality, Dr. Kumar Harsh said,

“*The list clearly shows that there is no need for reservation. The 69.84 percent clearly shows the caliber of reserved category students. The idea of reservation was to uplift the needy, but from the list it appears that what is now happening is reverse discrimination*.”
The general secretary Resident Doctors Association at All India Institute of Medical Sciences and member, youth for equality, Dr. Kaushal said,

“This kind of reservation not just bites into general category seats, but also against the recent Supreme Court judgment where the judiciary had included a concept of ‘educational creamy layer’ forcing the Government for changing the very definition of creamy layer, not just considering family income, but also educational qualification.”

It is always insisted by the nation’s politicians supported by the terrorized media that the so-called Other Backward Classes have been deprived of “education” and for centuries they are unable to compete in the professional examination and hence are in the need of protective discrimination. However, when the following information is considered then only one question enters the mind—Is there anything remotely either “socially” or “educationally” backward about these beneficiaries of ‘protective discrimination’?

- In the year, 2008, the admissions to the Tamil Nadu Medical Seats 1339 of the 1394 seats (i.e., 96.05%) were captured by the Scheduled Castes/Scheduled Tribes/Backward Classes/More Backward Classes.
- In the year, 2008, admissions to the Tamil Nadu Government PG Medical Seats out 9,190 seats were captured by the Scheduled Castes/Scheduled Tribes/Backward Classes/More Backward Classes.
- In the year 2009, the Other Backward Classes candidates dominated the Combined Pre-Medical Test. In Combined Pre-Medical Test Uttar Pradesh Medical Admissions, the topper was an Socially and Educationally Backward Classes, of the top 10 places, six were taken by the Socially and Educationally Backward Classes, 50% of the top 100 places were bagged by the Socially and Educationally Backward Classes and 60% of the top 1000 places were grabbed by the Socially and Educationally Backward Classes. In Combined Pre-Medical Test, the top rankers took admission through the open (general) category, leaving place for another Other Backward Classes and thereby shrinking the quota for the general candidates. In Chhatrapati Shahuji Medical University, around 130 candidates hailed from the Other Backward Classes category.
Therefore, the data of the last decade shows that the forward classes among this category of people of almost all the age groups are not educationally backward like their forefathers. Even in the last three to four years, the amazing academic performance has been shown by socially and educationally backward classes. In this bid, the general candidates’ quota has been shrunk thereby, resulting in the reverse discrimination towards them (general category candidates). The data clearly indicates the educational forwardness of the creamy layer among this category of people.

One can easily understand from the above that the policy of the guaranteed quota plus right for getting entry in the so-called Other Backward Classes’ list through merit and the caste-based categorization of super powerful groups eventually indicates that the Hindus in the unreserved category are not able to secure professional education in India. It seems that in perhaps a decade, India will become another Tamil Nadu, where all the seats are captured by those (Scheduled Castes/Scheduled Tribes/Backward Classes/More Backward Classes), who are called “weak, backward and marginalized”!

**Educational Backwardness of the poverty ridden sections among Other Backward Classes at Higher Education Level**

The Central Educational Institutions (Reservation in Admission) Bill, 2006 has provided 27 percent reservation for Other Backward Classes in the institutions of higher learning. About 72 percent of the population of our country is still living in the rural India and nearly one third of that continues to be below the poverty line. These people are fully deprived of the opportunities and the quality education. Since higher education is by its very nature elitist, it is almost axiomatic that only the creamy layer from all the castes enters the portals of the postgraduate institutes. This benefit hardly reaches the people in the rural areas who, being poor are really needy because of the lack of the infrastructure. So, this is not possible for the poor people of this category especially living in the rural areas with less quality education and with maximum drop-out rates to gain entry into the institutes of higher education with the help of the crutches of the reservations in their favour. It is just a mockery of them to provide the reservation in their favour in the institutes of higher education. Tremendous funding for the educational institutions is provided by the Government of India. But when the people do not utilize fully these resources, it leads to a waste.
III. Reservation in the Government Services

Under Article 16(4) of the Indian Constitution, reservation in the Government services as a measure of protective discrimination has been incorporated. After guaranteeing the general right of equality under Article 14, the Constitution defines the equality in terms of justice by non-discrimination provisions which are contained in Articles 15(1) and 16(1) and proceeds for the incorporation of the provisions of the preferential treatment so as to allow the State for achieving the equality to the disadvantaged sections by providing to them in all its dealings preferential treatment and particularly in the area of the public employment. Article 16(4) which provides for the protective measure of the reservations of the seats in the Government employment lays down, that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which in the opinion of the State is not adequately represented in the services under the State. The State is permitted under the provisions of Article 16(4) to classify individuals for the favoured treatment. On one hand, the discrimination is forbidden by the Constitution on the grounds of race, caste or religion etc, so as to discontinue the old iniquitous situation, on the other hand, these very criteria are permitted by it for the correction of the evil consequences flowing from their past misuse.

Under this Article, the Government is authorized to adopt any method for ensuring representation of the Scheduled Castes, Scheduled Tribes and the Backward Classes of the citizens in the public services. So, various relaxations and the concessions are given to the Other Backward Classes candidates so as to improve their representation in the services both at the Central and State level. For instance, relaxation is provided to them in the upper age limit. Unlimited numbers of chances are also provided to them within the relaxed age limit prescribed for appearing in the competitive examinations, exemption from the payment of the examination fee and relaxation in the standards of suitability.
### Table No.5.

**Statement showing detail of relaxation in the Minimum Marks Requirement and in Age in favour of Other Backward Classes.**

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Category</th>
<th>Minimum marks required in master degree</th>
<th>Age Limit &amp; its relaxation Junior Research Fellowship</th>
<th>Minimum Qualifying Marks</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Paper I</td>
<td>Paper II</td>
</tr>
<tr>
<td>1.</td>
<td>General</td>
<td>55%</td>
<td>28 Years</td>
<td>40</td>
</tr>
<tr>
<td>2.</td>
<td>OBC/PH/VH</td>
<td>50%</td>
<td>33 Years</td>
<td>35</td>
</tr>
</tbody>
</table>

**Source:** University Grants Commission National Educational Testing (NET) Bureau, Notification.

Created in 1956 by an Act of Parliament, the University Grants Commission (UGC) oversees the implementation of these policies in the institutes of the higher education. The UGC has routinely published guidelines to encourage and aid State Governments in filling reservations quotas entirely. For example, Other Backward Classes candidates are normally provided with a relaxation of marks by five percent from the minimum qualifying level. Even though reserved seats remain vacant, universities are advised to increase relaxation of admission.

In the University Grants Commission National Eligibility Test (NET) for the Junior Research Fellowship and Eligibility for Lectureship, the relaxations provided to the Other Backward Classes are detailed in the table No. 5 given above. In this table, the minimum marks required in Master Degree for the General Category is 55% but for the Other Backward Classes candidates, the minimum marks requirement is 50%. So, by getting less percentage of marks at the Master level degree, even the less efficient candidates (Other Backward Classes) become eligible to appear in the examination. Age limit for the General category students was 28 years whereas the age relaxation is given in favour of Other Backward Classes. They can appear in the Junior Research Fellowship even up to the age of 33 years. In addition to this, in Paper I and Paper II, the General Category candidates are required to get 50% percent marks to be eligible but for the Other Backward Classes again this requirement is just to get 45% marks in both of the Papers i.e., Paper I and Paper II taken together. Similar kind of Pass marks requirement is there in respect of the Paper III in order to qualify it. This relaxation in the age limit and minimum marks requirement in this eligibility test in favour of Other Backward Classes means very negation of the efficiency and intelligence. The efficiency and the sufficiency of the Government are
always determined by the professional competence of the personnel employed in it. This kind of provision also puts a premium on backwardness and in-efficiency.

**Table No. 6.**

**Number of attempts by the recommended candidates’ community wise in Civil Services (Main) Examination, 2007**

<table>
<thead>
<tr>
<th>Community</th>
<th>Number of attempts made by the recommended candidates</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>OBC</td>
<td>12</td>
<td>19</td>
</tr>
<tr>
<td>General</td>
<td>35</td>
<td>83</td>
</tr>
</tbody>
</table>


In Civil Services (Main) Examination, 2007, concessions were provided in the favour of the Other Backward Classes in the form of allowing them more number of attempts in comparison to the General category of the persons.

In the Table Number 6, at the first attempt, only 12 Other Backward Classes candidates could qualify the examination. But the 35 General category candidates were there who qualified at the first attempt.

At the second attempt, 19 Other Backward Classes candidates became eligible by getting the pass percentage. But again 83 General category candidates qualified the examination.

Similarly, at the third and fourth attempt made by the Other Backward Classes candidates and General Categories of persons show the similar kind of the situation. At the third attempt, 30 Other Backward Classes candidates and 97 General Category people passed this examination. At the fourth attempt, 52 Other Backward Classes candidates and 71 General category candidates qualified the examination. The above available data throws light on a very important point that the General category persons were more efficient and maximum number of the candidates of this category qualified this examination. On the other hand, inspite of this policy of reservation in favour of Other Backward Classes very less people of these categories were there, who could qualify it.

After that, no more attempts were allowed to the General category of the persons but the Other Backward Classes of the people were provided with the 8 and above attempts. At the fifth, sixth, seventh and the eighth and above attempts the qualified numbers of the Other Backward Classes candidates were 38, 24 and 15 respectively. Still this amount was very less. But inspite of increased number of the
allowed attempts in favour of the Other Backward Classes candidates, the total persons qualified of the General category were still more than the qualified candidates of the Other Backward Classes candidates. So, the General category candidates, on an average, qualified at the examination in the lesser number of attempts (4 attempts) compared to those of Other Backward Classes candidates. But this kind of provision reduces the minimum standard of the required efficiency for a particular kind of job. Such a provision again enhances the in-efficiency in the Government Jobs by allowing more attempts to be made by this category of people.

Despite serious attempts at liberalization beginning in 1991, the public sector continues to dominate the Indian economy and serve as the main source of the employment. The Central Government Services are divided into four levels, distinguished by income and selectivity: Class I (or Group A), Class II (or Group B), Class III (Group C) and Class IV (or Group D). Group A, the highest-paid level, includes members of the elite Indian Administrative Service (IAS), the Indian Foreign Service (IFS), the Indian Police Service (IPS) and connected Central Government services. In the next income bracket, Group B employees comprise officers of the State service cadre. Competitive examination and the interviews are usually used to fill these top two tiers, which require highly skilled and well-qualified candidates.

