CHAPTER 4

IDENTIFICATION AND DETERMINATION OF BACKWARD CLASSES

4. I. RESERVATION FOR BACKWARD CLASSES

It is a harsh but true fact that over the centuries many section of ours caste ridden society have been the victim of oppression and exploitation at the hands of the dominant groups in society. It is very difficult to gauge the extent and depth of social and economic exploitation that resulted in their discrimination, misery, poverty and other disabilities for an appreciably large section of ours population. Man has an intrinsic urge to revolt against injustice and the makers of the Indian Constitution were not oblivious of this reality. They had keen sense of perception and were aware of the dangers that inequality could breed. They made provision in the Indian Constitution to promote secularism, ensure equality and eradicate injustice that had been heaped upon millions through the abominable principles of protective discrimination for backward classes aimed at breaking the bandages of religious, race, caste, sex, language and descent and ensuring to the weak, the deprived and the backward the opportunity to compete with the strong and more advanced.374

The Constitution permits preferences in the form of reservation under protective discrimination provision for three categories of people:

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(a) Scheduled caste (b) Scheduled Tribes and (c) Other Backward Classes.

The constitution permits protective discrimination in the form of reservation in the three specific areas: reservation of seats in the legislature, reservation of jobs, and reservation of seats in the educational institutions.

4. II. RESERVATION OF POSTS IN THE STATE’S SERVICES

Although clause (1) of Article 16 guarantees equality of opportunity to all citizens alike, it would be meaningless to those for whom offices of positions and dignity have been out bounds for centuries and they are so crippled by the circumstances in which they are placed that such offices are beyond their reach if they are left to themselves. In India, we have been faced with inequalities, which are mainly due to social injustices perpetuated for centuries by the upper castes on those belonging to the lower castes by denying them a proper social status and opportunities for their betterment.375 Because of its pernicious caste system which may truly be described as its original sin376. The Hindu constitutes 80 percent of the country’s population and overwhelming majority amongst them belongs to the castes which suffered social disabilities in some degree or the other.377 Every Hindu born in with particular castes which he cannot change. Hitherto, he had to follow the occupation assigned to his caste and he could not even think of changing it. The mobility to upper castes is forbidden. One of the worst effects of castes was that access to knowledge and learning was denied to the lower castes for centuries. It was not till the advent of the British Rule in this country that the doors of education were opened to theme as well as to women who were considered as much disentitled to education as the

375 S. M. N Raina. Reservation with Justice, C I L Q 1990, p. 1
376 Indra Sawhney v. Union India, A I R 1993 S C 477 at 634.
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shudras\textsuperscript{378}. Naturally all the ports in the administrative machinery were manned by the higher castes which had the monopoly of learning. The concentration of the executive power in the hands of the select social group had its natural consequences. The most invidious and self perpetuating consequences was the stranglehold of a few high castes over the administration of the country from the lower to the higher rungs to the deliberate exclusion of others. Consequently all aspects of life were controlled, directly and regulated mostly to suit the sectional interests of a small section of the society which numerically did not exceed 10 percent of the total population of the country. The state of the health of the nation was viewed through their eyes, and the improvement in its health was effected according to their prescription.\textsuperscript{379}

To ensure protection of backward classes of citizens it was necessary that members of backward classes be appointed in state service and so the power was given to the state to provide for reservation of such appointments\textsuperscript{380}. Dr. B.R. Ambedkar realized that unless the backward classes have share in the power their interest cannot be protected\textsuperscript{381}. Accordingly the provision was made for the reservation of jobs in terms of Article 16 (4) which qualifies the non-discriminatory provisions guaranteeing the equality of opportunity in matters of public employment. Special privileges through reservation and percentage quotas in recruitment and promotion in services have been given in pursuance of the provision. In order to compete the stupendous task of social reconstruction of building an egalitarian society, the framers of the Constitution through it fair that people who were socially, economically and educationally backward should be given special concession in the form of out- of- turn opportunities in recruitment as well as promotion. It was apprehended that these unfortunate people will not be able to compete on an equal footing with people who are better placed in life socially advanced and educationally

\textsuperscript{379} Indra Sawhney v. Union of India , A I R 1993 S C 477 at 634.
\textsuperscript{380} P. C. Juneja. \textit{Caste As Criterion for Reservation - An Overview}, C I L Q 1992 p 214
\textsuperscript{381} Ibid.
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better qualified. The aim was to strike a balance between the fundamental rights of the individual and social justice to the backward classes.\(^{382}\)

The Constitution permits reservation of jobs in terms of Article 16(4) only if two conditions are satisfied, viz., the classes of citizens is backward and (b) that classes is not adequately represented in the service under the state. Both conditions must be fulfilled.\(^{383}\) In the *General Manager Southern Railway v. Rangachani*,\(^{384}\) the Supreme Court held that the provision of Article 16(4) are meant for providing adequate representation in the service to the backward classes, the representation has to be in all categories and grades in the service. The adequacy does mean mere proportionate numerical or quantitative strength. It means effective voice or share in power in running the administration.

In *Indra Sawhney v. Union of India*,\(^{385}\) the Supreme Court held that the Article 16(4) enables the state to make a provision for the reservation of appointment to the posts. The provision may be made either by an Act of legislature or by rule or regulation made under such Act or in the absence of both, by executive order. Executive order is not less a law under Article 13(3) which defense law to include among other by laws and notification. The provision of reservation under Article 16(4) being relatable to the recruitment and condition of service under the state, they are also covered by Article 309 of the Constitution. Article 309 expressly provides that until provision in that behalf is made by or under an Act of the appropriate legislature, the rules regulating the recruitment and condition of service of person appointment to service under the union or a state may be regulated by rules made by the President or the Governors as the case may be.

Further it was also held that the expression backward classes of citizen in Article 16(4) does not comprise all the weaker section of the people, but only those

\(^{382}\) Supra note 377
\(^{383}\) Ibid.
\(^{384}\) *A I R* 1962 *S C* 36
\(^{385}\) *A I R* 1993 *S C* 477
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which are socially and therefore, educationally and economically backward, and which are inadequately represented in the service. The expression “weaker section of the people” used in Article 46, however, is not confined to the aforesaid classes only but also includes other backward classes as well as, whether they are adequately represented in the service or not\textsuperscript{386}. Though the expression “backward class” has not been defined under the Constitution, the judiciary has tried to define it.

In \textit{M. R. Balaji v. State of Mysore}\textsuperscript{387}, it was held that there is no doubt that Article 15(4) has to be read as a proviso or an exception to Article 15(1) and 29(2). It was observed that Article 15(4) was inserted by the First Amendment in the light of the decision in \textit{State of Madrass v. Champakam Dorairajan}\textsuperscript{388} with a view to remove the defects pointed out by the Court namely, the absence of a provision in Article 15 corresponding to clause (4) of Article 16, no reservation can be made in the educational institutions for backward classes. Following \textit{Balaji}, it was held by another Constitution bench in \textit{Devadasan}\textsuperscript{389} further this court held that clause (4) of Article 16 by the way of a proviso or an exception to clause (1), Subba Rao, J., however opined in his dissenting opinion that Article 16(4) is not an exception to Article 16(1) but that it is only an emphatic way of stating the principle inherent in the main provision itself. Be that it may, since the decision in \textit{Devadasan}, it was assumed by this count that Article 16(4) is an exception to Article 16(1). This view, however, received a severe setback from the majority decision in \textit{State of Kerala v. N. M. Thomas}\textsuperscript{390}. Though the majority stuck to the view that Article 16(4) is an exception, the majority held that Article 16(4) is not an exception to Article 16(1) but that it was merely an emphatic way of stating a principle implicit in Article 16(1). The majority held that Article 16(1) being of facet of the doctrine of equality enshrined in Article 14 permits reasonable classifications just as Article 14 does. The majority judges in \textit{Indra

\textsuperscript{386} AIR 1993 S C 477
\textsuperscript{387} AIR 1963 S C 649
\textsuperscript{388} AIR 1951 S C 226
\textsuperscript{389} AIR 1964 S C 179
\textsuperscript{390} AIR 1976 S C 490
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Sawhney case\textsuperscript{391} held that the majority decision of Thomas case was correct and held that Article 16(1) being a facet of the doctrine of equality enshrined in Article 14 permits reasonable classification just as Article 14 does. In the view of judges of this case the view taken by the majority in Thomas is the correct one. It was further held that Article 16(1) does permit reasonable classifications for ensuring attainments of the equality of opportunities assured by it. For assuring equality, it may well be necessary in certain situation to treat unequally situated persons unequally. Not doing so would perpetuate and accentuate inequality. Article 16(4) is an instance of such classification put into place the matter beyond controversy.\textsuperscript{392}

The “backward classes of citizen are classified as separate category deserving special treatment in the nature of reservation of appointments / post in the services of the state. Accordingly we hold that clause (4) of Article 16 is not exception to clause (1) of Article 16. It is an instance of classification implicit in and permitted by clause (1). It was accepted that clause (4) is an instance of classification inherent in clause (1). Now just as Article 16(1) is a facet or an elaboration of the principle underlying Article 14, clause (2) of Article 16(4) is also an elaboration of a facet of clauses (1).

In Indra Sawhney v. Union of India\textsuperscript{393} it was held that the very object of Article 16 (4) is to ensure equality of opportunity in matter of public employment and to give adequate reservation to those who have been placed a very discounted position from time immemorial on account of sociological reason. To put in differently the purpose of clause (4) is to ensure the benefits flowing from the fountain of this clause on the beneficiaries namely the backward classes who in the opinion of the Constitution makers would have otherwise found difficult to enter into public service competing with advanced classes and who could not be kept in Limbo until they are benefited by the positive action schemes and who have suffered and are still suffering from historic disabilities arising from past discrimination or disadvantages or both .

\textsuperscript{391} A I R 1993 S C 477.
\textsuperscript{392} Ibid.
\textsuperscript{393} A I R 1993 S C 477.
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They continue to be deprived of enjoyment of equal opportunity in matters of public employment despite there being sufficient statically evidence in proof of manifest imbalances in Government jobs which evidence in sufficient to support an affirmative action plan.\textsuperscript{394}

The basic policy of reservation is to offset the inequality and remove the manifest imbalance the victims of which for by generation lag far behind and demand quality by special preferences and their strategies. Needless to say that equality in fact or substantive equality involves the necessity of beneficial treatment in order to attain the result which establishes on equilibrium between two sections placed unequally. In Mohan Kumar Singania v. Union of India,\textsuperscript{395} it was held that the Constitution no doubt has laid a special responsibility on the Government to protect the claims of SC/ST in the matter of public appointments under various constitutional provisions. Article16 (4), one of the various Constitutional provisions is an enabling provision conferring a discretionary power on the state for making any provisions or reservation of appointments or post in favour of any backward classes of citizens which in the opinion of the state, is not adequately represented in the service under the state. Clouse (4) of Article 16 has to be interpreted in the background of Article 335. Article 335 enjoins that the claims of the members of SC/ST shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to service or post in connection with the affairs of the union or of a state. Thus reservation is not a Constitutional compulsion but it is discretionary one. The expression backward class obviously takes within its fold people belonging to SC/ST.

In \textit{Indra Sawhney case} it was held that the expression “in the opinion of the state” would mean the formation of opinion by the state which is purely a subjective process. It cannot be challenged in a court on the ground of propriety reasonableness and sufficiency though such an opinion is required to be formed on the subjective

\textsuperscript{394} Indra Sawhney v. Union Of India, A I R 1993 S C 477.
\textsuperscript{395} A I R 1992 S C 1
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satisfaction of the Government whether the identified backward class of citizens are adequately represented or not in the services under the state, but drawing such requisite satisfaction, the existence of circumstances relevant to the formation of opinion is a sine quo non. If the opinion suffers from the vice of non-application of mind or formation of collateral grounds or beyond the scope of statute irrelevant and extraneous material then that opinion is challengeable.