In contrast, the bottom two job categories, Group C and Group D, include low-skill, low-qualification posts such as primary school teachers, revenue inspectors, constables, peons, clerks, drivers and sweepers. These are the typically low-income jobs and are not subject to the strict selection processes. Group C and Group D jobs make up the bulk of the public sector employment in the organized economy. The representation of the Other Backward Classes in various Government Services is as under:
### Table No. 7.
**Representation of Other Backward Classes in Central Government Services as on 1st January, 2008.**

<table>
<thead>
<tr>
<th>Group</th>
<th>Total No. of Employees</th>
<th>Representation of Other Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Group A</td>
<td>91881</td>
<td>5031</td>
</tr>
<tr>
<td>Group B</td>
<td>137272</td>
<td>5420</td>
</tr>
<tr>
<td>Group C</td>
<td>1810141</td>
<td>145819</td>
</tr>
<tr>
<td>Group D (Excluding Sweepers)</td>
<td>696891</td>
<td>34528</td>
</tr>
<tr>
<td>Total</td>
<td>2736185</td>
<td>190798</td>
</tr>
<tr>
<td>Group D (Sweepers)</td>
<td>75901</td>
<td>2430</td>
</tr>
<tr>
<td>G.Total</td>
<td>2812086</td>
<td>193228</td>
</tr>
</tbody>
</table>

**Note:** It does not include information in respect of two Ministries.


In the Table Number 7, the representation of the Other Backward Classes in different group of services as on 1 January, 2008 is shown. The Other Backward Classes employees can be compared with the total number of employees in the different groups.

In ‘Group A’ employment, the total number of employees were 91,881 and out of that total amount of the employees, the representation of the candidates belonging to the Other Backward Classes category was 5031 and it was 5.5 percent of the total number of the employees represented in the same kind of the job. It is clearly indicated by this table that in the group ‘A’ level employments, the representation of the Other Backward Classes is very less.

In the ‘Group B’ level employments, the total number of the employees represented was 137272. Out of that total number, the number of the Other Backward Classes employees was 5,420 which were 3.9 percent of the total employees represented. Again in this type of job, the representation of this category of the employees is almost negligible.

In case of services under the Group C, the total number of the employees was 1810141 and out of that total, Other Backward Classes’ representation was 145819 which was 8.1 percent of the total representation of the employees and again it was also very less.

The total number of the persons employed in ‘Group D’ employment was 696891 and this number did not include the sweepers. Out of that total representation,
the representation of the Other Backward Classes in number was 34528. In percentage this representation was just 5 percent. This table indicated slight decrease in the representation of the Other Backward Classes candidates because of the exclusion of the sweepers belonging to this category. The total number of the sweepers was 75901 and out of that the number of the Other Backward Classes sweepers was 2430 which are very less in comparison to the total number of the sweepers employed in this level of services and its percentage was 3.2 of the total sweepers employed.

Now, the total number of the employees including sweepers was 2812086 and the employees including sweepers belonging to Other Backward Classes category were 193228 and had the 6.87 percentage of the total. Therefore, it is very clearly shown through this table that at the Group C and Group D level employments, the representation of the Other Backward Classes was high in comparison to the group A and Group B level employments. This may be due to the high level of the drop out of these people at the Higher Secondary, Graduate and above level of the education. This category of persons gained lower level of the education and were no more eligible for the Group A and the Group B level of the employments. Because the achievement levels in the education of a community get reflected in its employment status. 183

**Table No. 8.**

**Representation of Other Backward Classes in Central Public Service Enterprises as on 1st January, 2008**

<table>
<thead>
<tr>
<th>Group</th>
<th>Total No. of Employees</th>
<th>Representation of Other Backward Classes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>No.</td>
</tr>
<tr>
<td>Group A</td>
<td>196116</td>
<td>15192</td>
</tr>
<tr>
<td>Group B</td>
<td>218599</td>
<td>19369</td>
</tr>
<tr>
<td>Group C</td>
<td>836590</td>
<td>128660</td>
</tr>
<tr>
<td>Group D (Excluding Sweepers)</td>
<td>276445</td>
<td>50691</td>
</tr>
<tr>
<td>Total</td>
<td>1527750</td>
<td>213912</td>
</tr>
<tr>
<td>Group D (Sweepers)</td>
<td>13012</td>
<td>520</td>
</tr>
<tr>
<td>G. Total</td>
<td>1540762</td>
<td>214432</td>
</tr>
</tbody>
</table>

*Note:* Information refers to position on 1st January, 2008.


In the Table Number 8, the representation of the Other Backward Classes in the Central Public Service Enterprises as in the year 2008 is displayed.
In ‘Group A’ grade employment, the total number of the employees was 196116 and out of the total employees, the number of the Other Backward Classes candidates was 15192 and its percentage was 7.74 of the total number of the employees which was very less.

In the Group B level of the employment, the total number of the employees represented was 218599 and the Other Backward Classes category people represented in the employment at this level was 19369 and it was 8.86 percent of the total representation of the employees.

At the ‘Group C’ grade employment, the total number of the employees was 836590. This total included 128660 employees of the Other Backward Classes in number but in percentage this category of persons was 15.38 which were slightly high in comparison to the Group A and Group B grade employment in respect of the Other Backward Classes.

In ‘Group D’ level of the employment, the total number of the employees excluding sweepers was 276445 and the total number of the sweepers in Group D was 13012. The number of the Other Backward Classes employees excluding sweepers was 50691 which were 18.33 percent of the total and the number of the Other Backward Classes sweepers in Group D employment was 520 and it was 4 percent of the total number of the employees represented.

Again this table clearly shows that the representation of the Other Backward Classes was higher in the Group C and Group D grade employment in comparison to the representation of the same category of beneficiaries in the Group A and Group B level of the employments. After almost 60 years of Independence, Other Backward Classes representation in the Groups A and B, still fell short of the reservations quota of 27% for the Other Backward Classes, while the less-prestigious and the lower-paid Group C and D jobs were filled but still the percentage for these level of jobs was also less than the prescribed percentage of 27 in favour of Other Backward Classes.

However, the study of the social pattern of ownership of business establishment of the people belonging to category of Other Backward Classes tells an entire different story which is as follows:
Table No. 9.
Social pattern of ownership of business establishments

<table>
<thead>
<tr>
<th>States</th>
<th>SC</th>
<th>ST</th>
<th>OBC</th>
<th>Gen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manipur</td>
<td>4</td>
<td>14</td>
<td>47</td>
<td>35</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>8</td>
<td>3</td>
<td>45</td>
<td>43</td>
</tr>
<tr>
<td>MP</td>
<td>10</td>
<td>4</td>
<td>45</td>
<td>41</td>
</tr>
<tr>
<td>Chattisgarh</td>
<td>7</td>
<td>14</td>
<td>43</td>
<td>36</td>
</tr>
<tr>
<td>AP</td>
<td>6</td>
<td>3</td>
<td>43</td>
<td>47</td>
</tr>
<tr>
<td>Karnataka</td>
<td>5</td>
<td>3</td>
<td>40</td>
<td>51</td>
</tr>
<tr>
<td>Orissa</td>
<td>14</td>
<td>12</td>
<td>35</td>
<td>39</td>
</tr>
<tr>
<td>Gujarat</td>
<td>2</td>
<td>4</td>
<td>32</td>
<td>62</td>
</tr>
<tr>
<td>Haryana</td>
<td>10</td>
<td>1</td>
<td>28</td>
<td>61</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>7</td>
<td>4</td>
<td>24</td>
<td>65</td>
</tr>
<tr>
<td>Tripura</td>
<td>18</td>
<td>13</td>
<td>23</td>
<td>46</td>
</tr>
<tr>
<td>Sikkim</td>
<td>4</td>
<td>23</td>
<td>20</td>
<td>53</td>
</tr>
<tr>
<td>Assam</td>
<td>12</td>
<td>7</td>
<td>19</td>
<td>62</td>
</tr>
<tr>
<td>Punjab</td>
<td>15</td>
<td>1</td>
<td>18</td>
<td>66</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>9</td>
<td>3</td>
<td>18</td>
<td>70</td>
</tr>
<tr>
<td>HP</td>
<td>13</td>
<td>3</td>
<td>11</td>
<td>73</td>
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<tr>
<td>Goa</td>
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<td>3</td>
<td>9</td>
<td>87</td>
</tr>
<tr>
<td>W. Bengal</td>
<td>18</td>
<td>2</td>
<td>8</td>
<td>72</td>
</tr>
<tr>
<td>J&amp;K</td>
<td>4</td>
<td>4</td>
<td>7</td>
<td>85</td>
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<td>AP</td>
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<td>61</td>
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<td>Nagaland</td>
<td>12</td>
<td>50</td>
<td>5</td>
<td>33</td>
</tr>
<tr>
<td>Meghalya</td>
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<td>56</td>
<td>4</td>
<td>35</td>
</tr>
<tr>
<td>Mizoram</td>
<td>0</td>
<td>79</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>9</td>
<td>1</td>
<td>72</td>
<td>18</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>9</td>
<td>1</td>
<td>52</td>
<td>38</td>
</tr>
<tr>
<td>Bihar</td>
<td>5</td>
<td>1</td>
<td>51</td>
<td>43</td>
</tr>
<tr>
<td>Kerala</td>
<td>4</td>
<td>1</td>
<td>50</td>
<td>45</td>
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<td>Jharkhand</td>
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<td>6</td>
<td>48</td>
<td>41</td>
</tr>
<tr>
<td>Union Territories</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Puducherry</td>
<td>5</td>
<td>1</td>
<td>69</td>
<td>25</td>
</tr>
<tr>
<td>Daman &amp; Diu</td>
<td>2</td>
<td>2</td>
<td>39</td>
<td>57</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>18</td>
<td>2</td>
<td>18</td>
<td>62</td>
</tr>
<tr>
<td>Andaman &amp; Nicobar Island</td>
<td>0</td>
<td>2</td>
<td>5</td>
<td>92</td>
</tr>
<tr>
<td>Dadra &amp; Nagar Haveli</td>
<td>2</td>
<td>23</td>
<td>4</td>
<td>71</td>
</tr>
<tr>
<td>Lakshadweep</td>
<td>0</td>
<td>64</td>
<td>0</td>
<td>35</td>
</tr>
<tr>
<td>India</td>
<td>9</td>
<td>4</td>
<td>38</td>
<td>49</td>
</tr>
</tbody>
</table>

Source: Economic Census, 2005. Fig in %

From the data given in the Table Number 9, it is clearly indicated that in our country, over half of all the business establishments – 51% to be precise – are owned by the socially disadvantaged sections, mostly Other Backward Classes, with a slim contribution coming from Scheduled Castes and Scheduled Tribes. From an analysis
of social ownership patterns of business establishments which were presented by the latest Economic Census for 2005, this good news came. It means that political empowerment has finally translated for the country’s most disadvantaged sections into the economic muscle. At the data, a closer look shows that the majority of businesses owned by the Other Backward Classes/Scheduled Castes/Scheduled Tribes were the establishments which were without any hired workers- that is, these were run by the members of the household. The proportion of such establishments owned by Other Backward Classes was 38%. So, the data shows that they made efforts possibly mainly at self-employment. Just over half (49%) of the businesses owned by the general category were own account establishments (OAE) or business owned and run by the family members.184

It is also shown by the data that while in 1998 at the time of the last Economic Census, the people from these sections owned 45% of the business establishments; a 6 % point increase had been registered since then by their share. The largest chunk of this growth was accounted for by the Other Backward Classes. In all the major States, in the ownership of businesses the share of Other Backward Classes had increased, barring Tamil Nadu, where a high 72% of all businesses was owned already by Other Backward Classes, and Punjab, where a small decline in Other Backward Classes ownership had been offset by a rise in Scheduled Castes—owned businesses.