Again the action of the government in making provision for the reservation of appointments or posts in favor of any backward class of citizens is a matter of policy of the Government. What is best for the backward class and in what manner the policy should be formulated and implemented bearing in mind the object to be achieved by such reservation is a matter for decision exclusively within the promises of the Government and such matters do not ordinary attract the power of judicial review or judicial interferences except on the grounds which are well settled by a catena of decision of this court. 396

4. III. RESERVATION FOR SCHEDULED TRIBES

Like Scheduled Castes the Scheduled Tribes are also getting protective discrimination in the form of reservation under three categories namely, reservation of seats in Lok Sabha, and State Vidhan Sabha, reservation in admission in educational institution and reservation in appointment or post in State employment. Under Articles 330397, 332398 and 334399 of the constitution, seats are reserved for Scheduled

396 Ibid.
397 Article 330 says- Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of People—(I) Seats shall be reserved in the House of the people for—(a) the Scheduled Castes;
(b) The Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam.
(2)The number of seats reserved in any state or Union Territory for the Scheduled Castes or the Scheduled Tribes under Clause(I) shall be as nearly as may bear, as nearly as may be, the same proportion to the total number of seats allotted to that state or Union territory in the House of the People as the population of the Scheduled Castes in the state or union territory or of the Scheduled Tribes in the state or Union Territory or part of the state or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the state or Union Territory.
(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous district of Assam shall bear to the total number of
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Castes and Scheduled Tribes in the Lok Sabha and State Vidhan Sabha in proportion to their population\(^{400}\). Scheduled Tribes\(^{401}\) constituted a society in itself\(^{402}\). A tribe as a society has a linguistic boundary\(^{403}\).

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\(^{398}\) Article 332 says- Reservation of Seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States- (1) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes, except the Scheduled Tribes in the autonomous district of Assam, in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the state of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any state under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the state or the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the state.

(3A) Notwithstanding anything contained in clause (3), until the taking effect, under Article 170, of the re-adjusted, on the basis of the first census after the year 2026, of the number of seats in the Legislative Assemblies of the States of Assam, Meghalaya, Mizoram, Nagaland, the seats. Which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such state shall be:

(a) if all the seats in the Legislative Assembly of such state in existence on the date of coming into force of the Constitution(Fifty-seventh Amendment ) Act, 1987 are held by members of the Scheduled Tribes, all the seats except one.

(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number as on the said date of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in existing Assembly.

(3B) Notwithstanding anything contained in clause(3), until the re-adjustment, under Article 170, takes effect on the basis of the first census after the year 2026, of the number of seats in the Legislative Assembly of the state of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly, shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy second Amendment ) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in the Assembly.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the state of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the state.

(5)The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the state of Assam shall be eligible for election to the Legislative Assembly of the state from any constituency of that district.

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\(^{399}\) Article 334 of the Constitution of India –(Reservation of seats and special representation ceases after sixty years.)

\(^{400}\) H.C. Upadhayay, Reservation for Scheduled Castes and Scheduled Tribes, Anmol Publication, Ansari Road, Darya Ganj, New Delhi P.193.

\(^{401}\) About 8 percent of India’s population consists of tribal people, distributed through unevenly throughout the length and breadth of the country. They belong to various racial, linguistic, economic and religious categories .they are also at different Social, Political, economic levels. These difference
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can be in terms of hill tribes and plains people, and those engaged in forest based economic pursuits and the ones who are empowered as settled agriculturalists or those who are Hinduised or converted to Christianity and those who seek to adhere to their unadulterated tribal way of life. They are, for example—the indigenous tribes of the Andaman Islands—the onga, the jarawa, and other—who until the nineteenth century remained almost completely isolated from the mainland and therefore unaffected by Hindu method of Tribal absorption. Despite such differences among various tribal groups, they are economical, educational and political backward as compared to the non tribal peoples. It is because of this diversity that social anthropologists do not provide an agreed upon definition of tribe.


The term tribe was taken over by the anthropologists from ordinary usage and lives all such terms it had a variety of meanings. In general, it was applied to people who were considered primitive, lived in backward areas, did know the use of writing. Sometimes, it was considered synonymous with the term race, which is scientific usage has entirely different meaning. In India, and also in certain extent in Africa, the situation is conspicuously different. In this country, groups which correspond closely to anthropologists’ conception of tribe have lived in long association with communities of entirely different type. Except in a few areas, it is very difficult to come across communities which retain all their pristine tribal characters. A tribe is in ideal state, self contained units. It constituted a society in itself. (Andre Banteille; the definition of the Tribe, Ramesh Thapar Tribe Caste and Religion in India, Macmillan India Limited, Delhi. 1983. P. 7)

We can define tribe as a collection of individual sharing of common culture. This definition has been accepted, either implicitly, by a wide range of anthropologists. The purest of the tribal groups, which have been resisting acculturation or absorption, posses certain features which can be considered as common features if possessed by the entire tribal group. They are as follows:

1) they live away from the civilized world in the most inaccessible parts of both forest and hills;
2) they belongto either of the three stocks- Negritos, Austroloids, or Mongoloids;
3) they speak the same Tribal dialect;
4) they prefers a primitive religion Known as ‘Animism’ in which the worship of ghosts and spirits is the most important elements;
5) they follow primitive occupations such as gleaning, hunting and gathering of forest products;
6) they are largely carnivorous or flesh or meat eaters;
7) they live either naked or semi naked, using tree barks and leaves for clothing
8) they have nomadic habits and love for drink and dance.

Mandelbaum mention eight characteristics of Indian Tribes:

1) Kinship as an instrument of social bonds;
2) Lack of hierarchy among individuals and groups
3) Absence of strong, complex, formal organization;
4) Communitarian basis of landholding;
5) Segmentary Character;
6) little value on surplus accumulation;
7) lack of distinction between form and substances of religion;
8) A different physiological make up for enjoying life.

The tribes of India prior to Independence were considered animistic by the census authorities. Distinction was made between those who were Hinduised and those who followed their own religion. Some scholar had opined that no shape line demarcation can be drawn between Hinduism and animism. There is no uniform pattern of religion among the tribal people of India.

Tribal Society is homogenous, undifferentiated and unstratified as contrasted with Hindu society which is heterogeneous, differentiated and stratified. Tribes in India differ in social organization and culture pattern. Tribal who have became peasant and are engaged in allied occupation do not constitute a homogenous unstratified society. Members of a tribe may not perceive it, but each tribe is internally stratified. Tribes in India differ in social organization and cultural pattern. Tribal who have become peasants and are engaged in allied occupations do not constitute a homogeneous unstratified society. Members of a tribe may not perceive it, but each tribe is internally stratified.

Tribes in India are not a monolithic lot of people. They vary in terms of their historical and ecological backgrounds, socio-economic and cultural level of advancement. Some tribes live in forest or hill slopes, where other live on the plains. Except, Tribal in the North East region, tribes are generally backward, economically as well as educationally. Generally, they are distinct from non tribes Language, Religion and magical beliefs and practices, foot habits and style of dress, pattern of habitation and dependence upon forest produce are important features of their life which make them distinct from non tribal groups. Kinship is the very principle of social organization; it governs major social, economic and political activities of their life.

N.K. Bose classified the tribal into three main categories considering the manner in which they earn their livelihood:
1. Gatherers; 2. Shifting cultivators and 3. Settled Agriculturalist, using the plough and plough cattle; Santhals, Gonds, Bhils and oraons and Mandas fall in the last category. These Tribal peasants are not substantially different from the non tribal peasants. These Tribal are also categorized as cultivators, agricultural laborers and workers. They are working in factories in south Bihar, West Bengal, Orissa and Madhya Pradesh and in plantations in Assam. From the point of view of geographical distribution, L.P. Vidyarthi has clarified tribal people into four categories: Himalayan, middle India, Western India and Southern India region. S.C. Dube provides a fivefold.

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The constitution of India now recognizes the Scheduled Tribes as a separate category with specific claims and entitlements that schedule was initially promulgated by presidential order and can be modified only by an Act of parliament. Thus the administrative definition of who is a tribesman was set by presidential or parliamentary decision without much social analysis. The spectrum of Indian groups called tribal, by official notification or popular usage, ranges from hunters and gatherers who are clearly out of caste society, to settled village group that function as Jatis. Article 366 (25) define Scheduled Tribes

1) Aboriginals living in seclusion; 2) Tribal group having an association with the neighboring non-tribal and also maintaining their non-tribal distinctiveness; 3) tribal living in village along with the caste group, sects and religious groups and maintaining, their identity; 4) tribal who have been degraded to the status of untouchables; 5) tribal who enjoy high social, economic and political status. This classification is basically based on the nature of culture contact on the tribal with non-tribal.

Tribes in India may also be classified into three types on the bases of language.

They are: a) Dravidian, the tribal people of the middle and southern India (Gonds, Toda, Oran, Paliyan, Chenchu); b) Austroic, the menda tribes of Chotanagarpur; c) Tibeto-Chinese, the tribal of Assam, Meghalaya, or other tribes of the north eastern regions.

404 “Scheduled Tribes” means such tribes and tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342, to be Scheduled Tribes for the purpose of this constitution.” In exercise of the power conferred under clause (1) of Article 342, the President has made the constitution (Scheduled Tribes) order, 1950, listing the Scheduled Tribes in various states. The list was revised by the parliament subsequently. Under the constitution, the president and the parliament are explicitly given broad and exclusive power to define these scheduled groups and the courts have refused to review the appropriateness of the criteria applied in determining these group. The constitution of India nowhere defines Scheduled Caste and Scheduled Tribes nor lay down any criteria for each. However, under Article 341 and 342 the president of India from time to time has provided by Constitutional (Scheduled Caste) and (Scheduled Tribes) orders, lists of such castes and tribes. In these orders there are lists of SC/ST of different States and Union Territories. Later on Parliament, by law, included more groups in the Schedule. The interesting thing is that the southern states of India had largest number of SC/ST in the representative lists to their credits.
4. IV. THE RESERVATION FOR SCHEDULED CASTES

The Scheduled Caste has been getting three kinds of protective discrimination under the constitution of India. Article 15(4) provides reservation of seats in education institution in favour of the Scheduled Castes. Article 16 (4) provides reservation in appointment or post in Government employment in favour of Scheduled Castes. The percentage of reservation for Scheduled Castes is 15% of the total seats or posts available in any year. Apart from these two types of reservation, the Scheduled Caste has also been given reservation for representatives in Lok Sabha and Legislative Assemblies of states. This special provision for the reservation of seats in the legislative was provided purely as a transitory measure. The Scheduled Castes are backward socially and economically. Therefore, the constitution gives special protection to them. Under Article 46 of the constitution, it is the responsibility of the states to promote with special case the educational and economic interests of the weaker section of the people, and the Scheduled Castes and the Scheduled Tribes in particular and protect them from social injustice and all forms of exploitation.

Who are Scheduled Castes?

The Vedic literature, which mainly includes the Vedas, the Brahmins, the Aranyakas, and the older Upanisads, dose not provide any evidence that the Sudra Caste’s existed in the early period. The Rig Veda (second century or about 1500 BC) only refers to the three castes of Brahmins, Kshastriyas and Vaisya in the Aryan community. It seems that the caste of Sudra was created by the Aryan in the closing phases of the Rig Veda. However, there are scholars who contended that the class of Sudra was known to Rig Veda. The non mention of the word Sudra dose not argues its non-existence. In the Brahmins, however, we find a repeated reference to Sudra along with Brahmins, Kshastriyas and Vaisya forming the integral part of the Indo-Aryan Society. The text of Brahmin as assign to the Sudras (Dasas) the lowest
position and maintain them as the people outside the fold of the Brahmanical Sacrificial Religion\textsuperscript{405}.

This is perhaps because they were racially and culturally different from the Aryans and opposed them as far as their religion is concerned. According to Kamble, they not only opposed the God of the Aryans but also did not perform any sacrifices and gave no gifts to the gifts to the priests. The term and epithets used by the Aryan for Dasas were Aryavrata, Anasa, and Mridhravaka. In the matter of social privileges and religious right, therefore, the Sudras were given very low status\textsuperscript{406}.

These people belong to the last verna namely the Sudra and Avarnas include many caste groups which have suffered many social and economic inequality since the ages. Particularly those people who were outside the Vena system were known as Avarnas or Panchmas or Antyajas. They were externally in the sense that they were required to stay outside the village settlements\textsuperscript{407}. The concept was attached to them they were treated as untouchable caste in India was officially defined as the depressed caste in 1932\textsuperscript{408}. Gandhiji named them “Harijans” where Hari means God; jans means people and thus “Harijans” means people of God. This word in Marathi, Gujarati, Hindi and other languages means a child whose father identity is unknown, and hence a bastard progeny. Therefore, the name Harijan was not only disliked but was hated and opposed by untouchables. Surprisingly enough, their reaction to the word Scheduled Caste or even to the word untouchable is not that sharp\textsuperscript{409}.

The expression Scheduled Castes was first coined by the Simon Commission and embodied in the government of Indian Act 1935. While the castes were liked systematically in the 1931 census of India, the term Scheduled Caste (SC) was applied

\textsuperscript{405} Ram Ahuja, Indian Social System, Rawat Publication, Jaipur, New Delhi, 2007, P. 362  
\textsuperscript{406} Ibid.  
\textsuperscript{407} N.D. Kamble, the Scheduled Caste, Ashish Publishing House New Delhi, 1982, P. 30-31  
\textsuperscript{408} Ibid  
\textsuperscript{409} Ibid
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to these castes for the first time in the Government of Indian Act of 1935. Until then they were known as untouchable, depressed classes or exterior Castes. Then the Government of India published a list of Scheduled Castes under the Government of India (Scheduled Castes) order, 1936. What underlines untouchability is the notion of pollution defilement and contamination. Referring to the notion of purity Ghurye has said: “Before 800 BC, we find the idea of ceremonial purity almost full-fledged and even operative in relation not only the despised and degraded group of people called “Chandal” but also the forth order of society, the Sudra”. Ambedkar has, however, maintained that while the impure as a class came into existence at the time of Dharmasutras, the untouchable came into being much later than 400 A.D. Ambedkar has further said, “if Anthropology is a science which can be depended upon to determine the race of the people, then the result obtained by the application of Anthropometry to the various strata of Hindu society disapprove that the untouchable belong to a race different from Aryans and the Dravidians. The Brahmins and the untouchable belong to the same race.” Hutton’s opinion is that the origin of the position of the exterior caste is partly racial, partly religious, and partly a matter of social custom. The economic condition of the Sudras also reveals the low position that they occupied in the hierarchy of society. The cases of Sudras possessing cattle’s and wealth were very race. Mostly they worked as landlords labourers on forms and as domestic servants. One Sutra mentions that “Sudras have to earn their subsistence only by servicing the higher Varnas.”

In the process of the evolution of the castes and principles of graded Chaturvarna and Ceremonial purity, the vast body of people known as, the vast body of people known as Panchamas or exterior castes or Antyajas or Anti Sudras fell

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410 Ibid
411 Ram Ahuja, Indian Social System, Rawat Publication, Jaipur, New Delhi, 2007, P. 363
412 Ibid
413 Hutton, caste in India, 1961 quoted in Ibid note
414 Ibid at 363
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outside the pale of the Chaturvarna systems and are known as Avarnas (not belong to varna). It seems probable and inter-verna struggles and other religious, historical predominant in the evolution of four Varnas at the fifth group of the Avarnas. Their problem arises from the peculiar just a position of the castes-Hindu village and then Scheduled Castes get to all over India, perpetuating untouchability. They were denied the right enjoyed by the Brahmins, Kshastriyas, Vaishyas and even Sudras such as the right of Upanayana, learning, bearing arms, trade and other ‘clean’ occupations⁴¹⁵.

4. V. DISCRIMINATION AGAINST THE SCHEDULED CASTES

With the deal of the fundamental religion and civil rights, the segregated Antyajas had no status as a person in the eyes of law as observed in the Hindu Shastra. Moreover, they were forced to live on the outskirts of the savarna village thus restricting their mobility. In effect, they were segregated and became the Antajas and untouchables. The instances given in the religious scriptures help to show the direction given to the Hindu society with respect to untouchability that exists today.

The twice born Hindu sought to make the Sudras and the Ati-Sudras their perpetual slaves. Slavery here doesn’t mean a legalized form of subjection only. It could be a state of society in which some men are forced to accept from others the commandments which control their conduct. It has been proved through manus law that the Brahmin may confidentially seize the goods of the Sudras, as the Sudras was denied any property.

The law relating to Sudras and the Ati-Sudras down the centuries were in favour of Dwijas who dominated ruthlessly the Ati-Sudras and the Sudras though the latter formed the bulk the population. Lord Buddha was perhaps the first great

⁴¹⁵ N. D. Kamble. The Scheduled Caste, Ashish Publishing House
New Delhi, 1982, p. 30-31
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teacher of mankind to raise a revolt against caste. The untouchables were out of the Varna (Panchamas or Avarnas) and had no share in the social, political and judicial powers. On the contrary they were slaves and were offered as presents to friends or gifts to temples and were bought, sold and mortgaged in the same manner as the land on which they dwelt or as the cattle or other property of their owners. The master had the right even to kill a slave. Until recently they were landless labourers and slaves. The British rule through the East India Company in 1792 banned the slave trade. The practice of selling the slaves for arrears of revenue was discontinued in 1819. In 1843 and each was passed by which the right of any Para claiming a slave could not be investigated in public offices or Courts. The penalties for slave’s dealings were inserted in the penal codes of 1862 but all caste destinations ceremonies and prohibition were respected, despite these acts, caste tyranny and oppression remained vigorous. The lower caste in hierarchy was required to keep a respectable physical distance from the higher caste.

Untouchability in India is intimately organically associated with the institution of caste. Its rigid form is a logical outcome of a peculiar nation of pollution sanctified by religion and codified by the Brahmmanical discriminative laws. This only institutionalized the caste hierarchy and untouchability but gave it socio religious-legal approval. While talking with higher caste, the untouchables had to (a) keep a distance from 30 to 64 feet according to the caste hierarchy of the person to whom he was talking. (b) bend his body, (c) cover his mouth by his hand, (d) address higher caste by ‘lord’, ‘sir’, ‘parents’ etc. (e) address himself slave, his children as calves, his house as hut, his paddy as chaff and his rice preparation as dirty gruel. Both men and women untouchables were prohibited from: (a) wearing clothes above the waist and below the knees, (b) wearing new clothes (Even when new cloth were brought they were to be made dirty by dipping them in mud or rubbing on the dark spots), (c) wearing gold and silver ornaments and (d) using shoes notwithstanding the thorns and sharp stones of the jungle paths. Shanan caste women who were above the

417 Ibid
untouchable caste in caste hierarchy were not allowed to cover their bosom, the covering of which led to riots in south Travancore in 1932. If this was the caste with the Shanans what might have been the plight of the untouchables\textsuperscript{418}.

The untouchable was not allowed to enter the house of the higher ups. However, he was allowed to work as a labour during construction, repair or storing the grains, etc. But later the house was purified by sprinkling cow urine or cow dung. If the Scheduled Caste touched the utensils and other things, then non-inflammable things were to be put on fire and then purified by sprinkling cow urine, while things like clothes were to be purified by only sprinkling cow urine. Water had to be purified by mixing cow dung if it was touched by a Scheduled Caste. Food was seemed to the Scheduled Caste only outside the house in lives or broker vessels which were to be watched by him before and after use. A caste served only the castes above it and since the Scheduled Caste was the lowest caste they had to serve all castes and no caste served it.

The Scheduled Caste people were not allowed to walk on public roads or enter temple. In the court of justice, he had to shout from the appointed distance and take his chance of being heart. This is because he was prohibited from entering the village or town and hence virtually prohibited from employment, business and contact with the people.

After independence, the constitution of prescribed protection and safeguard for the Scheduled Castes (and the Scheduled Tribes and other backward classes) with the object of removing their social disabilities and promoting their varied interests. The important ones are: - abolition of untouchability, protection of social injustice and various forms of exploitation, throwing open religious institution of public character to all section, removal of restriction on access to shops, restaurants-wells, tanks, roads, etc. giving them the right to move freely and acquired property, giving them

\textsuperscript{418} Ibid.
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the right of admission to educational institution and receiving grants out of state funds, permitting the state to make reservation on for in service, giving them special representation in the Lok Sabha and in the Vidhan Sabha, setting up separate departments and advisory council to promote their council and safeguard their interests, prohibition of forced labour, and making special prohibition for the administration and control of the Scheduled areas. The Constitution of India now here defined neither Scheduled Caste nor lays down any criteria for it. Under Article 341(1) of the constitution of India, the president of India after consultation with the governor may specify “the castes, races, tribes or part of groups within caste or races, tribes which shall be deemed to be Scheduled Caste for the purpose of the institution.” However, according to Article 341(2), Parliament of India by law can include or exclude the above mention groups from the list of the Scheduled Caste; such Scheduled Caste can be notified separated for each state. Accordingly the President has notified the Scheduled Caste in the orders called Constitution (Scheduled Castes) part-c status order 1951 and the Scheduled Caste and Scheduled Tribes lists (modification) order 1956.

As has been pointed out earlier, the Scheduled Castes are backward socially and economically. Therefore, the Constitution gives special protection to them. Under Article 46 of the constitution, it is the responsibility of state to promote with special care the educational and economics interest of the weaker section of the people; and Scheduled Castes and the Scheduled Tribes in particular and protect them for social injustice and all forms of exploitation.

4. VI. IDENTIFICATION AND DETERMINATION OF SCHEDULED CASTES AND SCHEDULED TRIBES

The ascertainment of the Scheduled Castes and Scheduled Tribes does not pose major problems. The geographical and Cultural factors make identification of the Scheduled Caste and Scheduled Tribe fairly simple. In order to determine whether or not a particular caste is a scheduled tribe within the meaning Articles 341 and 342, one has look to the public notification issued by the President in that behalf. Moreover, Parliament may by law include or exclude the list of Scheduled Caste Scheduled Tribes specified in a notification any caste, or race or tribe or part thereof moreover it is not open to anyone to seek for any modification in the order by producing evidence to show that though caste a alone was mentioned in the order, caste be was also a part of caste A and as such to be deemed to be included in caste.

In view of these provisions, it is not supervising, therefore, that the courts have refused to oversee the presidential designation of the Scheduled Castes and Scheduled Tribes. It is obvious that President has been given very broad and exclusive power to specify these classes and there is no room left for judicial scrutiny of scheduling of castes. In Basanatingappa v. Munichinnappa, the Supreme Court held that it was not open to anybody to seek any modification in Scheduled Castes order by producing any evident to show that such caste should have been included in such list. In BhaivaLal v. Hari Krishnan Singh, an enquiry whether the appellant there belong to the Lohar Caste which was not recognized as Scheduled Castes and his declaration that he belonged to the Chamar Caste could not be permitted. The Court, however, assumed that “before a notification is issued under Article 341(1), an elaborate inquiry is social justice is to be done to castes, races or Tribes as it may

424 A I R 1965 S C 1269
425 A I R 196 5 S C 1557
Identification and Determination of Backward Classes

appear to be necessary. The Court further observed that it is doing justice it would obviously be expedient not only to specify the parts or groups of castes, races or Tribes but to make the said specification by reference to different areas of the states.