In States like Uttar Pradesh, the increase in Other Backward Classes ownership had been significant, going up to nearly half of all businesses from 38% in the last census in the State in the year of 2005. The proportion of Other Backward Classes-owned establishments in the State of Gujarat had gone up by 13% points comprising almost a third of the businesses of the State. However, the status of the weakest among the reserved categories, the Scheduled Tribes, seems to have remained virtually unchanged. But, in Northeastern States, there had been a steady increase in Scheduled Tribes-owned establishments. In the State of Bihar, the proportion of Scheduled Castes-owned businesses with the hired workers constituted 31% of all the businesses owned by the Scheduled Castes.

Where there had been political empowerment of the reserved categories especially Other Backward Classes and Scheduled Castes, much larger proportions of the hired worker establishments were seemed to be owned by them than in others. In the States of Bihar, Uttar Pradesh and Kerala, 51%, 48% and 48% of the establishments which used hired workers were owned by the reserved categories, with
the bulk in the hands of the Other Backward Classes. Finally, it can be said that the data shows the strong financial position and status of the peopled belonging to the Other Backward Classes in the country.

**Accretion of problems due to the policy of reservation**

Moreover, the Colleges/universities demarcate different qualification levels or “cut-off marks” also in favour of the Backward Classes in keeping with the reservation policy. However, this cut-off mark system only hampers the development of the Backward Classes themselves by reducing their competitive spirit. By doing it, they are seemed to be told by the Government that they can just sit back and score only the required minimum, because caste and not the marks for these categories of people becomes the ticket for entering the institutes of higher learning and professional excellence. But in reality, it is really shocking to know that in the last ten years or so, 90% students belonging to Scheduled Castes/Scheduled Tribes/Other Backward Classes in the courses were either dropped out or were declared failed in the first year or in the second year. In number of cases, they simply failed to acquire the benchmark required to sit in the examination.\(^{185}\)

There would have bundles of expert professional had these seats been provided to really meritorious eligible candidates who could prove to be the real treasure of the country. So, it is clearly shown that this kind of practices really amounts to the violation of the right to education of the students belonging to the general category who, despite of merit and eligibility on their part, in the institutes of higher education fail to get the seats only due to the reason that they belong to the general category. In the rat race, the really meritorious students lose out and it procures great loss for the Nation. Simply, 50% of the really meritorious students belonging to the general category are kicked out of the race by the reservation policy. As a result of it the problem of brain-drain is fueled because really meritorious students go abroad simply due to the lack of seats for their caste or community. To a section of the beneficiaries, any overgenerous approach, if it has the effect of destroying the right to education of other persons, more so, by pushing a mediocre over a meritorious, belies the hopes of our founding fathers on which the great document of the Constitution was structured and so, must fall to ground. Thus, the mediocrity over meritocracy cuts at the roots of justice and hurts the right to equality. In this regard, it is said by Professor Paramananda Singh that,
“What is needed today is that the State should divert more and more of its resources for increasing the overall competitiveness of the beneficiaries rather than stick to ‘reservation’ as the only best means to promote equality.”186

Sometimes, candidates from the lower classes are accepted on the basis of the policy of the reservation provided in their favour in order to fill quotas even if they are not suitably qualified. The Government has to make the compromise with the efficiency required for a particular type of the job. Therefore, by selecting sub-standard and in-efficient persons only to sympathize whimsically with the weaker sections is by denying the prospect of excellence to punish the society as a whole. Another drawback of this policy of the reservation is that the merits of the Scheduled Castes and Scheduled Tribes are never truly recognized. Providing the benefits of the reservation in favour of these classes of people did not develop strength in them and as a result they never felt confident of stepping on higher rungs on their own legs shedding the crutches. Pushing the protection of reservation beyond the primary level only keep the cripples, crippled forever.187 The words of Pt. Jawaharlal Nehru are worth mentioning here that,

“I am grieved to learn of how far this business of reservation has gone based on communal consideration .....This way lays not folly, but disaster. Let us help the backward group by all means, but never at the cost of efficiency.”188

Demand by different Communities for the inclusion in the category of Other Backward Classes

Theoretically, the reservation may have been aiming at equality, but in practice, it enhances inequality among the different classes in the society and is against the philosophy of “common brotherhood”. Since the object of providing the benefits under the compensatory discrimination was only to offset the accumulated results of the historical injustice, only those groups could be identified as Other Backward Classes who were both socially and educationally backward. But, the problem germinates from the seeds of the caste based reservation is that the more and more castes and communities are being included in the list of Other Backward Classes just to strengthen the vote banks by the politicians. Sadly, a system which was devised in the year of 1950 for the period of only 10 years has been strengthened, expanded
and perpetuated with the over-inclusion of the more and more castes and the communities. There are cases when the party in power included large number of classes on the eve of the Central or State election, in the list of people belonging to the category of Other Backward Classes. Now, the so-called minorities are also clamoring for the reservation. Too much politicization of the reservation issue tends for creating fierce competition among the various castes to seek inclusion in the lists of Other Backward Classes. In turn this results, for wooing and winning the backward groups for the sole purpose of the political gains, in the political abuse of the reservation device.

It was observed long before Indra Sawhney in K.C.Vasanth Kumar v. State of Karnataka, that the paradox of the system of the reservation is that a spirit of self degeneration among the people had been endangered by it. However, at the present times also, nowhere else in the world, for the sake of gaining backward status, do castes, classes or communities queue up. Nowhere else in the world to assert backwardness and to claim “we are more backward than you,” is their competition. There are dominant groups in each State usually with economic and political clout, by whom the benefits of the reservations are reaped. There are Ezhavas in Kerala, Nadars and Thevars in Tamil Nadu, Vokkalligas and Lingayats in Karnataka, Lodhs and Koeris in Central India, Yadavs and Kurmis in Bihar and Uttar Pradesh and Jats in Rajasthan, which, have been clubbed as Backward Classes despite their dominant status eligible for the benefits under the reservations. The experience of the past two decades shows that many groups were included in the category of Other Backward Classes mainly on the basis of their political clout and this is amply demonstrated by the examples of the Lingayats or jats. The continuing demand in Maharashtra for inclusion of entire Maratha community (as against the inclusion of the only Kunbi Marathas as at present) in the Other Backward Classes category is another instance of the intertwining of State level politics and social justice agenda. The reservation has become a contentious issue today, for these reasons more so when it is applied to Other Backward Classes. The claim to backwardness has converted into a political resource rather than test for receiving the benefits of the reservation policy a certain nature of majoritarianism has crept into the reservation discourse that obfuscated issues of backwardness.

The two commissions appointed so far failed to lay down specific criteria for identification of Other Backward Classes. “Caste” as an important factor was used by
both the commissions for determining the backwardness of a class. It is to be remembered that very inquiry about the caste of an individual for determining Other Backward Classes would amount to grave breach of the Constitution and would harm the unity and integrity of the nation. In India, rather than to hasten the termination of the caste-system such exercise would perpetuate and strengthen it which had never been dreamt of by our founding fathers.

**Agitations owing to demands for inclusion in the category of Other Backward Classes**

Many communities in India are agitating for getting their communities listed in the category of Other Backward Classes. It would not be out of place to narrate the incident of the mob violence in Haryana’s Hisar town on 14th September 2010. This was because of the agitation made by the protesters belonging to the Jat Aarakshan Sangharsh Samiti who had planned a “Chetavani Sammelan” to press for reservation under the Other Backward Classes for the Jat community. On 7th March, 2011, it was again decided by the Jat Aarakshan Sangharsh Samiti to intensify its agitation and for that purpose it had blocked the Hisar-Rewari rail track at Ramayan village in support of its demand for the reservation for the community in the Government jobs. The decision was taken by the Samiti to boycott former minister and Congress legislator Sampat Singh for suggesting that reservation should be made on an economic basis. Eleven activists of the Samiti began an indefinite fast for pressing for their demand. This movement of agitation also had spread its impact on the Jats of Punjab. In Punjab, the Jats community blocked the roads in Ferozepur in favour of their demand for including their category in Other Backward Classes for getting the benefits of the policy of the reservation in Government jobs. In addition to that, on 7th March, 2011 there was blockade of the rail track of Ferozepur-Bathinda section by the Sarb Hind Reservation Sangharsh Committee (Jats). On March 10, 2011 in Chandigarh, the Haryana Chief Minister Bhupinder Singh Hooda said that he had forwarded a memorandum received from the leaders spearheading the ongoing Jat reservation stir to the Prime Minister, by whom it was sent to the Backward Classes Commission. In Lucknow on the same day, Chief Minister Mayawati expressing her party’s solidarity with the agitating Jat community, which is seeking an Other Backward Classes quota, urged them to present their case before the Central Government in a “disciplined manner.” On March 12, 2011 in Panipat, the Sanyukt Jat Aarakshan Sangharsh...
Samiti has served on the Government an ultimatum for meeting its demand for the reservation for the community in the Government jobs by March 14.\textsuperscript{196} In Chandigarh, on March 15, 2011 the centre was prompted by the threat for stopping the essential supplies, including oil from the Mathura refinery, to Delhi from March 17 and it invited the agitating Jats for a dialogue on their demand for reservation under the Other Backward Classes category in the Government jobs.\textsuperscript{197} However, on March 24, the leaders of the Jat community were directed by a Division Bench of the Punjab and Haryana High Court headed by the Chief Justice Ranjan Gogoi to desist from disrupting movement of trains. The Supreme Court also on the same day directed the Governments of Haryana, Rajasthan and Uttar Pradesh for ensuring that the supply of essential commodities, including milk, food and fuel from Panipat and Mathura was maintained. But the protesters vowed to continue the stir and in addition to that seek compensation for the protestor’s death.\textsuperscript{198}