The court through declined to review the order, conceded that object of Article 341 was to provide “additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. The Scheduled Tribes also are at the bottom of the society, but their case is somewhat different. They were not victims of social injustices. It was their love for their natural environment which kept them away from the main stream of the society, in forest and other backward areas where they led a very simple life in poverty but a contended life with no zeal of better living. They, therefore, lagged behind and their condition worsened as an account of their ignorance, illiteracy and simplicity they were exploited by the business man and other of the upper strata of the society. In contrast to the Scheduled Castes, who suffer from the social disabilities like untouchability, the Scheduled Tribes or oelivasi live in exclusive territorial community. They are not a part of Hindu Society. Their basic disability is due to their physical isolation from their society and their exploitation by non-tribal. The indifference of the British rulers towards the tribal welfare had perpetuated the distinctive characteristics of the tribal. They were very easily exploited by the money-lender, contractors and zamindars.

Our ideas of social justice and dream of establishment an egalitarian society demanded a positive effort on the part of the Government to lift them and bring them to of an average enlightened citizen of India by not only making them literate but by opening the doors of higher education to them and providing them with adequate representation in public services under the state.

426 S.M.N. Raina. Reservation with justice, C1LQ 1990. p. 2
427 Supra note 423.
428 Ibid
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The Simon Commission prescribed thirteen-tests for including a caste in the Scheduled list. Some of these tests were:

1. Whether caste in question pollutes high castes by their touch or proximity.
2. Whether caste in question is denied entry into temples.
3. Whether caste in question is denied the use of public places like schools, wells, etc.
4. Whether caste in question can be served by Brahmans and purohits.
5. Whether caste in question can be served by tailors, barbers, washer men, water carriers, etc.
6. Whether caste in question is one from whose hands a caste Hindu can take the water.
7. Whether in ordinary social intercourse, a well-educated member of the caste in question will be treated as an equal by high caste man.
8. Whether caste in question is merely ‘depressed’ on accounts of his own ignorance illiteracy or poverty and but for that would be subject to no social disability.
9. Whether caste in question is, depressed on account of the occupation followed and whether but for that question, it would subject to no social disability.

Some of the important castes included in the Scheduled Castes lists are: Chuhra, Bhangi, Chamar, Dom, Pasi, Raigar, Mochi, Rajbani, Dosadh, Shanam, Thiyan, Paraiyan and Kori.

Article 366 clause 24 reads: - In the Constitution, unless the context otherwise requires, the following expression have the meaning hereby respectively assign to them, that is to say”

“Scheduled Caste means 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 purpose of this Constitution.”

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The groups in the category were listed (i.e. scheduled) in 1936 for purposes of giving effect to the provision for the special electoral representation in the Government of India Act, 1935. This list reflected definition of untouchability with an admixture of economic and educational tests and consideration of local politics. The criteria were, all of the castes included in the final tests were socially the lowest Hindu caste in their particular provinces and they were listed partly, at least, on that basis. The above list contained over 40 million persons\(^{431}\).

In order to determine whether or not a particular caste is a Scheduled Caste or Tribe within the meaning of Article 341 and 342, one has to look to the public notification issued by the president on that behalf. Moreover the Parliament may be law include or exclude from the list of Scheduled Caste specified in the notification any caste, race or tribe or part thereof. It is not open to anyone to seek any modification in the order by producing evidence to show that the enough caste alone was not mentioned in the order, case b was also a part of caste A and such to be deemed to be include in caste A. Whenever one caste has another name it has been mentioned in the brackets after it in the order\(^{432}\).

4. VII. RESERVATION FOR OTHER BACKWAD CLASSES

The reservation for the Scheduled Castes and Scheduled Tribes was provided in the Indian Constitution framed after Independence but the reservation for Other Backward Classes was announced by the Janata Dal Government only on August 7, 1990. This was done in accordance with implementing the Mandal Commission Report.

\(^{431}\) E. Dharma Rao. “Scheduled Castes and Scheduled Tribes Admission into Educational Institution” AIR 1991 journal 185

\(^{432}\) Harpal Kaur Khehra, Job Reservation versus Efficiency of Administration, C I L Q 1990, P. 33
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Presently, the Constitution provides reservation for OBCs in two areas namely, (a) reservation in the services of the state and (b) reservation in the educational institutions. Article 15(4) uses the expression socially and educationally backward classes of citizens and Article 16(4) speaks of backward classes of citizens. In order to invoke Article 16(4) two conditions must be satisfied: 1). A class of citizen is backward socially and educationally; 2). the said class is not adequately represented in the services under the state.

This Article requires the classification of backward classes to be based upon the criterion of backwardness which may be socially, educationally, economically or politically. Backward classes used in Article 16(4) are wide enough to include in its scope SCs and STs. They are also entitled to claim its benefits. It is submitted that in the context of Article 16(4) the application of the statistics regarding underrepresentation in services may involve two stages, one at the stage of classification of citizens as backward and non-backward and the other when the state makes an assessment of the inadequacy of representation of the backward classes in services. It maybe that certain groups which have been classified as socially and educationally backward classes for purpose of Article 15(4) may be adequately represented in the services under the state. Consequently these groups will have to be eliminated from the list prepared for the purpose of Article 16(4). Therefore, the groups drawn for the purposes of Article 15(4) need not be the group for the purpose of Article 16(4).

4. VIII. WHO ARE THE OTHER BACKWARD CLASSES? --- A HISTORICAL EVOLUTION OF THE CONCEPT

The broad category of backward class includes (1) Scheduled Caste (2) Scheduled Tribes and (3) Other Backward Classes. Each of these categories has its own distinctive background and, to some extent, its own problems. Of these three, the Other Backward Classes (OBCs) are the least homogeneous and the most loosely
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defined. Their problems also are in many ways different from the first two. The term backward classes broadly refers to the category of people who have been designated as backward by the Government and are entitled to get certain special benefits and privileges conferred by the government. Backwardness is considered an attribute of a group and not of an individual.

The term Backward Class has neither been defined nor there is any provision empowering the president to specify such classes. One does not final parallel Articles the constitution for backward classes. No doubt, Scheduled Castes and Scheduled Tribes are backward classes, but there may another classes of people who may be equally or less backward classes of citizens for whom special provisions has been mad are by Article 15(4) and 16(4) treated as being similar to the Scheduled Castes and Scheduled Tribes, which were defined and were known to be backward and for whom it was felt that special provision should be made for their advancement. The position of the OBCs is not clearly mentioned in the Constitution. Their position was not defined in specific terms until recently. If we go to the Caste System which was the common feature of Indian society prior to the Constitution, the society was divided among four castes vise, Brahmins, Kshartias, Vaisyas and Sudras. The Sudras were the lowest among the caste hierarchy and were suffered social disabilities from very ancient time and were also discriminated by the three upper castes. The Sudras are generally designated as Other Backward Classes. The Ati-Sudra among the Sudras were designated as Dalit or Scheduled Castes. Officially defined in terms of caste and occupation, the OBCs would comprise intermediate agricultural and functional (clean) castes they are higher than the Scheduled Castes or Dalits in the caste hierarchy. Compared to the upper castes, they are behind in the economic and educational sphere. There are also increased inequalities between different categories of backward classes and even within the same category. The OBCs, as compared with SCs and STs, have been successful in registering their political presence strongly in recent

433 Harpal kaur khehra, Job Reservations Yesus Efficiency in administration. C I L Q 1990.p.34.
434 Dinesh Chandra Battacharya , sociologes, Vijoya publishing house,106 Vivekananda Road, Kolkata,2004. P.382
time. Andre Beteille\textsuperscript{435} considers peasant castes the core of the OBCs. They are at a lower rung in the castes hierarchy. They have certainly been far behind the upper castes in education, profession and Government jobs and white-color occupation in general\textsuperscript{436}.

Marc Galanter has aptly observed that the question of who were the Scheduled Castes was debated and roughly settled before independence within the executive and without the participations of the courts, but who are the backward classes in a past independence question which the constitutional recognition of the category made one of all India basis\textsuperscript{437}. A close look at the debates of the Constituent Assembly on Article 16(4) gives the impression that the backward classes were not merely economic groups but historical social categories whose backwardness was associated with discriminatory social structure of the Indian society\textsuperscript{438}.

\section*{4. IX. IDENTIFICATION AND DETERMINATION OF OBC’S}

The ascertainment of the Scheduled Castes and Scheduled Tribes does not pose major problems. The geographical and cultural factors make the identification of the Scheduled Castes and Scheduled Tribes fairly simple but the question as to who are deemed to be the other backward classes and what criteria should be adopted in determining them for purposes of reservations in jobs and educational institutions give rise to serious difficulties. Even after the constitution came into force there was a strong tendency to equal the backward castes with the backward classes. Some states in the guise of giving representation to backward classes adopted the principle of representation to backward castes\textsuperscript{439}.

\begin{thebibliography}{99}
  \bibitem{435} Ibid
  \bibitem{436} Ibid
  \bibitem{438} Ibid
\end{thebibliography}
The Constitution permits reservations of jobs in terms of Article 16(4) only if two conditions are satisfied, viz (a) the class of citizens is backward and (b) that class is not adequately represented in the services under the state. Both conditions must be fulfilled. Article 16(4) cannot be invoked merely because a class of citizens is not adequately represented in services. If that was so, “it would really exclude the backward classes from the benefit of Article 16(4) and confer the benefit only on a class of citizens who though rich and cultured, have taken to other avocations of life. The expression backward class in clause (4) of Article 16 has the same meaning as the expression “socially and educationally backward class” in clause (4) of Article 15.

In Triloki Nath Tiku v. State of Jammu and Kashmir, the court pointed out that, though the caste of a group of citizens might be a relevant circumstance in ascertaining their social backwardness, it could not be the sole or the dominant test in that behalf. This court accepted the criteria adopted by the Mysore Government for ascertaining the backwardness of a class. The argument advanced on behalf of the state, namely, that the difference in the phraseology used in Article 15(4) and Article 16(4) namely, socially and educationally backward classes in the form and backward classes in the latter, leads to the incredible conclusion that backward classes of citizens in Article 16(4), are only such classes of citizen who are not adequately represented in the services of the state does not appeal to us. The sale list of backwardness under Article 16(4), the argument proceeds is the inadequacy of representation in the services under the state that is to say, however, advances a particular class of citizens, socially and educationally, may be, if that class is not adequately represented in the services under the state, it is a backward class. This

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442 A I R 1967 S C  1283.
contention, if accepted, would exclude the really backward classes from the benefit of the provision and confer the benefit only on a case of citizens who, though rich and cullied, have taken to other avocation of life. It is therefore, necessary to satisfy two conditions to attract class (4) of Article 16, namely, (i) class of citizens is backward, i.e., Socially and educationally, in the sense explained in Balaji case and (ii) the said class is not adequately represented in the services under the state. In T. Devadasan v. Union of India,\textsuperscript{443} it was held that reservation under clause\textsuperscript{940} of Article 16 must be in favour of any backward class of citizens: Backward class” is not defined, whether a particular class is backward or not is a question of fact in each case and it must satisfy certain objective lists, but it is admitted in this case that the scheduled caste and the Scheduled Tribes one backward classes. The second condition is that, in the opinion of the state they are not adequately represented in the services under it. Once a class is a backward class, the question whether it is adequately represented or not is left to the subjective satisfaction of the state. The result of the analysis of the Article is that to in role clause (4), (i) there shall be a backward class of citizens, and (ii) the said class, in the opinion of the state is not adequately represented is the service of the state. If these two conditions are complied with, the state is at liberty to make any provision for the reservation of appointments or posts in favor of the said class of citizens.

Article 16(4) uses the term “backward classes” as compared with the word socially and educationally backward classes of citizens or the Scheduled Castes and Scheduled Tribes” used in Article 15(4). This difference in terminology raises two questions: Firstly, whether Article 16(4) covers Scheduled Castes and Scheduled Tribes or not. Secondly, whether the term ‘backward classes in to be understood in the same sense as in Article 15(4), i.e., socially and educationally backward classes. As it has been held in several cases that the ream backward classes under Article 16(4) covers Scheduled Castes and Scheduled Tribes,\textsuperscript{444} and also the term is identical with

\textsuperscript{443} A I R 1964 S C 179.