There may be division of the opinion whether the Jats deserve reservations. In law, it is a well-settled principle that to a Backward Class providing the reservation is not a constitutional mandate. It is the prerogative of the State concerned if it is so desired by it, with an object to provide opportunity to certain Backward Classes in which the Scheduled Castes and the Scheduled Tribes are also included for reserving certain seats in the educational institutions for their advancement in the society.\textsuperscript{199} Caste-based reservations and politics of appeasement are the reasons for inflaming passions resulting in such incidents.\textsuperscript{200}

To the utmost surprise, this system of caste-based reservations is rather being used for exploiting and dehumanizing the upper castes. This has resulted in generated agitations made by the people belonging to those castes which are not included in the list of the Backward Classes. So, excluded people complain that they are no better off than those preferred. On the merited applicants, an unfair burden is placed who have to stake their careers as a price for public and collective good. Therefore, this reservation system in favour of the Backward Classes seems to be leading to a situation of unfair reverse discrimination and seem to be in the direct violation of the various rights. Such a pursuit sows the seeds of the tension which culminates often in violence and in an open confrontation among the various disadvantaged sections of the society. Consequently, now the demand has been made by the Convener of the Brahmin Aarakshan and former All India Congress Committee member Pt. Umesh Sharma on April 11, 2011 for getting reservation for the community in the State of
Haryana on the economic criteria. It was said by Pt. Umesh Sharma that Brahmins were being exploited in the State in every field. He further said that Brahmins in the State were still economically backward and he added that a memorandum would be submitted to the Chief Minister through the Deputy Commissioner by Brahmins in Bhiwani on April 25 on the reservation issue.201

Caste-based reservations besides impeding the goals of secularism are seen as perpetuating the evils of caste-system and accentuating caste consciousness.202 The commitment vested in the Constitution for discouraging caste is overshadowed by increasing resilience in the public life of caste. On the single issue of Other Backward Classes, class conflict and the political stalemates are larger struggle and the competition for the power and social status. Sometimes, these struggles manifest themselves in caste-war. So, along the caste lines, the masses as well as the intelligentsia seems to be divided. If not stopped timely, in the long run, this problem can result into a civil war in the country.

Reservations for the Other Weaker Sections/ Special Groups (Other than Women)

Both horizontal and vertical reservations are permissible according to the Supreme Court in Indra Sawhney v. Union of India.203 Vertical reservation included the reservation made in favour of the Scheduled Castes, Scheduled Tribes and Other Backward Classes (pursuant to Articles 15(4) and 16(4)) but the reservations that are made to other backward groups including women are termed as horizontal reservations.

1. Reservations in favour of the Disabled Persons

The Indian Constitution does not provide specifically for the reservations in favour of the disabled persons. However, in accordance with the Mysore High Court the State has been empowered for granting the concessions to the handicapped groups of the persons.204 In the exercise of its executive power and in such cases, the classification is based on the lawful policy of the State.205 However, in the matter of employment, even though special reservations for the disabled persons can be made by the courts, they may only do so under Article 16(4). Only if the term “Backward Classes” is redefined in such a way as to cover these groups within its ambit, a disabled person may be provided reservation. But in India, there is no set criterion for selecting persons outside of the Backward Classes.
As far as admissions are concerned, the different States of India may grant concessions to the handicapped person short of outright reservation, for example, the awarding of the stipends and the scholarships etc. As mandating for the equal and the fair representation of the disabled persons in the workforce, there is no legislation, these above mentioned concessions may prove to be inadequate.

2. Preferential Treatment in favour of Military and Defense Personnel and Ex-Servicemen

From the other categories of the disadvantaged persons, the case of the ex-servicemen is quite distinct. Since compulsory early retirement is made for keeping the Armed Forces young and active, resettlement of ex-servicemen is a national responsibility. As compared to their counterpart in the civil services, Armed Forces personnel have a short span of career. Most of the retired or released personnel are physically and mentally fit with the distinct qualities of initiative, drive, leadership and discipline but they have to start their career afresh in the civil life. The problem of resettlement of the ex-servicemen is a national problem and the Government has adopted for the betterment of such personnel a number of measures like resettlement on land, self-employment scheme, resettlement training and other welfare schemes. Re-employment constitutes the most striking means of the resettlement. Reservations for the ex-servicemen have been accorded by the Government. So, the ex-servicemen came in the genuine category of the deprived and the disadvantaged class.

Similar is the case of the wards of the defense and military personnel. In relation to the reservation benefits for the Wards of the Military and Defense personnel, and also the reservation of the posts in favour of ex-servicemen under the re-employment scheme of such personnel, before the courts a number of cases have come. The cause involved in such cases has been appreciated by the judiciary and by making the preferential provisions effective a step further than the Government has been taken by it.

3. Reservation in favour of Sportsmen

The reservation for the sportsmen has been favoured by the judiciary. The need of providing special preferences to the sportsmen has been emphasized by the Hedge, J. and he further added, “It is well known that a good sportsman cannot afford to be a bookworm. Due to that reasons his claim for becoming a good Doctor or Engineer cannot be ignored. He is likely to be a better Doctor or Engineer than his
competitor who knows only the books and not men and matters.” 207 Similar opinion has been shared by various other High Courts.

4. Reservation in favour of the Wards of the Political Sufferers

In respect of the Wards of the Political Sufferers, it was finally concluded that both the conditions of a political sufferer and of being ward of a person with the outstanding social background had to be satisfied by the petitioner before, against the reserved seat he could compete. The phrase “outstanding social background” necessarily in the political field refers to the outstanding performance of the person or his guardian coupled with, in the matter of education, his background. 208

5. Reservation Benefit in favour of the Members Nominated by the Government/Minister

For admission to the educational institution, the nomination of the candidates is justified under Article 14 if the exercise of the nomination power of the Government is not arbitrary and there is justification of the nomination power of the Government and this power is exercised on certain well defined principles.

It has also been accepted by the courts that under affirmative action programs, various other persons may be beneficiaries. The court provided in Ramesh Chandra v State of Punjab 209 for reservation of seats for the benefits of various categories of persons, including the reservation of the seats in favour of Scheduled Castes, Scheduled Tribes and the Other Backward Classes. These persons included:--

(a). Government of India nominees.


(c). Scheduled Caste and the Scheduled Tribe candidates belonging to the State of Punjab.

(d). Sportsmen.

It has been stated by other court decisions that reservations made for the benefits of the dependents of the freedom fighters are valid. 210

In India, to benefit under the reservation schemes, one does not have to be a citizen of India. The following persons, who are not citizens of India, have been included by the courts of India for getting benefits under the Indian reservation schemes. Colombo Plan Scholars, Thailand Scholars, Jammu and State Kashmir Scholars, students from Nepal, repatriates from Burma, Ceylon (now called Sri Lanka), Mozambique, students from less developed Commonwealth countries and
students from Goa\textsuperscript{211} are included in these schemes. From other countries, candidates who are provided the reservation on a reciprocal basis may also benefit under the Indian reservation system.\textsuperscript{212}

It would seem, even though a list exists that if from another State of country any other person wished to get the benefits of the reservation scheme of the India they would have to prove at first their backwardness.

6. Protective Discrimination in Favour of Women

Both men and women are important components of the society and their mutual understanding and cooperation contribute equally to guide the activities of the world. But it is the most ill-fated that women have experienced inferior position to men in almost all societies of world. The position of women in the family and society at large was no improved than those of slaves and has been treated like ordinary chattels-incapable of taking pleasure in any rights as human beings. They were destined to continuous repression to their fathers, husbands and guardians. Under the old Christian law, the woman had no right of a human being.

In India also women have a long history of anguish and exploitation. The women continued to be victims of aggressive actions and also they had to suffer various types of unfairness, mistreatment and torture-both physical and mental in the male dominated society thereby disturbing the balance in our society.

Dr. Rabindranath Tagore, one of the India’s greatest poets has shown the pains and inequality of the situation more than half a century ago in these words:

\textit{“O lord why have you not given women the right to conquer her destiny?}
\textit{Why does she have to wait head bowed?}
\textit{By the roadside, waiting with tired patience,}
\textit{Hoping for a miracle in the morrow?”}

The movement for emancipation of women and bettering their status in the social hierarchy picked up momentum in the twentieth century. The Constitution framers of India tried to instill a new self-reliance in women folk by providing special provisions for them which worked like a catalyst for the revolution against the misogynous attitude of the society. The Constitution of India is a National Charter for abolishing injustice and inequalities in respect of women who remained in abject slavery, suffered perpetual discrimination and age old injustice. No other Constitution
of the world is so much sensitive to gender justice as the Indian Constitution. The major concern of the Constitution makers was to ensure equality. There are different weaker sections of the people in our country and the General Clause of equality in the Constitution would not have served this purpose. So, special constitutional protection was necessary for the weaker sections of the society. The framers of the Constitution were well aware of the unequal treatment meted out to the fairer sex from the time immemorial. Therefore, the Constitution of India not only guarantees equality before law and equal protection of law to women but also confers certain affirmative and protective rights upon them. To secure to all the citizens of India equality of status and opportunity and to bring the women at par with men in every possible respect, our Constitution authorizes preferential treatment in favour of the women by way of protective discrimination.

Protective discrimination is the policy of granting special privileges to the downtrodden and the underprivileged weaker sections of society, most commonly women. These are affirmative action programs and the practice is most prominent in India, where it has been enshrined in the Constitution and institutionalized. In consonance with the constitutional scheme, the Preamble’s promise of providing equality of status and opportunity has been concretized and clothed with flesh and blood by the provisions of Articles 14, 15 and 16.