\textsuperscript{444} General Manager, S. Railway v. Rangachani, A I R 1962 S C 36
any socially and educationally backward classes,” i.e., there is no difference between Art. 15(4) and 16(4) as far as the definition of backward classes goes.445

The Supreme Court in the second *Triloki Nath case* 446 stated that test based solely on caste, community, race, religion, sex, descent, place of birth or residence cannot be the criteria for backwardness the expression backward class is not synonymous with backward caste or backward communities. The entire caste or community may be declared to be backward but this would not be because of its characteristic as a caste or community as such, but because it is backward at a given point of time in the social, economic and educational, scale of values.

Though *Balaji*447, case was not a case arising under Article 16(4), what it said about Article 15(4) came to be accepted as equally good and valid for the purpose of Article 16(4). The formulations enunciated with respect to Article 15(4) were, without question, applied and adopted in cases arising under Article 16(4). It is held by the court that in dealing with the question as to whether any class of citizens is socially backward or not, it may not be relevant; its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the caste themselves. The court further proceeded to held if the caste of the group of citizens was made the sole basis of determining the social backwardness of the said group, the task would inevitably break down in relation to many sections of Indian society which do not recognize castes in the conventional sense known to Hindu society. How is are going to decide whether Muslims, Christians or list of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in to form the operation of Article 15(4). It is not unlikely that in some states some Muslims or Christians or Jains forming groups may be socially backward.


446 Ibid.

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It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste of which the poor citizens may belong, but not only shows the relevance of both caste and poverty in determining the backwardness of citizens. The leaned today stressed the part played by the occupation, conventional beliefs and place of habitation in determining the social backwardness.

In *Janki Prasad Parimoo v. State of Jammu and Kashmir*[^448^], the court held that Article 15(4) speaks about “socially and educationally backward classes of citizens while Article 16(4) speaks only of any backward classes of citizens. However, it is now settled that the expression backward class of citizens in Article 16(4) means the same thing as the expression “any socially and educationally backward class of citizens in Article 15(4). In order to qualify for being called a backward class citizen he must be a member of a socially and educationally backward class. It is social and educational backwardness of a class which is material for the purposes of both Article 15(4) and 16(4). In India social and educational backwardness is further associated with economic backwardness and it is observed in *Balaji*[^449^], case that backwardness, socially and educationally, is ultimately and primarily due to poverty. But if poverty is the exclusive list, a very large proportion of the population in India would have to be regarded at socially and educationally backward, and if reservation are made only on ground of economic considerations, an untenable situation many arise because even in sectors which are recognized as socially and educationally advanced there are large pockets of poverty. The court further held that in identifying backward classes, therefore, one has to guard oneself against including therein sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated. In this connection it must also be remembered that state resources are not unlimited and, further the protection given by special reservation must be balanced against the constitutional right of every citizen to demand equal opportunity. Moreover, where

[^448^]: A I R 1973 S C 930.
[^449^]: A I R 1963 S C 649.
appointments and promotions to responsible public offices are made, greater
circumspection would be required in making reservations for the benefit of any
backward class because efficiency and public interest must always remain paramount.

In *State of U. P. v. Pradip Tandon*\(^{450}\), reservations in favor of rural areas was
held to be unsustainable on the ground that it cannot be said as a general proposition
that rural areas represents socially and educationally backward classes of citizens.
Poverty in rural areas can not be the basis of classification to support reservation for
rural areas.

In *Kumari K. S. Jayashree v. State of Kerala*\(^{451}\), it was held that the problem
of determining who are socially and educationally backward classes is undoubtedly
not simple. Dealing with the question whether caste can by itself be a basis for
determining social and educational backwardness, the court observed that it may not
be irrelevant to consider the caste of group of citizens cleaning to be socially and
educationally backward. Occupations, place of habitation may also be relevant factors
in determining who are socially and educationally backward classes?

In *K. C. Vasanth Kumar v. State of Karnataka*\(^{452}\), the court observed that the
means list, that is to say, the list of economic backwardness ought to be made
applicable even to the Scheduled Castes and Scheduled Tribes. After 2000 A.D. it is
essential that the privileged section of the underprivileged society should not be
permitted to monopolies preferential benefits for an indefinite period of time. In so far
as the other backward classes are concerned two lists should be conjunctively applied
for identifying them for the purpose of reservations in employment and education:
One, that they should be comparable to the Scheduled Castes and Scheduled Tribes in
the matter of their backwardness; and two, that they should satisfy the means list such

\(^{450}\) A I R 1975 S C 563.
\(^{451}\) A I R 1976 S C 2381.
\(^{452}\) A I R 1985 S C 1495.
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as a state Government may law down in the context of prevailing economic conditions.

4. X. THE CONSTITUENT ASSEMBLY DEBATES

In the Constituent Assembly\textsuperscript{453}, the word backward, however did not occur in Article 10(3) as originally proposed by the constituent Assembly in April-May 1947. The original clause (clauses 3) reads:

“Nothing herein contained shall prevent the state from making provision for reservation in favour of classes, who is the opinion of the state are not adequately represented in the public services\textsuperscript{454}" B.R. Ambedkar proposed a change in the clause as follows:

“Nothing herein contained shall prevent the state from making provision for reservation in public services in favour of classes as may be prescribed by the state”.

Ambedkar thought that the words “adequate represented” might give rise to a lot of litigation on the question of adequacy of representation and desired that once the appropriate authority made reservation of jobs in should continue and should not be a matter of litigation. Rajagopalachari opposed this suggestion saying that it would enable to the state to make reservation even for the majority community when the sole aim of clause 5 was to protect minorities. He thought that the word class as preferable to the word minorities as the latter then could include even political minorities. This was in reply to a suggestion by some members that the word classes should be replaced by minorities.

As we shall see, the entire trend of the debate changed when the drafting commit finally decided to confine the policy of reservation only for the backward classes and not for as religious or linguistic minority. Hence the word ‘Backward’

\textsuperscript{453} Constitution Assembly Debate, Lok Sabha Secretariate, Official Report, New Delhi.1999
\textsuperscript{454} Ibid
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before the word ‘classes’ was added by the drafting committee in the draft Constitution. Article 10 (3) of the draft constitution provided:

“Nothing in this Article shall prevent the state from making any provision for the reservation of appointment of posts in favour of any backward classes of citizens who in the opinion of the state are not adequately represented in the services under the state.”

This came to be as Article 16(4) of the constitution. The drafting committee had introduced the word backward before of the protective discrimination. They thought that the word class was too vague and could cover even the members of the advanced section of the society who were under represented in the state service. By using the word ‘backward’ the farmers wanted to make in clear that except the backward classes who were socially, economically and educationally backward no other minority could be entitled to have the benefit of reservation. In the constituent Assembly divergent opinions were expressed by the members on the meaning of the terms ‘backwardness’ as the time was too vague; the Scheduled Castes members raised the apprehension whether they were included in the expression. Some members expressed the apprehension of the judicial review of the team ‘backward’, while others suggested to omit the word entirely allowing unrestricted communal reservations. Some members, on the other hand equated backward classes with Scheduled Castes and Scheduled Tribes only. Some members proposed that instead of the word “backward class”, the expression “scheduled caste” ‘or depressed class’ should be used for the same of definiteness. Yet there were views that the teams broader covered a category to include all backward castes and communities who were socially, economically and educationally backward.

K.M. Munshi assured the house that “at the time when the advisory committee met on the last occasion there was no question of providing safeguards for religious minority.” The minded that “the negotiations proceeded of the footing that except

455 Ibid
456 Ibid
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backward and the Scheduled Castes and tribes who have a special claim of their own, no other minority should be recognized in the constitution. Munshi felt that the scheme or reservation was pursued for the fulfillment of the social and economic needs of the backward classes who as a result of historical circumstances were equality denied of opportunity is the socio-economic life of the society. When some Scheduled Castes member raised the question whether they were intended to be included, Munshi replied: I cannot imagine for the life of me now after an experience of one and half-year of the constituent Assembly that any honorable member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I also cannot imagine a time when there is backward class in India which does not include the Scheduled Castes.\textsuperscript{457}

That expression “backward class” as used in draft Article 10(3) Article 16(4) covered not only the Scheduled Castes and Scheduled Tribes but also other socially, educationally and economically backward classes was further clarified by Munshi by reading this Article with Article 301, it became class beyond doubt that the team “backward” signified” that class of people-does not matter whether you call them untouchables or touchables, belonging to this community or that a class of people who are so backward that special protection is required in the services and I can see no reason by any member should be apprehensive of regard (sic) to the word backward”.

Even often this clarification a member asked, ‘who are the backward classes?’\textsuperscript{458} To this Munshi replied; “Article 301 (now Article 340) mares it clean that there will be a commission appointed for the purposes of investigating who are backward classes which includes not only the Scheduled Castes and Scheduled Tribes but also other backward classes, who are economically, educationally and socially backward. We need not therefore define or restrict the scope of the word ‘backward’ to a particular community.”

\textsuperscript{457} Ibid
\textsuperscript{458} Ibid
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It is notable that Munshi repeatedly referred to the expression economically, socially and educationally backward classes as the legitimate recipients of the benefits of Article 10 (4) read with Article 340. Neither Article 16(4) not Article 340 uses the expression ‘economically’ but the speech of Munshi indicates that the word “social” includes “economic” also. That the backward includes even economic backwardness is reinforced by the wording of Article 46 which directs the state to promote the “educational and economic” interest of the weaker sections’ of the society particularly the Scheduled Castes and Scheduled Tribes and to protection, from ‘social injustice’ and “all forms of exploitation”. It Article 16(4) is read with Article 340 and 46 the expression weaker section’ would certainly include educationally and economically backward classes besides the Scheduled Castes and tribes. Article 46 also used the word “Social injustice” along with economic interest implying thereby that the constituent Assembly clearly intended to include even economically backward classes i.e., weaker sections of the society for the purpose of seeming social justice to those people by making reservation of job for them459.

Despite all the clarifications, a doubt still persisted among the members of the assembly regarding the exact meaning and scopes the word backward class. T.T. Krishnamachari for instance described Article 10(3) using the team ‘backward class” as a paradox for lawyers, leading to a lot of litigation”. Ambedkar frequently used the word caption communities and collection of communities while defending Article 10(3). The entire debates were intended to be included within its purview even Munshi at one place referred to backward community as being included in it. When asked who is a backward community, Ambedkar said “we have left it to be determined by each local Government. A backward community is a community which is backward is the opinion of the Government.” Ambedkar statement that a backward of the local Government gives due recognition of the variation is the local conditions and suggests the difficulties is formulating an universal last for determining backwardness on an all India basis. It also clarifies that the purpose Article 16(4) is to

459 Ibid
provide adequate representation to the underrepresented backward communities and that reservation should be of a minority of posts.

The repeated reference made by him to castes and community show that by backward classes he meant nothing but backward castes and communities, who had suffered centuries of oppressions and various forms of socio-economic disabilities precisely on the ground of being belonging to a particular caste, community or religions. But all those were the personal views of Ambedkar and not of constituent assembly as a whole. The debate of the assembly analyzed above, reflected multiplicity of the views on the meaning of the term ‘backward classes’, including a view that the term included economic backwardness or educational backwardness, of the people regardless of one’s caste, religion or race.

In the constituent Assembly K.T. Shah⁴⁶⁰ had proposed an amendment to clause (2) of draft Article 4 (now clause (3) of Article 15) for adding the word or Scheduled Castes; or backward tribes, for their advantage, safeguard and betterment.” The object as stated by him was: “In regard to the Scheduled Castes and backward tribes, it in an open secret that they have been neglected in the past; and their right and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded a violating the basic principles of equality for all classes of citizens in the country. The need and must be give for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present in equality, their present backwardness is only a hindrance to the rapid development the country. Ambedkar opposed shah’s amendment on the apprehension that if a clause line Article 16 (4) was introduced in Article 15 also, the state could open separate educational and other facilities exclusively for the Scheduled Castes and the scheduled tribe without

⁴⁶⁰ Constituent Assembly Debate, Lok Sabha Secretariate, New Delhi 1999.
offending the equality guaranteed contained in Articles 14, 15 or 29. Ambedkar was not unaware the prevalence of the practice in America of segregating Negros from educational and other public facilities with the tacit approval of the U.S. supreme court^461.