Provisions for Women under the Indian Constitution

In the preamble of the Indian Constitution, in the Fundamental Rights, Fundamental Duties and in the Directives Principles, the provisions of gender equality are enshrined in the Constitution of India. In the following provisions of the Constitution of India, reference to equality between men and women can be found:


I) Article 14213 guarantees the right to equality.

II) Article 15 states that there shall be no discrimination on the ground of religion, race, sex or place of birth.

III) Article 15(3) empowers the State to make special provisions for women and children.

IV) Article 16 confers the right of equality of opportunity in the matters of public employment.
V) Article 21\textsuperscript{214} protects life and personal liberty.

VI) Article 23 guarantees right against exploitation and trafficking in human beings.

Part IV of the Constitution deals with the Directives Principles of State Policy and the Directive Principles which are of the concern for the women directly and bear upon their status are:

I. Article 39(a)—Right to an adequate means of livelihood equally for men and women.

II. Article 39(d)—Equal pay for equal work for both men and women.

III. Article 39(e)\textsuperscript{215}—Protection of health and strength of men and women workers and children.

IV. Article 42—Provision for just and human conditions of work and maternity relief.

V. Article 51(A) (e)\textsuperscript{216} of Fundamental Duties imposes a duty on every citizen of India to renounce practices derogatory to the dignity of women. This was inserted by 42\textsuperscript{nd} Amendment to the Constitution of India.

VI. Article 243—The Constitution (73\textsuperscript{rd} Amendment Act 1992) envisaged the reservation of seats for women in panchayats. This amendment was made in order to improve the position of women especially at the village level and thus, providing an opportunity to women in the political field.\textsuperscript{217}

VII. Article 325—Guarantees the right to vote to all the citizens irrespective of sex.

In addition to this, Part IX- A has been added to the Constitution by the Constitution (Seventy-fourth Amendment) Act, 1992. It provides for the setting up of three types of Municipal Corporations. Of the total seats (including the seats reserved for women belonging to Scheduled Castes and Scheduled Tribes) to be filled by direct election in every Municipality, not less than one-third shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.\textsuperscript{218}

So, these Fundamental Rights and Directive Principles of our Constitution have made extensive safeguards in favour of women. According to Granville Austin,

“Fundamental Rights and the Directive Principles are the conscience of our Constitution.”\textsuperscript{219}
India has also ratified various international conventions and human rights instruments committing to secure equal rights of women including the Convention on Elimination of All Forms of Discrimination against Women in 1993.

The Indian Parliament has also enacted variety of statutes dealing with the problems of women in the light of various international and regional agreements. A number of the important legislations are enacted for safeguarding the interests of women before\textsuperscript{220} as well as after\textsuperscript{221} independence. In 1992, the National Commission for Women was set up in order to achieve the objective of empowerment of women and it was a landmark achievement in the social development providing a platform for actualizing aspirations of the nation for sustained development with gender equality.

Though our Constitution and various other legislative enactments and different commission for women have made a number of efforts for the achievement of the objective of gender equality, yet in actual practice, due rights are denied to women and they continue to be the victims of male domination.\textsuperscript{222} Violations of the rights of the women continue in practice. The women are lacking in position and power and are over represented amongst the poor. Gender inequalities hurts the interests not only of the girls and grown-up women, but also of boys and men, through biological connections (such as childhood undernourishment and cardiovascular diseases at later ages) and through societal connections (including in politics and in economic and social diseases at later ages). Even then the position of the women is still pitiable in certain areas; it is also true that a woman has, even in her own home been given a rather subordinate role to play. Born into indifference and reared on neglect, the girl child is caught in a web of cultural practices and prejudices that hamper her development, both physical and mental. In India, a girl child, from the period of her infancy to adolescence in the socially inhospitable environment of patriarchal and male dominated society, is considered to be someone, who will never contribute to the family income and who at marriage will take a large portion of family assets as dowry. So, they are considered just the burden and are valued less resulting in lower investment on their education as well as on their feeding, inadequate care and nutrition development.
1. Less Political Participation of Women

Indian women participation in the political field started with the freedom movement. Mahatma Gandhi made serious efforts to arouse political consciousness in the poor, illiterate women in order to make them take part in the freedom movement. Political participation may be defined as voluntary participation in the political affairs through membership, voting and partaking in the activities of the political parties, legislative bodies and/or politically motivated movements. The Constitution of India guarantees adult franchise and provides full opportunities and framework for women to participate actively in politics. But it is pity that women have not substantially availed of the constitutional provisions. The election statistics shows that for the last two decades almost equal numbers of men and women have gone to the polling booths to vote. The number of women filing their nomination papers in any election, national or State, is only a fraction of the corresponding number of men. But the number of women winning elections is so small that their percentage in the legislative body is nominal.

<table>
<thead>
<tr>
<th>Table No. 10. \nWomen Members in Lok Sabha</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lok Sabha</td>
</tr>
<tr>
<td>First</td>
</tr>
<tr>
<td>Second</td>
</tr>
<tr>
<td>Third</td>
</tr>
<tr>
<td>Fourth</td>
</tr>
<tr>
<td>Fifth</td>
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<tr>
<td>Sixth</td>
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<tr>
<td>Seventh</td>
</tr>
<tr>
<td>Eighth</td>
</tr>
<tr>
<td>Ninth</td>
</tr>
<tr>
<td>Tenth</td>
</tr>
<tr>
<td>Eleventh</td>
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<tr>
<td>Twelfth</td>
</tr>
<tr>
<td>Thirteenth</td>
</tr>
<tr>
<td>Fourteenth</td>
</tr>
<tr>
<td>Fifteenth</td>
</tr>
</tbody>
</table>

Source: Election Commission of India.

As shown in the Table Number 10, it is clear that the percentage of winning candidates has been below eleven in the Parliament in all the past elections. The State Assemblies too show the similar situation. No variation has occurred in half-a-century.
**Table No. 11**

**Women in Decision Making**

<table>
<thead>
<tr>
<th></th>
<th>Women</th>
<th>Men</th>
<th>Women as % of Men</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive bodies of political parties</td>
<td>-</td>
<td>-</td>
<td>9</td>
</tr>
<tr>
<td>Cabinet Ministers</td>
<td>8</td>
<td>76</td>
<td>11</td>
</tr>
<tr>
<td>High Court Judges</td>
<td>15</td>
<td>488</td>
<td>3</td>
</tr>
<tr>
<td>Civil Services</td>
<td>-</td>
<td>-</td>
<td>7</td>
</tr>
<tr>
<td>Executive bodies of trade unions</td>
<td>6</td>
<td>108</td>
<td>6</td>
</tr>
</tbody>
</table>

**Note:** South Asia Human Development Report, 2000.


Apart from political parties and Parliament, women are also seriously under-represented in other spheres of decision-making, in a country like India, there seems paradoxical-on the one hand, women have moved into the professions and civil services in far higher numbers than in other South Asian countries. On the other hand, their entry into the upper echelons seems to be restricted by a glass ceiling. The political empowerment automatically follows economic empowerment; therefore, it becomes obligatory for the women’s organizations as well as the Government of India to search for remedial measures to improve the political status of the women.

In 1992, Seats and Pradhan positions were also reserved for the two disadvantaged minorities in India, Scheduled Castes and Scheduled Tribes, in the form of mandated representation proportional to each minority’s population share in each district by the 73rd Amendment. Even though, this Amendment also provided that one-third of the seats in all Panchayat councils, as well as one-third of the Pradhan positions, must be reserved for women and the reservations for women have been implemented in all major States except Bihar and Uttar Pradesh (which has only reserved 25% of the seats to women) yet so far as the representation of women in the successive Lok Sabhas is concerned, it has not gone beyond 11 percent. In the same way, reality seems to be very disturbing that out of 117 members of the Legislative assembly of Punjab only 7 are women which are just about 6% of the total members. So is the case in other states and the percentage of women members is just 3% to 9%. The efforts of successive Governments to amend the Constitution of India in order to provide for the reservation in country’s legislatures are not being materialized because of insensitive behaviour towards gender equality of certain leaders who are supposed to be committed to the cause of social justice. Following is the chequered history of
the Women’s Reservation Bill moved in the Rajya Sabha on March 9th, 2011 that seeks to reserve 33 percent seats for women in the country's legislatures:

1996 -- After prolonged deliberations, as a first step, in September 1996, the Deve Gowda government introduced in the parliament the Women's Reservation Bill as 81st Constitutional Amendment Bill. But following opposition, the bill was referred to the scrutiny of the Joint Select Committee of Parliament. The report was produced in the Rajya Sabha and the Lok Sabha but nothing positive happened.

1998 -- The bill was re-introduced in the 12th Lok Sabha as the 84th Constitutional Amendment by the National Democratic Alliance Government headed by Atal Bihari Vajpayee.

1999 -- The National Democratic Alliance Government re-introduced the bill in the 13th Lok Sabha.

2002 -- The bill was introduced in Parliament but failed to sail through.

2003 -- Bill was introduced twice in Parliament.

2004 -- The United Progressive Alliance Government included it in the Common Minimum Programme.

2008 -- The Government tabled the bill in the Rajya Sabha so that the legislation did not lapse.

2010 -- The cabinet cleared the bill for taking it up in the Rajya Sabha.

On March 10th, 2010 the 14-year perilous political struggle to give women adequate representation ended with the Rajya Sabha finally debating the contentious issue and then voting 186-1 on the Constitution (One Hundred and Eighth Amendment) Bill, 2008 amid acrimony, political divides and ugly scenes of dissent. In the 245-member House with an effective strength of 233, the bill required the backing of at least 155 members. The reserved seats would be allotted by rotation to different constituencies and would be valid for 15 years after the commencement of the Amendment Act. The Bill seeks to reserve for women 181 out of the 543 seats in the Lok Sabha and 1,370 out of a total of 4,109 seats in the 28 State Assemblies.

Only the last step remained-of the Lok Sabha endorsing it. However, Lok-Sabha Speaker Meira Kumar had nothing positive to say as she emerged from over an-hour long meeting with known critics of the Women’s Reservation Bill on July 14, 2011. On the 15-year old Bill, her second major attempt within a month to forge a consensus had failed as socialist and Muslim leaders rejected her advances and flagged their old “conspiracy” concerns. Leading Andhra Muslim leader from
Asaduddin Owaisi of the Majlis-e-Ittehadul Muslimeen (MIM) told that Women’s Reservation Bill would sound a death-knell for the representation of all Muslim Members of Parliament – male and female- in the Lok Sabha. The Rashtriya Janata Dal (RJD) chief Lalu Yadav was the most vociferous in his protest.\textsuperscript{223}

For the Bill, these are sad bodings at a time when United Nations Women has revealed new worldwide proof supporting the merits of quotas as device to augment the presence of the women in the Parliament. Another prominent example of Costa Rica can be quoted here which approved the momentous Responsible Paternity Act 2001 for encouraging shared upbringing of the children, just five years after authorization of 40 % representation for the women in its Parliament. Out of 28 countries with more than 30 percent women in the Parliament, several pulled out of clash, including the neighboring Nepal, which has 33 percent women in the Parliament. However, in India, even the approaching monsoon session of Parliament doesn’t embrace much promise for the Constitution (one Hundred and Eighth Amendment) Bill, 2008 which looks for reserving one third seats for the women in the Lok-Sabha and State legislatures.\textsuperscript{224}

The bill proposing quota for women is a step forward in mainstreaming women in politics by giving them representation in the highest elected bodies both at national and regional levels where they can discuss all the problems in order to seek their redressal and thereby to get an opportunity to highlight them on a national as well as regional platform. Without proper representation of women in the legislative bodies and political participation at all levels, issues concerning women would remain neglected.\textsuperscript{225}

2. Educational backwardness of women in India

Education expands opportunities for women, equips them to make more informed choices, empowers them to resist oppression and enables them to claim their rights. This right is linked to other basic human rights including the right to freedom from discrimination, the right to work and the right to participate in decisions affecting one’s self and one’s community. But there exists a wide gap between the literacy rates not only among males and females but also among rural and urban females. Nearly 245 million women lack the basic capability to read and write. Compared to boys, far fewer girls are enrolled in the schools, and many of them drop out\textsuperscript{226}. 
Table No. 12.
Literacy Rate: 1951-2001

<table>
<thead>
<tr>
<th>Year</th>
<th>Men (Literacy Rate)</th>
<th>Women (Literacy Rate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951</td>
<td>27.16</td>
<td>8.86</td>
</tr>
<tr>
<td>1961</td>
<td>40.40</td>
<td>15.35</td>
</tr>
<tr>
<td>1971</td>
<td>45.96</td>
<td>21.97</td>
</tr>
<tr>
<td>1981</td>
<td>56.38</td>
<td>29.75</td>
</tr>
<tr>
<td>1991</td>
<td>64.13</td>
<td>39.29</td>
</tr>
<tr>
<td>2001</td>
<td>75.85</td>
<td>54.16</td>
</tr>
</tbody>
</table>


The female literacy rate has been consistently been lower in rural as well as urban sectors. The girls have far less opportunity of schooling than boys do. There are other deficiencies in basic facilities available to women, varying from encouragement to cultivate one’s natural talents to fair participation in rewarding social functions of the community. According to a 1998 report by United States Department of Commerce, the chief barriers to female education in India are inadequate school facilities, shortage of female teachers and gender bias in curriculum (majority of the female characters being depicted as weak and helpless).227

The opportunities in higher education and professional training are fewer for young women than for young men. Indeed, gender bias in higher education and professional training is based on the superficially innocuous idea that the respective “provinces” of men and women are just different.

3. Under-representation of Women in Employment

The Constitution of India grants equality of opportunity to all matters relating to employment or appointment to any office under the State. Article 39 of the Constitution enjoins the State to direct its policy to secure to the citizens, men and women equally, the right to adequate means of livelihood. The equal Remuneration Act forbids discrimination against women at the time of recruitment or in their conditions of service subsequent to recruitment. The Equal Remuneration Act seeks to ensure equal remuneration to men and women workers in an establishment doing the same work and work of the similar nature. Despite of all these constitutional safeguards provided in favour of women, the proportion of women workforce is very less in comparison to the male workforce. According to the Economic Census, All India Report 2001, of the total of 83.4 million workers, men constitute 80 percent, women 17.3 percent. In addition to it, women workers face deprivation in terms of
wages, working conditions and welfare benefits like their counterparts in the organized sector.

A wide disparity in the work participation rates exists between males and women. The female work participation rate increased from 22.7 percent in 1991 to 25.7 percent in 2001 as against a marginal increase from 51.6 percent to 51.9 percent for men.

**Table No. 13.**  
*Work participation Rate in India (1991-2001)*

<table>
<thead>
<tr>
<th>Year</th>
<th>Person</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>Total</td>
<td>37.68</td>
<td>51.56</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>40.24</td>
<td>52.50</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>30.44</td>
<td>48.95</td>
</tr>
<tr>
<td>2001</td>
<td>Total</td>
<td>39.26</td>
<td>51.93</td>
</tr>
<tr>
<td></td>
<td>Rural</td>
<td>41.97</td>
<td>52.36</td>
</tr>
<tr>
<td></td>
<td>Urban</td>
<td>32.23</td>
<td>50.85</td>
</tr>
</tbody>
</table>

**Source:** Annual Report of Ministry of labor 2003-04.

While the proportion of women in the organized and public sector increased between 1991 and 2001. Though there has been increase in the proportion of workers for both men and women during the decade 1991- 2001, but it is striking among men than women.

Women’s contribution to the economy as workers continues to be visible and unrecognized, despite a change in the conventional definition or work by the Government. A Pilot Time Use Survey conducted in 1998-99 by the Central Statistical Organization showed that 51 percent of women’s work was not recognized as such, 93 percent of women workers are in informal employment (including agriculture) and a majority in low income jobs. Wage gaps between male and female labor persist and are greater in urban than in rural India. One of the reasons for such an inadequate representation of women in comparison to the men is the “division of labor”. According to this, where it is quite natural that men work outside the home, women could do it if and only if they could combine it with various inescapable and unequally shared household duties. The reach of this inequality includes not only unequal relations within the family, but also derivative inequalities in employment and recognition in the outside world. And also this type of “division” of labor has far-reaching effects on the knowledge and understanding of different types of work in the professional circles.
Consequently, the access of the women to unorganized sector—to education is inadequate. So women in India remained largely marginalized, poor and socially excluded. The high gender gap in literacy at all levels; high rate of dropouts of girl students; in-adequate access of women in employment opportunities; and their less political participation raises many questions about the role of institutional machinery to implement the law. In the case of women, admittedly, there is need to remove the shortage of laws and constitutional provisions guaranteeing a place of honor and equality to women. Secondly, there are large bureaucracies at the Central and State levels and an elaborate network of institutions shouldered with the duty of elevating the status of the women. Yet there still exists a very wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes and related mechanisms on the one hand and the situational reality of the status of women in India on the other. This is due to the slow, expensive legal system which is procedurally biased against the women. Therefore, the existing laws and policies alone are not enough to combat the menace of inequality. And reservation for women is not a bounty but only an honest recognition of their contribution to social development. Reservation in favour of women constitutes a category by itself. They have remained backward. So, women satisfy the educational, social and economic criteria of backwardness as compared to men, to be eligible for getting benefits of protective discrimination policy of Government of India.

Thus, for the emancipation of women and conversion of their de-jure equality into de-facto equality, the educational and the economic independence of the women is of paramount importance. This could lead to total development of the women. This goal of economic independence and empowerment of the women can be achieved only through gainful employment opportunities. Women’s gainful employment especially in more rewarding occupations clearly will play a role in improving the lot of the women especially in increasing the status and standing of the women in the society. In order to achieve this objective, comprehensive Protective Discrimination law and policy for providing reservation in political, educational and employment to women is the need of the hour. At the end, it would not be out of place here to quote Robert Ingersoll,

“There will never be generation of great men until there has been a generation of free women of free mothers”.


Conclusion

In simple sense, reservations are a device for undoing historical and social inequality and attaining substantive equality, rather than formal, in our society. Reservations were authorized by our Constitution for the progression of the backward sections of the society. In the Constituent Assembly when there was commencement of the debate on the reservations, it was determined that the reservations would be given in favour of the Scheduled Castes and the Scheduled Tribes, but a little afterward the door was wide opened to the “Backward Classes” as well on the basis that they were also socially, economically and educationally denied in the earlier period like Scheduled Castes and Scheduled Tribes. But the population of Other Backward Classes which was calculated by the Commission was founded upon doubtful figures and was mere conjecture. Since the existing lists had swelled to comprise several thousand “castes” to be treated as ‘Backward Classes’, only to gratify the political directive thereby ensuing in the factual position that determination of the Backward Class in the contemporary time has itself become a matter of giant debate. Too much politicization of the reservation issue has a tendency for generating violent rivalry among the various castes to seek insertion in the lists of Other Backward Classes. To the greatest surprise, this system of caste-based reservations is rather being used for exploiting and dehumanizing the higher castes. This has resulted in generated agitations made by the public belonging to those castes which are not incorporated in the list of the Backward Classes. Currently, the alleged minorities are also clamoring for the reservation. The high caste communities also feel discriminated. Thus, supportive of the Backward Classes, this reservation system appears to be leading to circumstances of unjust reverse discrimination. Even in the last three to four years, the remarkable academic performance has been revealed by socially and educationally Backward Classes in various entrance examinations at graduate and post-graduate level and even in the selection procedure of nurses at the premier All India Institute of Medical Sciences (AIIMS) and so reserved category outpaced the general category contenders. In this tender, the general candidates’ quota has been reduced in size hence, resulting in the reverse discrimination towards them (general category candidates). Such a quest sows the seeds of the worry which concludes time and again in aggression and in an open confrontation among the various underprivileged sections of the society.
In addition to that, a number of problems emerged unluckily because of the adoption of the caste criterion as the foundation for providing benefits of the reservations to the Backward Classes of the citizens. Reservations in the educational institutions and jobs justifiably were provided as an effectual apparatus for serving the deprived sections of the society for overpowering social and economic handicaps. However, from the figures provided above, it is currently fairly obvious that despite of providing reservation facilities in favour of the Other Backward Classes in the area of education and jobs, still there is extensive under-representation of this category of people in the public employment. This is due to the reason of increased drop out rate of this category of people at the advanced education level. More drop-out rate at the first place, among these citizens at high educational level is owing to the lack of the provision of the quality education in the Government run schools. At the second place, Other Backward Classes in India have almost 51% of the Indian businesses in their ownership and control ensuing into the mass of monetary resources in their hands but with un-intention on their part for achieving education since there is no requirement of gaining formal education for continuation of their self possessed business enterprises. Then, under these state of affairs, the reservation benefits in support of this category of people in the field of education and employment will be of no use for providing any sort of assistance in any manner.