It is submitted that the omission of Article 15(4) by the constituent assembly was deliberate. Presumably the assembly felt that Article 46 was broad enough to cover all compensatory measures to benefit the backward groups including preferences in educational sphere without violating Article 14 or 15. Since the framers did not in corporate any provision in chapter (iv) requiring the state to secure adequate representation to the backward classes in public services they incorporated Article 16(4) in part III of the constitution by way abundant caution when shah’s amendment was rejected the constituent Assembly perhaps did not conceive that the counts might strike down compensatory discrimination measures in the absence of express provisions in the constitution to that effect^462.

Soon after the commencement of the constitution a lacuna was found in the provision of reservation and that had to be remedied by an amendment of the constitution. Article 15(4) was added by First Amendment in 1951 as a result of the decision of the supreme Court in Champakam^463 in which the count struck down a madras scheme of reservation of seats in the medical and engineering colleges for caste and religion based grounds like Brahmins, non-Brahmins, Hindu, backward Hindu, Muslims and Christians. The amendment was necessitated because of some unfortunate observations of the Supreme Court to the effect that the state was not authorized to give preferential treatment outside the area of public employment Article 15(4) was added simply to authorize the state to make preferences in favour of the backward classes in all its dealings. The amendment however did not validate the

^462 Ibid
^463 Ibid
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madras G.O. and did is no way affect the correctness of the holding in Champakam case that caste and religion could not be the sale consideration for preferential treatment\textsuperscript{464}.

The debate on Article 15(4) also centered around the question as to who were the ‘socially and educationally Backward classes’ and why was it that the parliament choose to depart from the language used in Article 16(4) ? Prof. K. T. Shah suggested an amendment for the addition of the word ‘economically’ along with the word ‘socially and educationally’ on the belief that the aim of Article 15(4) should be to remove economic backwardness\textsuperscript{465}. Prime Minister Nehru expressed his unwillingness to accept such an amendment and observed; but my difficulty is that when we choose those particular words there we choose them because they own in Article 340 and me wanted to bring bodily from there. Otherwise, I would not have the slightest objection to add ‘economically.’ But if I added “economically” I would at the same time not make it a kind of cumulative thing but would say that a person who is lacking in any of these things should be helped… ‘Socially is a much wider word including many things and certainly including economically.’

The Select Committee Report also made similar clarifications for not including the word ‘economically’ in Article 15(4). Nehru conceded that giving recognition to caste and communities went against the principle of equality and non-discrimination but at the same time he felt that: we have to deal with the situation where for a variety of causes for which the present generation is not to blame the past has the responsibility, there are groups, individuals, communities, if you like, who are backward. They are backward in many ways – economically, socially, educationally – sometimes they are not backward in one of those respects and yet backward in another. Nehru believed that the aim of compensatory or protective discrimination

\textsuperscript{464}Ibid .
\textsuperscript{465} Ibid
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was to eliminate inequalities based on past prejudices associated with discriminatory social structure of the society.

Ambedkar, then the law minister, defended Article 15(4) refined to Article 16(4) and said, “what are called backward classes are – nothing but a collection of certain castes.

There was a considerable suspicion in the minds of many members that Article 15(4) might be misused by the state by creating communal quotas and thus 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 destination against the spirit of the Constitution by treating non – backward classes as backward for the purpose of conferring privileges on them. The assurance given by the select committee echoes the intention of framers to help the really needy and the backward classes instead of promoting the interest of the individuals or the groups of the advance classes in the name of caste or religion.

The entire debates on Article 15(4) and 16 (4) centered around the question as to which ‘communities’ and ‘castes’ were intended to be included for protective discrimination. The chief Draftsman, Ambedkar always equated backward classes with castes and communities Munshi stressed the relevance of the factors of social, economic and educational backwardness in determining backward classes, some members pressed for economic backwardness as the only consideration for preferential treatment. Some believed that backward classes meant only the schedule castes other viewed it as broad enough to include other castes and communities as well, one member (T. T. Krishnamachari) echoed the doubt that Article 16(4) would ‘a pradise for lawyer’. Ambedkar clarified that the backward classes will be designated by each state Government, but others believed that it is under Article 340 which will conclusively determine the criteria for selecting legitimate beneficiaries and that on the basis of commissions report the president determination would be final
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national list of backward classes. Yet other appreciated the variations in the local conditions and preferred the determination of backward classes at the local level rather than at the central level.

One thing is clear from the above analysis, it is that the underlying purpose of compensatory discrimination was to counterbalance the disadvantaged suffered by certain classes for past wrongs suffered by them because of unequal social structure of the Indian society. It was contemplated that only through affirmative action programmes the historically disadvantaged classes could be compensated for past losses. The debates clarify that under Article 15 (4) and 16 (4) preference had to be given to classes rather than to the individuals but the policy clearly was not to confer benefits on all members of a disadvantage class but only to those who were utterly deprived by past discrimination. The word ‘classes’ was used simply as a convenient device to identify the legitimate and deserving beneficiaries. This might have been envisaged that the aim of Article 16 (4) and 15 (4) was not to eliminate all inequalities but only those associated with traditional social structure. Presumably the groups or classes entitled to preferences were not merely economically poor but social groups associated with disabilities and backwardness because of heredity or unjust social conditions. This is why it was the impression of many speakers in the constituent Assembly and parliament that backward classes had to be designated by “castes’ and communities” who are the victims of inherited inequalities. In classifying the weaker sections of the society which need special protection it was realized that the specified scheduled groups discussed above do not exhaust the list of all backward classes. The constitution therefore, took rate of what are called ‘other backward classes’ who were equally or may be somewhat less backward than the Scheduled Castes and Scheduled Tribes. Unlike the scheduled groups, there is no clause defining these backward classes, nor is there any clean-cut method or agency for their

466 Supra note 462.
467 Ibid.
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determination\textsuperscript{468}. No definite standard has been laid down by the framers of the constitution to define backward classes. In fact, no uniform or single nomenclature has been used to denote such classes\textsuperscript{469}.

4. XI. VIEWS OF THE NATIONAL BACKWARD CLASS COMMISSIONS

To facilitate the task of identifying the backward classes and laying down criteria for this purpose, Article 340 authorizes the president to appoint a commission to investigate the conditions of the backward classes. Article 340 provides that the president may by order appoint a commission to investigate the conditions of socially and educationally backward classes within the territory of India. In order to identify such classes attempt have been made through various commissions, committee constituted for the purpose by the centre and states as well as by the judiciary. In pursuance to this Article, the president appointed the backward classes commission under the chairmanship of Kaka Saheb Kalelkar in January 1953, which submitted its report on March 31, 1955, under the chairmanship of Kaka Saheb Kalelkar, this commission prepared a list of 2399 communities as socially and educationally backward and recommended reservation varying from 25 to 40 per cent for them in all four classes an Government services. Having considered several criteria relevant in determination of backward classes, it ultimately decided to treat the status of caste as an important factor for that. On that basis it proceeded to make a list of backward communities. According to the commission, the relevant factors to consider in classifying such classes, would be their traditional occupation or profession, the percentage of literacy or the general educational advancement made by them, the


\textsuperscript{469} Harpal Kaur Khehra. Job reservation resos efficiency in administration, CILQ 1990, p. 34
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estimated population of the various communities throughout the state or their concentration in certain areas. Thus report, however, was not accepted by the Government as it did not apply any objective tests for identifying backward classes and opposed the adoption of castes as one of the criteria for backwardness.470

The Second Commission was set up on December 20, 1978 under the chairmanship of Mr. B. P. Mandal to probe the conditions of socially and educationally backward classes. The report submitted on December 31, 1980 listed 3743 castes as backward classes on the basis of caste based set of indicators as criteria evolved by it according to chairperson, the backwardness in India had got institutionalized as a result of the caste system and social organization. The result was that the communities at the lower rung, deprived of normal facilities and civil rights continued at this level for several years; As a result of India’s proclaimed commitment to establish a democratic and egalitarian society the backward section now expected to have equal rights with others.471 In 1961, the centre remitted the Kalelkar report to the states, directing upon reservation for backward classes in addition to existing system for Scheduled Castes and Scheduled Tribes, some states favored economic backwardness as criteria while others were inclined to stick on to the list prepared by them on the basis of castes. However centre desired that it would by better if the states apply economic lists rather than classifying people by their castes.472

Even the courts have endorsed the view that an exclusive central designation of the other backward classes is not constitutionally required. It has been held that the state Governments can list backward classes independently of either the enumeration of such classes by the president or the findings of a central backward classes commission. A presidential designation is not a condition precedent for the exercise

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470Ibid at 34.
471 I did.
472 Ibid
of the power conferred by Article 15 (4), or 16 (4)\textsuperscript{473}. It is submitted that the
corstitution gives to the centre a very minimal role to play is the area of protective
discrimination. The framers cleanly intended to leave the local Governments in full
awareness of divergence of the state practice in this area even in the pre-constitution
days. They fully realized the difficulties of prescribing universally applicable tests of
backwardness and wanted to presume flexibility in the designing of ameliorative
measures\textsuperscript{474}.

Any exclusive central designation of the other backward classes cannot be
fool-proof and there is no guarantee that such a course shall altogether be free from
pressure on the part of politically dominant backward castes through some indirect
methods or direct organized movements. Moreover, finding out suitable criteria on an
all India basis is beset with the same difficulties as was felt by Kaka Kalelkar
Commission. Moreover in the area covered by Article 16 (4) it is the opinion of the
state Government and not of the president or parliament which will determine the
inadequacy of representation of the backward groups\textsuperscript{475}. It is worth noting that the
enumeration backward classes by the commission contemplated under Article 340 (1)
are not conclusive or binding on the state Governments. Article 16 (4) authorizes the
state to make any provision for any backward class of citizens and not for every
backward class of citizens enumerated in the commission list. The inclusiveness of
the central designation of backward classes is reinforced by the fact that the
commission is not a continuing body with power to revise its list. Even if a state
Government appoints a local backward classes committee, it is not bound to adhere to
the lists proposed by such committee and to give benefit to every backward class
enumerated is such lists. The state may provide reservation even to such backward

\textsuperscript{473} Parmanand Singh. \textit{Backward classes commissions and politics of backwardness: A profile, 17
(3&4) IBR.1991. p. 416.}

\textsuperscript{474} Ibid.

\textsuperscript{475} Ibid
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classes which are not enumerated is the list prepared either by central or state backward classes’ commission\textsuperscript{476}.

In their examination of Kaka Kalelkar Commission Report, the Government of India had specially noticed the absence of any objective tests for identifying socially and educationally backward classes. Several Supreme Court judgments have also emphasized the need for evolving such criteria on the basis of field investigations and other independent evidence. It was in view of these considerations that the Commission decided to tap a number of sources for the collection of data and Chapter III of this Report contains a brief account of this approach\textsuperscript{477}.

Socio-educational field survey was the most comprehensive inquiry made by the Commission in this behalf. Right from the beginning, this survey was designed with the help of top social scientists and specialists in the country, and experts from a number of disciplines were associated with different phases of its progress.

To begin with, a Research Planning Team of Sociologists met in Delhi from June 12th to 14th, 1979 to draw up a plan of studies and researches which should be undertaken by Backward Classes Commission for determining, in a scientific and objective manner, the criteria defining socially and educationally backward classes. The report of this team is at Appendix-12, Volume II.

Subsequently, a Panel of Experts (Appendix-13, Volume II), led by Professor M. N. Srinivas, met in Delhi from July 18th to 20th, 1979, and after detailed deliberations, prepared a complete design of the survey along with a set of schedules, dummy tables, instructions, etc\textsuperscript{478}.

\textsuperscript{476} Supra note 473 at 417
\textsuperscript{478} Ibid
Experts Panel agreed with the observation of Research Planning Team that the task before the Commission was to lay down the criteria for identifying recognizable and persistent collectivities and not individuals. It also observed, “in the Indian context such collectivities be castes or other hereditary groups traditionally associated with specific occupations which are considered to be low and impure and with which educational backwardness and low income are found to be associated.”

With a view to providing continuous guidance at the operational level, a Technical Advisory Committee was set up under Dr. K. C. Seal, Director General, Central Statistical Organisation, with Chief Executive, National Sample Survey Organisation, and representatives of Directors of State Bureau of Economics, members479.

The experts Panel had prepared the following four schedules for canvassing during the field survey:

(i) Household schedule (rural).
(ii) Household schedule (urban).
(iii) Village schedule.
(iv) Town schedule

These schedules were pre-tested in a number of villages in West Bengal; U.P., Maharashtra and Haryana and, validation checks carried out by the Research & Survey Wing of the Commission. The results were discussed, by Technical Advisory Committee and, after detailed examination, it was decided that rural and urban house, hold Schedules may be combined in one composite schedule with two independent, mutually exclusive; sections for rural and urban areas. It was also decided to drop the town schedule. The combined rural and urban household schedule was fully pre-coded so as, to meet the requirements of electronic processing of data. The schedules

479 Ibid
thus finalised and actually canvassed in the field are at Appendices 14 and 15, Volume II\textsuperscript{480}.

Household schedule was divided into five parts, i.e., household particulars, particulars of Individual member particulars of students between 5-15 years, description of assets and indebtedness. Questions under well part were so framed as to get information on such social, educational and economic particulars of a household as characterized the syndrome of social and educational backwardness in the Indian conditions.

All the questions in the schedules were direct and did not involve any problems As indicated earlier; these schedule were pre-tested in four States, validation checks carried out at the headquarters and some modifications made as a result thereof.

Experts’ Panel had recommended 1\% purposive sample of villages at district level to be able to identify a vast majority-of-backward—classes. At a subsequent meeting of Technical Advisory Committee presided over by Director General. Central Statistical Organization, it was decided 'that for our purpose a sample of 1 \% of the countries' population comprising 65 lakh person, may, be too large, especially in view "Of the limited time available to the Commission. Instead, 100\% coverage of two villages and one urban block in each district of the country was considered to be quite adequate. In view of the vast experience of Central Statistical and National Sample Survey Organization in conducting surveys this recommendation of the Committee was accepted. The selection of villages and urban blocks was left to the State agencies entrusted with the survey. It was, however, emphasized that, as far as possible, the villages and urban blocks selected for survey should be of a composite nature, medium sized and should reflect typical rural or urban conditions of the con-

\textsuperscript{480} Ibid
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cerned district. A list of the villages and urban blocks surveyed in each State is at Appendix-16, Volume II.

Survey, operations were entrusted to the State Statistical Organizations of tile concerned States/Union Territories. This was made possible through the good offices of Dr. K. C. Seal, Director General, Central Statistical Organization, who took up this matter at the Fourth Conference of Central and State Statistical Organizations held at Lucknow from September 20th to 24th, 1979 and persuaded the State representatives to accept this challenging task.

All the schedules, survey instructions, etc., were got centrally printed in Delhi and dispatched directly to a number of distribution centers indicated by each State. Each State nominated a Contact Officer to coordinate survey work at the State level. The actual work of survey was entrusted to District Statistical Officers who selected two investigators per village/urban block for actual canvassing of schedules in the field. It was also decided that the filled in schedules will be scrutinized at each headquarter before they are forwarded to the Commission.481

Indicators (Criteria) for Social and Educational Backwardness:482

As a result of the above exercise the Commission evolved eleven 'Indicators' or criteria for determining social and educational backwardness. These 11 'Indicators' were grouped under three broad heads, i.e., Social, Educational and Economic. They are:-

A. Social
(i) Castes/Classes considered as socially backward by others.
(ii) Castes/Classes which mainly depend on manual labour for their livelihood.
(iii) Castes/Classes where at least 25% females and 110% males above the State

481 Ibid
482 Ibid
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average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas.

(iv). Castes / Classes where participation of females in work is at least 25% above the State average.

B. Educational

(v) Castes/Classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the State average.

(vi) Castes / Classes where the rate of student drop-out in the age group of 5-5 years is at least 25% above the State average.

(vii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.

C. Economic

viii) Castes/Classes where the average value of family assets is at least 25% below the State average.

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

x) Castes classes where the source of drinking water is beyond half a kilometer for more than 50% of the households.

xi) Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average.

As the above three groups are not of equal importance for our purpose, separate weight age was given to 'Indicators' in each group. All the Social 'Indicators' were given a weight age of 3 point each, Educational 'Indicators' a weight age of 2 points each and Economic 'Indicators' a weight age of one point each. Economic, in addition to Social and Educational Indicators, were considered important as they directly flowed from social and educational backwardness. This also helped to
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highlight the fact that socially and educationally backward classes economically backward also.

It will be seen that from the values given to each, Indicator, the total score adds up to 22. All these 11 Indicators were applied to all the castes covered by the survey for a particular State. As a result of this application, all castes which have score of 50 per cent (i.e., 11 points) or' above were listed as society and educationally backward and the rest were treated as 'advanced', It is a sheer coincidence that the number of indicators minimum point score for backwardness, both happen to be eleven. Further, in case the number of household covered by the survey for any particular caste were below 20, it was left out consideration, as the sample was considered too small for any dependable inference.

The above system of listing castes as socially and educationally backward on the basis of their score may appear somewhat arbitrary. On-the face of it this is a tenable viewpoint. On the other hand, points scored by a particular caste under the above system actually reflect the number of indicators of backwardness which it satisfies. Secondly, this method has the great merit of objectivity, as point system allows no subjective assessment. Thirdly, this method was found to be highly dependable in practice. For instance, as a result of its application, most of the well-known socially and educationally backward castes were identified as backward.

In the end it may, be emphasized that this survey has no pretensions to being a piece of academic research. It has been conducted by the administrative machinery of the Government and used as a rough and ready tool for evolving a set of simple criteria for identifying social and educational backwardness. Throughout this survey our approach has been conditioned by, practical considerations, realities of field conditions, constraints of resources and trained manpower and paucity of time. All these factors obviously militate against the requirements of technicality sophisticated and academically satisfying operation.
Identification of backwardness classes for the purpose of reservation necessarily raises the questions as to what are the criteria for identifying backwardness. The constitution nowhere defines the expression “backward classes”, nor even the debates in the Constituent Assembly give any guidance in the matter as is evident from the reply given to a similar question by the Chairman of the Drafting Committee, Dr. B.R. Ambedkar that “A backward community is a community which is backward in the opinion of the government.” Various commission appointed for the purpose have used many criteria such as caste, poverty, occupation, education, residence, etc. the apex court has from time to time tested the constitutional validity of these criteria in a galaxy of decisions.

(i) Caste as Criterion:

Backwardness of certain castes and communities has been attributed to the Indian social structure in which rigid endogamous groups inherently sustain the inequality due to traditional values and taboos. But whatever might have been true in traditional India, in examining today whether caste as a whole can be treated as backward or whether caste and class are synonymous, one should not lose sight of the present day sociological realities. Today there is no necessary correspondence between caste-status and socio-economic status. Education and occupation are now relatively open to every-one regardless of one’s caste, religion or race. Some sociological studies have revealed that upward mobility among the lower-status castes is increasing with gradual disappearance of social status based upon ritual-rank-ordering. Instead of ritual status being the criteria of mobility, new criteria of occupation, education, wealth, political influence and leadership positions are instrumental in “reducing the positive relationship between ascriptive (caste) status and achieved (education, income, occupation) status and thus creating the possibilities of changing the status summation characteristic of Indian society.” With these changes in the profile of social stratification in India ‘caste’ can no longer be
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characterized as ‘homogeneous’ and ‘non-competitive’. Today there is a great amount of differentiation among the members of a caste-group in terms of income, occupation, and status and therefore it is no longer accurate to talk of ‘caste’as‘classes’.

It is unrealistic to justify a state-wide generalization of various jatis as backward class when the members of the same jati (sub-caste) in different parts of the same state and even within the same district may differ greatly in terms of social standing and economic position. Since there is no necessary congruence between caste-status and socio-economic status of its members, the prosperous actions of the caste groups will grab the lion’s share of the benefits of compensatory discrimination to the detriment of the really backward. Caste criterion is unreliable because the “social and economic backwardness many easily become confused with low ritual status”. The caste-status (which is determined by birth) of an individual is static or immutable but the social, economic and educational attainment (which is achievable) is dynamic and it is questionable how a static factor (caste) can determine a dynamic factor (backwardness). Moreover the non-discriminatory provisions of the Indian Constitution also reject the caste form of social organization and envision a new egalitarian and secular society. Caste today has become the strongest party in India and it shall be dangerous to confer benefits solely on caste basis.

Caste can therefore be only one of the criteria for determining backwardness and cannot be the sole determinant.

In Champakam Doriarajan and Periakaruppan, the Supreme Court struck down government orders reserving seats for certain “castes” as backward and held that such identification is inconsistent with the fundamental right to equality. In Balaji Jayasree and Pradeep Tandon the apex court accepted caste as an element factor for ascertaining social backwardness but opined against accepting caste as the sole or dominant criterion.

In Venkataraman, Rajendran and Periakaruppan cases the apex court recognized the integral connection between caste, occupation, poverty and social
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backwardness. In Thriloki Nath (II) the court held that “the members of an entire caste or community may in the social, economic and educational scale of values at a given time be backward and may on that account be treated as a backward class, but that is not because they are members of a caste or community, but because they form a class”. In K.C. Vasantha Kumar Chinnappa Reddy, J stated that, ”if poverty be the cause caste is primary index of social backwardness, so that social backwardness is often readily identifiable with reference to a person’s caste.”

The Supreme Court in its landmark judgement in Indra Sawhney held by a majority of 6 to that caste being a social class in India may validity be a criterion for backwardness if it is backward socially and its educational and economic backwardness is on account of its social backwardness. In the court’s view:

“When caste, occupation, poverty and social backwardness are so closely intertwined in our society there is nothing unconstitutional in beginning the process of identification with castes, which represent explicit identifiable social classes or grouping.”

Thus in Indra Sawhney case, the Court upheld the methodology adopted by the Mandal Commission in identifying backward classes on the basis of caste. The majority judges were however unconvinced that caste may ever be a valid criterion in view of express prohibition against any discrimination based on caste. In the words of Sahai, J., “Caste is a reality. Undoubtedly so are religion and race”. “If caste is treated as a valid criterion”, the learned judge cautioned “then tomorrow the identification of backward classes among other communities, where caste does not exist, on race or religion coupled with these very considerations cannot be avoided”.

(ii) Poverty as a Criterion:

There is no gainsaying that poverty breeds backwardness, be that social, economic or educational. But whether indigent people forms a class to qualify as backward class has been a debatable issue.
In *Chitralekha* the Supreme Court held that the identification of backward classes on occupation-cum-income basis unrelated to caste was perfectly valid. The court however maintained as in Janaki Parimoo and in Pradeep Tandon that poverty and poverty alone cannot be the basis of identifying social or educational backwardness, although in Jaysree Ray, J. opined that social and educational backwardness are not more than “the inevitable corollaries of the extremes of poverty” and Gajendragadkar in Balaji observed that “economic backwardness might have contributed to social backwardness’. Yet in K. C. Vasantha Kumar, Desai and Sen, JJ., opined that poverty in the present milieu must be the predominant and sole factor for determining backwardness for the purpose of Art. 15 (4) and 16 (4), for in the words of Desai, J. “if economic criterion for compensatory discrimination or affirmative action is accepted it would strike at the root cause of “social and educational backwardness”. The other three judges in Vasanth Kumar did not agree with these two judges and validated the caste criteria coupled with economic and/or other considerations.