The Central Educational Institutions (Reservation in Admission) Bill, 2006 has provided 27 percent reservation for Other Backward Classes in the institutions of advanced education. But it is just a mockery of the poor people of this class living particularly in the rural region with less quality education and with maximum drop-out rate to get access into the institutes of higher education with the aid of the crutches of the reservations in their support. Secondly, the data of the preceding decade points out the educational advancement of the creamy layer amongst this category of people. Therefore, not being educationally and economically backward, they are not eligible for getting the benefit of the reservation of 27% in their favour. Instead of providing reservation at higher educational level, the need of the hour is to provide quality and compulsory education up to Senior Secondary level to the poor strata of this community particularly living in rural areas.

In the support of this category of people, many concessions, relaxations in the age-limits etc. have been provided. Even the numbers of chances provided to this category of people are more in contrast to the members of general category. In
addition to that, the Colleges/universities demarcate diverse qualification levels or “cut-off marks” supporting the Backward Classes merely for observing the reservation plan. But, this cut-off mark scheme only obstructs the progress of the Backward Classes themselves by diminishing their competitive drive. Further, there would have horde of expert professional had these spaces been provided to actually meritorious qualified applicants who could prove to be the actual wealth of the nation. As a result of it, the problem of brain-drain is fueled as really meritorious scholars go in the foreign country merely due to the lack of seats for their caste or group of people in their own country. Therefore, this policy not only brings in-efficiency in the Government employment but also scratches at the roots of justice and impairs the right to equality.

The truly deserving poverty ridden backward people are not incorporated in the list of “Backward Classes” by the capable authority since by reason of the defective process of issuance of fake caste certificates, fairly advanced people persist to be treated as backward so as to avail a range of facilities. The raise in the income ceiling of the creamy layer also constitutes an obstruction in the unvarying development of the nation. It is time at the present for evolving an appropriate mechanism for the elimination of the creamy layer from the pastel of the reservation in jobs as well as in admission to educational institutions.

In the case of women, admittedly, the existing laws and policies single-handedly are not sufficient to fight the menace of inequality. At the first place, there is call for removing the dearth of laws and constitutional provisions promising a place of respect and parity to women and secondly, appropriate execution of the laws and policies in the help of the women is the requirement of the current period. Women have stayed backward. Reservation in favour of women constitutes a category by itself. Consequently, women satisfy the educational, social and economic criteria of backwardness in contrast to males, to be entitled for receiving benefits of protective discrimination policy of Government of India. In order to realize objective of the liberation of the women, comprehensive Protective Discrimination law for providing reservation in political, educational and employment to women is the need of the age.

The objective at the rear of providing reservation in favour of Other Backward Classes and other weaker sections including women was to eliminate the evident inequity and to counterbalance the inequality which for olden generations was vested in these categories of populace. On the other hand, it appears that in the current time,
the policy of reservation is being sustained without any aim since even after more than sixty years of freedom of India, the elements from among the Other Backward Classes embrace the mass of those people who are still below the poverty stripe and the gaps between the poor and rich in the place of being reduced have been enlarged.

In summation, it can be made clear that the special constitutional provisions were granted in favour of Other Backward Classes and women for ameliorating their positions and for the creation of the casteless society. But, on the pedestal of the above study, it can be held that the these provisions concerning policy of the reservation in support of the Other Backward Classes and women are not adequate, not relevant and are insufficient. This policy has also proved not to be a success in providing the benefits of this policy to its actual beneficiaries. In case of women, there is also solemn need for appropriate implementation of the provisions given for their benefits in the Constitution of India in addition to making amendments in the provisions of the Constitution providing them with the political reservation. The provisions providing reservation in support of Other Backward Classes and women incorporated in the Constitution of India need to be suitably interpreted, critically reassessed, amended and re-shaped for making them more adequate and satisfactory. With the intention of meeting the aspirations of the deserving economically backward candidates, from both the backward and the general categories, ideally it is desirable to replace the criterion of caste with economic criterion.

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1 Arun Shourie, Falling over Backwards: An Essay against Reservations and Against Judicial Populism (ASA Publications, New Delhi 2006)
2 Krishna Iyer, J. in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association v. Union of India, AIR 1981 SC 298, para 93.
5 Ibid.
6 Articles 330 and 332 of the Constitution of India.
7 Article 335 of the Constitution of India.
8 Articles 164 and 338 of the Constitution of India.
9 Article 341 runs as follows:
“341. Scheduled Castes: (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.”
“(2) Parliament may be law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any castes, race or tribe part of or part of or group within any caste, race or tribe, but same as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Article 342 runs as follows:

“342. Scheduled Tribes: (1) The President may with respect to any State or Union Territory, and where it is a State after consultation with the governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

“(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Clause 24 of Article 366 runs as follows:

“Scheduled Castes mean such castes, races or tribes or parts or or grous within such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution.”

Clause 25 of Article 366 runs as follows:

“Scheduled Tribes means such tribes or tribal communities or parts or or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled for the purposes of this Constitution.”


The Second Report for the Commission for Backward Classes was appointed in 1979 under the Chairmanship of Shri B.P.Mandal. The Mandal Report is based on the 1931 census of India.


Article 15 clause (4) states as “Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

AIR 1951 SC 226.


Ibid.


Ibid.


97 Ibid. at p. 663, Jayasree K.S. State of Kerala, AIR 1976 SC 2381.
100 Ibid.
103 Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 55, 56).
104 Ibid at P. 481.
105 Ibid.
106 Ibid. (Paras 55, 56).
107 Ibid.
113 Ibid., per S.B.SINHA, J., concurring.
114 Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400):—9-Judge Bench.
115 Ibid.
116 Ibid.
117 Nair Service Society v. Distt Officer, Kerala Public Service Commission, AIR 2004 SC 834.
118 Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 92A, 292, 396, 399-400)—9-Judge Bench.
119 Ibid.
123 M. Nagaraj v. Union of India, AIR 2007 SC 71.
125 Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400)—9-Judge Bench.
129 Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400)—9-Judge Bench.
131 Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400)—9-Judge Bench.
78 Indra Sawhney v. Union of India, AIR 1993 SC 477.
79 M. Nagaraj v. Union of India, AIR 2007 SC 71.
80 The Clause (4B) states, “Nothing in this articles shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for the reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.”
81 Nair Service Society v. District Officer, Kerala Public Service Commission, AIR 2004 SC 834.
83 The Report of the Indian Franchise Committee, Volume I, Para 282, page 109. The Census of 1911 also accepted the list of untouchability ‘as the criteria for classifying “Depressed Classes”.’ See Id, Para 285 page 110. The 1921 Census however did not specify any criteria for classifying “Depressed Classes”. Ambedkar felt the need for substituting the term “Depressed Classes” by some other term like “Exterior Castes or Excluded Classes” to clarify the exact position of untouchables falling outside the pale of Hinduism and distinguishable from economically and educationally Backward Caste Hindus.
84 In the princely State of Mysore the term “Backward Classes” included all communities except Brahmins according to a Committee appointed in 1918 for the purpose of giving preferences to the backward communities in the public services. See Sir Leslie C. Miller Committee Report 1919 Para 3, p 11. This position continued till the Reorganization of State in 1956. Also see Lesh Dushkin “Backward Class Benefits and Social Class…” EPW volume 14, Numbers 7-8 April 1979 page 661-665. Duskin reports that in Mysore from 1921 until well after independence, the BCs, included everyone except Brahmin and those whose mother tongue was English. Id. at 661.
85 In Bombay also the term “Backward Classes” was used in the sense understood in Mysore. See Omvedt, “Cultural Religions in a Colonial Society. The Non-Brahmin Movement in Western India, 1873 to 1930”: Omvedt notes that in 1925 for purposes of reservation in services, a Bombay G.O. classified Backward as including all communities except Brahmins, Prabhus, Marwaris Parsis Banias and Christians, See Id. 343.
86 The Hartog Committee Report 399 (1929).
87 Indian Central Committee 45-47 (1929).
89 A. Ramaiah, “Identifying Other Backward Classes”, Economic and Political Weekly, June 6, 1992; 1203-1207.
90 Ibid.
91 A very Scholarly and searching analysis on the origin of “Other Backward Classes” has very recently been made by Marc Galanter “Who are the Other Backward Classes; An Introduction to a Constitutional Puzzle; EPW Volume XIII, Numbers 43-44, 28 October, 1812-1828(1978).
92 Marc Galanter, Compelling Equalities; Law and the Backward Classes in India, (1984), xviii.
93 Section 24; First Schedule Part I.The Government of India Act 1935.
94 Article 347(1), 366(24) – Indian Constitution 1950, for a further discussion on this aspect see Chapter V infra Section C.
95 A. Ramaiah, “Identifying Other Backward Classes”, Economic and Political Weekly, June 6, 1992; 1203-1207.
96 H. N. Kunzru, 7 CAD at 685; R. M. Nalvada, 7 CAD at 686.
97 For a detailed account of the history of OBCs, see Marc Galanter, Compelling Equalities; Law and the Backward Classes in India, (1984), xviii, at 154-179, also see Parmanand Singh, Equality, Reservation and Discrimination in India, (1982), at 80-107.
98 7 CAD at 661 (1948-49).
99 In Plessy v. Ferguson 163 U.S. Supreme Court upheld a Louisiana Law that required railway companies to provide “equal but separate” accommodation for whites and Negroes and the Court held that the Fourteenth Amendment was not intended “to abolish distinction based on color or enforce social, as distinguished from political equality, or a communion of two races upon terms unsatisfactory to either” 7 CAD at 544. It was only in 1954 in Broon v. Board of Education 347 U.S. 483 (1954) that the ‘equal but separate’ doctrine of Plessy was struck down as violative of equal protection guarantee. Ambedkar had perhaps Plessy in his mind in opposing Shah’s amendment.
90 The bill was referred to a Select Committee. See, Gazette of India 1951 Part II P. 379.
100 Parliamentary Debates Part II, Volume XII column. 8121,9815.
102 Ibid., Col. 9616.
But the most interesting thing about Nehru is that at one time he thought that it is the backward individual rather than the Backward Class who should be helped. He said,”Why should we brand groups and classes into backward and forward….I don’t particularly like the word “Backward Classes of citizens”….What I mean is this; it is the backward individual that we should help”. See Parliamentary Debates Part II, Volume XII at column. 9084.
But later Nehru changed his views. When K. T. Shah urged for the substitution of the word ‘citizens’ for classes, Nehru rejected the amendment invoking the historical factors which necessitated the preferences for ‘classes’ and not ‘citizens’. Id. 9641.
104 The bill was referred to a Select Committee. See, Gazette of India 1951 Part II, P. 379.
105 See Chapter VI Infra for details.
106 Ibid., Seth Govind Das Id at 10051, Venkataraman Id. at 10081, Hukum Singh Id .at 9823 and S. P. Mulokjee Id. at 9824 felt that the Central list of the Backward under Article 340 would not be conclusive.
107 The secretary of the commission was Shri Arunangshu De and other members of the commission were: Shri Narayan Sadaba Kajrolkar,M.P., Shri Bheekha Bhai, M.P., Shri Shiv Dayal Sibgh Chaurasia, Shri Rajeshwar Patel,M.P., Shri Abdul Quyum Ansari, M.L.A. (Bihar), Shri T. Mariappa, M.L.A. (Mysore), Lala Jagannath (Resigned and replaced by P.G. Shah) and Shri Atma Singh Namdhari, M.P.
108 The objects and terms of reference of the Commission were as follows:
1. Determine the criteria to be adopted for the consideration of any section of the people of India ( in addition to the Scheduled Castes and the Scheduled Tribes who are specified through notification issued under Articles 341 and 342 of the Constitution) as socially and educationally Backward Classes and according to that criteria, to prepare a list of those classes along with their approximate number and their territorial distribution;
2. Enquire about the conditions of those socially and educationally Backward Classes of citizens and also investigate in respect of the difficulties under which they labour.
3. Investigate such other matters as may be referred to them by the President; and,
4. Present a report to the President setting out the different facts as found by the Commission and also to make such recommendations as would be thought proper by the Commission.
109 The recommendations to be made by the commission were as follows:
1. For steps to be taken by the Union or any State in order to remove the difficulties and to improve the lot and conditions of these sections of the society and,
2. For grants to be made for the purpose by the Union and any State Government and also the conditions subject to which those grants might be made.
110 The powers of the Commission were as follows:
1. To obtain any kind of information considered to be necessary or relevant by it to reach its object from the Central Government, the State Government and such other organization, authorities or the individuals which in its opinion may assist them in such manner and form as may be considered appropriate by it.
2. To hold sittings of the Commission and sittings of some sub-committees that may be appointed by the Commission with the authority of Chairman from amongst their own members.
3. To visit or depute any of their sub-committees for visiting any parts of the territory of India which the Commission may consider necessary or convenient.
111 1 BCC Report 1955, P. 8, 47.
112 Ibid., P. 39.
113 Ibid., P. 13.
114 Ibid., P. 39.
115 Ibid., P. 41.
116 Ibid., P. 40.
117 Ibid.,P. 125.
118 Committees and Commissions in India, 1953, P. 255.
119 Recommendations were as under:

1. A proper land policy was suggested to be formulated for the purpose of upliftment of these classes of people.
2. The fixing of the ceiling on the land holdings was also suggested by the Commission for removing the prevalent inequalities of the holding of the cultivator in the rural areas.
3. On account of the policy of ceiling, the land made available to the Government at first should be distributed among the landless persons and then after that among the persons who were the owners of the uneconomic holdings.
4. The Commission prohibited the fragmentation of the holdings of the small and middle owners beyond a certain limit and rather the consolidation of their holdings was suggested by the Commission.
5. Measures were suggested by the Commission to remove rural indebtedness and other many measures were also suggested in connection with the rural development like to provide marketing facilities, price support, irrigation facilities, development of livestock, dairying, land tax policy, scheme for rural savings, cattle insurance, reorganization of the village economy and Bhudan movement etc.
6. To prevent exploitation of the Backward Classes and to remove the social evils measures were also suggested by the Commission to be implemented by the Government of India.

120 One of the most crucial recommendations of the report was opposed by three out of the five dissenting members, named as Dr. Anup Singh, Shri Arunangshu De, and Shri P. G. Shah. That crucial recommendation was, as a criterion for social backwardness, the acceptance of the caste and on the basis of that, reservation of posts in the Government services. On the other hand, the acceptance of caste as a criterion for backwardness was strongly advocated by Shri S.D.S. Chaurasia in his 67-page minute of dissent. The concern of Shri T. Mariappa’s minute of dissent was just to include in the list of Other Backward Classes a couple of castes.

121 It was observed in this Memorandum, “Under Article 340 of the Constitution of India, for the purpose of the enquiry it was essential to find out whether the proper classification could be made of these Other Backward Classes and the Commission was under an obligation to find the objective tests and also the criteria to be adopted for such classification, the Commission was also shouldered with the responsibility of finding the indisputable yardsticks to be used for the measurement of the social and educational backwardness of the Backward Classes of persons.”

124 Ministry of Home Affairs states, “While it was decided by the State Governments for defining the backwardness to choose criteria of their own, and according to the Government of India at the place of the castes, the economic tests would be better to be applied.”
125 As far as the preparation of the lists in respect of the Backward Classes are concerned, there was the observation that, “Under Article 338(3), even if it was the duty of the Central Government to specify certain section or the strata of people of India as belonging to Other Backward Classes, but every State Government would still be free to draw up lists of its own for fulfilling the purposes of the provisions under Articles 15 and 16. Because State Governments were empowered to adhere to their own lists, so there would not be any kind of practical utility of any all India list if drawn up by the Central Government.”

126 Ibid.
127 1 BCC Report.
128 The list of the other members of the Commission was as follows:

1. Shri R. R. Bhole, M. P. Member
2. Shri Dewan Mohan Lal Member
3. Shri L. R. Naik (ex-M.P.) Member
4. Shri K. Subramaniam Member
5. Shri S.S. Gill Member

129 The terms of reference of the Commission were as follows:-

1. The Commission was appointed to determine the criteria to be adopted for the purpose of defining the socially and educationally Backward Classes.
2. It was to recommend the steps to be taken in favour of the socially and educationally Backward Classes so identified like actions to be taken for their advancement.
3. It had the responsibility to examine whether there was desirability for providing provisions of reservation in favour of the Backward Classes of citizens of appointments or posts who were not
adequately represented in the posts or public services in respect of the affairs of the Union or of any State.

4. At the last, the Commission was shouldered with the responsibility of presenting a report to the President providing the facts with such recommendations which the Commission would think just and proper.

A trend, of which Jats of Rajasthan are the most prominent example, has raised fears of the quota benefits being cornered by the castes that are socially and educationally more advanced in comparison to the others in the list of Other Backward Classes. In 1999, the controversial move was made by the Government of the Vajpayee for conferring the status of Other Backward Classes in Rajasthan on Jats barring the districts of Bharatpur and Dhaulpur which before Independence had been ruled by the members of that caste. Inevitably, a dominant part of the Other Backward Classes quota has been grabbed by the Jats of Rajasthan.


Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400)—9 Judge Bench.


M. Nagaraj v. Union of India, AIR 2007 SC 71.

Ibid.

Ibid.


Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400)—9 Judge Bench.

Ibid.


Prem Prakash v. Union of India, AIR 1984 SC 1831 (Paras 11, 18).


Union of India v. Madhav AIR 1997 SC 3074—3 Judges Bench; Union of India v. Brij Lal Thakur, AIR 1997 SC 2101; State of Bihar v. Bageshwari Prasad, 1995 Supp (1) SCC 432; Post Graduate Institute of Medical Education & Research v. Faculty Association, AIR 1998 SC 1767, the view taken in Madhav case which was subsequently followed in many decision and Brij Lal Thakur and Bageshwari Prasad were overruled and the decision in Chakradhar case holding ‘no reservation in single post directly or by device of rotation of roster points’, was approved and Post Graduate Institute of Medical Education & Research v. Faculty Association, AIR 1998 SC 1767 was reversed.

Indra Sawhney v. Union of India, AIR 1993 SC 477 (Paras 57, 58, 94A, 292, 396, 399-400)—9 Judge Bench.


157 Indra Sawhney v. Union of India, AIR 1993 SC 477—9-Judge Bench; Parliament has enacted the National Commission for Backward Classes Act, 1993 to set up a National Commission for Backward Classes, to implement the Supreme Court’s direction as above [See under Article 340, post].


159 Parliament has enacted the National Commission for Backward Classes Act, 1993, to set up a National Commission for Backward Classes, to implement the Supreme Court’s direction as above [See under Article 340, post].


161 Ibid.

162 Ibid.


169 The important aspects are:

1. Implementation of 27% reservation for the Other Backward Classes in the institutes of higher learning and,
2. Assessment of additional infrastructure and other requirements for increasing the overall availability of seats to a level so that the present level of seats available to the general category students does not decline.

170 Sec. 4 of the Act.


172 The policy of reservation applicable in Teaching Department for the session 2007-2208 is as follows:-

1. Scheduled Castes or Scheduled Tribes 25%
2. Backward Classes 5%
3. Rural Area 7%
4. Border Area 3%
5. Sports 3%
6. Defence Personnel and their wards (sons, daughters and spouses) 2%
7. Physically Handicapped 3%
8. Children of
   (i) Persons killed in terrorist violence
   (ii) Army deserters killed
   (iii) Sikh migrants as a result of 1984 riots
   (iv) Dependants of Freedom Fighters.


174 Reported in the The Tribune 1, October 8, 2009.

175 Rema Nagarajan, Times of India...........

These handicapped persons may be:

(i) Sons/daughters of Central Government Servants.
(ii) Sons/daughters of Union Territories and States other than the State providing reservation.
(iii) Cultural Scholars.
(iv) Sportsmen.
(v) Sons/ Daughters of the political sufferers.
(vi) Ex-servicemen and their children.
(vii) Candidates from other countries who are given reservation on reciprocal basis etc.

See judgment Writ Petition op cit 151.
213 Article 14 of Indian Constitution provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.
214 Article 21 of Indian Constitution states, no person shall be deprived of his life or personal liberty except according to procedure established by law.
215 Article 39(e) of Indian Constitution provides that the strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
216 Article 51(A)(e) of Indian Constitution states to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religions, linguistic and sectional diversities, to renounce practices derogatory to the dignity of women.
217 It is appropriate to mention here that many statutes have been enacted by the Indian Parliament so as to make the participation of women in administrative, judicial and political field. The Legal Services Authorities Act, 1987, The Consumer Protection Act, 1986, The Protection of Human Rights Act, 1993.
223 The Tribune, Chandigarh, India, July 15, 2011.
224 Ibid.