The apex court dilated upon this issue in its 9-judges bench decision in Indra Sawhney analyzing all the relevant decisions, regarding the economic criterion. The Court said that “the policy of reservation is not aimed at economic upliftment or alleviation of poverty,” The Court observed: “Poverty by itself is not the test of backwardness for if it were so most people in this country would be in a position to claim reservation.” However the court upheld a criterion based upon occupation-cum-income without reference to caste.

(iii) Occupation as Criterion:

For identifying backwards among Hindus, caste may be a relevant factor but it does not work in other communities not recognizing caste-system. In such cases occupation and avocation might help in identifying backward classes among non-Hindus. The apex court in many decisions such as *Chitralekha, Vasanth Kumar*, and even in *Indra Sawhney* upheld as valid the criteria based upon occupation-cum-income factors. In his minority judgment in *Indra Sawhney*, Sahai, J. also advocated
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the occupation criteria by saying that if among non-Hindu occupation can be a basis for identification of backwardness it can equally furnish basis for identification among Hindus itself.

Heredity and occupation has been one of the most distinguishing features of the Indian caste-system. The old four-fold stratification was based on social roles of the four Varna groups and these social roles were based upon occupation that each Varna was prescribed to follow. The choice of occupation was thus limited by birth, religious sanctions based upon Upanishads, Manusmriti and other Shastras. Many castes began to derive their cast-names from the occupations they pursued such as Washerman, blacksmith, carpenter, tailor, fisherman, scavengers. The rigidity of the cast-system has often been attributed to the non-changeability or non-mobility of occupation. But the non-mobility in occupation was also due to the tendency among the higher castes to resist any attempt by the lower castes to achieve upward occupational mobility.

It is true that today the relationship between caste-hierarchy and occupational stains is gradually decreasing due to the policy of compensatory discrimination but there are many people who because of the lack of education, wealth and other resources still stick to their traditionally low occupation with all stigma attached to it. Such persons remain utterly backward socially and educationally. Therefore the test of ‘occupation’ is a relevant test for determining backwardness. The test of ‘occupation’ has the additional advantage that it does not attract the non-discrimination provisions of the Constitution. It has been suggested that if occupation is taken as the main determinant of backwardness it would automatically absorb caste which may be described as a nothing more than “a systematization of occupational differentiation” or a “formal or historical personification or social backwardness.”

But the test of occupation presents some puzzling problems. One is that a bona fide declaration of the occupation pursued by an individual or family is doubtful especially those outside the area of state employment. The desire of being included in
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the category of backward classes may induce many persons to show that they are pursuing a specified occupation. Then there are communities which do not follow any traditional occupation such as beggars, the wandering tribes and criminal tribes who have no fixed income in the economic sense.

The other problem relates to the definition of traditional occupation. A traditional occupation means and occupation followed in a family in which it is handed down by and ancestor to his posterity. Such occupations are generally occupations in which some skills are necessary like those of an artisan or a craftsman. And those occupations which do not require special skills developed by tradition and can be resorted to by anybody will not be a traditional occupation and thus cannot be the basis of a backward-class-classification.

Similarly if the father of the person who claims reservation under Article 16 (4) or 15 (4) has given up his low income occupation and has taken to a trade or a government job, it would be wrong to give to such person any benefit only because his grandfather pursued low occupation.

Besides, it is difficult to decide who the persons are belonging to a listed occupational group. For instance, it has been held that the occupation of a purohit is not an “occupation involving manual labour” as it involved merely the recitation of ‘mantras’.

Again, supposing a person is pursuing the occupation of a “petty-businessman” specified as an occupation for getting preferences. But he also does teaching as a part-time job. Can he get the benefit of the reservation order when he combines a listed occupation with some other occupation unspecified in the order? Perhaps, he will not.

The occupational test is further complicated by the changing occupation of the people. For instance, it has been held that a person, whose father was a school teacher
but had engaged himself in agriculture after retirement, could not receive the benefit of reservation in college because the ‘occupation of agriculture’ specified in the order meant traditional or habitual occupation of the families and not casual or temporary occupation.

Finally, what shall be the unit for determining backwardness on the application of ‘occupational test’. Presumably the unit will be the family (and not the individual) as in the case of an income test. But suppose in a family often persons, 2 pursue traditionally low and polluting occupation, 2 persons, 2 pursue middle-class status occupation and the remaining 6 persons are pursuing higher-status occupation. Will the 10 members of the family be treated as backward or only 2 members pursuing traditionally low occupation? Perhaps the answer is not so simple.

Therefore like ‘caste’, ‘occupation’ may be only one of the factors for determining backwardness. It will however be better if the test of occupation is subsumed under the test of caste because of close affinity of caste of occupation.

The use of an income test as the sole determinant of social backwardness is justified on the ground that economic inequalities among the people is largely due to the rigid-caste-structure and these disparities can be removed only by placing all emphasis on the economic backwardness. But the judicial resistance to an exclusive economic test is based on the notion that such method would enable even socially and educationally advanced sections of the society to claim benefits of reservation. And be whatever standard poverty is determined a preference based upon economic condition would encompass a vast majority of the population.

In India a vast majority of rural population is engaged in agricultural occupation and if all income ceiling in terms of money is fixed then it might discrimination in favour of those whose income is difficult to estimate such as farmers, traders and other members of the self-employed class. The income of these people is often unrecorded or concealed especially when the income is in kind like
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food grains or services. In case of these persons employment or taxation records will not be ordinarily available and thus it will be difficult to estimate their income. An income test will surely discriminate against those whose salary records are maintained such as government servants or those employed in autonomous institutions.

Then, what should be the line to demarcate between the affluent and the poor in a society like ours where large segments of the population lives outside the money-economy? The problem of the removal of poverty is a part of the general developmental programme of a welfare state which can be achieved by such measures as economic ceiling on land holdings, abolition of bonded labour, abolition of rural indebtedness, living wages to labourers, conferment of land ownership on those who till the soil, general industrial and technological advancement and provision for better education, housing and better food and health care for the poor. In our submission these re-distributive measures should not be mixed up with the notion of compensatory discrimination which is designed primarily to eliminate inequalities associated with structural and environmental factors. And exclusive income test for classifying backward classes would thus ignore the historical context under which inequalities of income, wealth, education and occupation is closely related to the rigid caste-structure. Backwardness has to be judged by one’s social standing and educational attainments rather than by one’s economic position alone.

And in the context of Article 16 (4) the recipients of the job reservation are required to fulfill the minimum educational qualifications and mere poverty cannot confer them and appointment. It may however, be conceded that since education depends upon income, poverty can contribute to the underrepresentation in government service for want of educational qualification. The income ceiling however, serves a useful purpose of eliminating those members of a backward community who have attained sufficient advancement. The test of income has therefore to be used conjunction with other tests for determining backwardness.
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When an income ceiling is applied sufficient care has to be taken to define clearly the term “family income” (because here again, it shall be the family and not the individual as the unit for applying the test). It will be preferable to define a ‘family’ as including the applicant to a reserved post; his/her spouse the applicant’s parents if the applicant is residing with them or dependent on them. The income ceiling will be applied by reference to the families of each group of persons specified in the reservation order having below the aggregate annual income fixed by the order.

IV. Education as Criterion:

The educational backwardness of certain classes of citizens is also due to historical reasons. In the traditional India, some castes and classes were denied education under Brahmmanical supremacy. The Brahmmanical supremacy was put to an end with secularized and formalized system of education introduced during the British period. But even this change benefited to higher status castes more than the lower castes. The reason was that the castes were merged with occupational status and thus many lower castes were induced to pursue traditionally low occupation for which education was not necessary. And even when attempts were made by the lower castes to achieve upward mobility through education, such attempts were thwarted by the higher castes on whom the lives of many agricultural and servant castes depended. In some cases where the low castes children attended the schools, they were ill-treated and discriminated against by the high-caste teachers.

But in today’s India due to the policies of compensatory discrimination a low rittal status man has a better chance to achieve high economic and educational status. One can however, still find congruence between caste and illiteracy or low level of education due to the hangover of centuries old caste oppressions. The Kala Kalelkar Commission came to the conclusion on the basis of the caste-wise literacy figures of the 1931 census that generally lower castes were educationally backward also.
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causes of educational backwardness were summed up by the commission as traditional apathy for education on account of social and environmental conditions or occupational handicaps, poverty, lack of educational institutions in rural areas, living in inaccessible areas, lack of adequacy educational aids and financial grants for the purchase of books and clothing, lack of hostel facilities, unemployment among the educated and defective educational system.

The first question that arises in educational test is that how to determine educational backwardness for the purposes of reservation in services. In Balaji he Supreme Court has doubted the adequacy of literacy test based upon the census records, has expressed the doubt about the propriety of taking the average of the student population of each community at the level of 8th, 9th and 10th standard with the object of putting each of these communities in the list of backward classes and has indicated that even if such test is adopted by the state, only those communities which are well-below the state average could properly be regarded as educationally backward classes. Presumably according to Balaji the educationally backward classes will be less than half of the state average but how much below the state average will be reasonable is not clear from the judgment. But in Balaram, the Supreme Court has deviated from the Balaji “well below the state-average formula and has upheld a classification in which even those communities wee included who were slightly above the state average. Such departure has been justified on the ground that Balaji did not lay down any hard and fast rule as it had observed that “it is for the state to consider the matter and decide the manner which is consistent with the requirement of Article 15(4).”

But Balaji was decided in the context of Article 15(4). Apparently the test of education will be different in the context of Article 16(4) which is related to the appointment in the state services. The level at which the list of educational attainment should be applied for delineating educationally backward classes for purpose of Article 16(4) should be reasonably related to the capabilities of the beneficiaries of job-reservation. If the literacy test of the type adopted for educational
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reservation is applied even or the purposes of Article 16(4) it would be illogical because for getting an appointment one should have the minimum educational qualifications. The level at which the test of educational attainment should be applied should be the level of minimum educational qualification required for appointment in majority of the state services. For instance, if the minimum qualification prescribed for getting class (ii) jobs is graduation, bachelor’s degree should be the minimum education level for testing educational backwardness in order to make it more meaningful.

The test of educational attainment also raises membership problems. What should be the unit for determining educational backwardness? If ‘family’ is taken as a ‘unit’ it is difficult to measure the educational position of all members in a family because all the members in a family may not be uniformly less educated. If ‘caste’ is made the unit then it will be opposed to Articles 15(1) and 16(2). Moreover, it is difficult to determine caste-wise educational backwardness in the absence of caste-wise literacy figure.

The above discussion clarifies that the backward classes have to be delineated by the application of multiple tests. All the relevant tests have to be applied simultaneously to all groups and communities. As soon as the relevant indices are applied, the groups which have attained sufficient socio-economic advancement will be eliminated from the list. But for applying these tests the state will have to collect necessary data regarding the social and economic conditions of the people. In the context of Article 16(4) the state will have to collect adequate data of income of the families, the earning members and size of families, the income-wise number of posts held by the members of respective communities or group of communities.

Art. 15 (4) and 340 make special mention of backwardness being “educational”, in addition to “social”, for affirmative action. However Art. 16 (4) make use of the expression “backward class of citizens” only. Yet as was noted by the Supreme Court in Indra Sawhney an impression somehow gained currency that the
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expression used in all these provisions point to the “socially and educationally backward classes” which it was held has no basis and Art. 16 (4) apply to a much larger class. Nevertheless it cannot be denied that educational backwardness in Indian context is generally a manifestation of social backwardness. The courts have therefore always recognized the importance of education as an important, though not predominant, criteria.

V. Residence as Criterion :

In Pradeep Tandon case the court had the occasion to examine the validity of reservation in favour of candidates coming from “rural areas, hill and Uttarakhand areas pf U. P.” while invalidating reservation in favour of candidates from hill Uttarakhand areas in U.P. as constitutionally permissible, it was observed that when large areas of land remain sparse, disorderly and illiterate population whose property is small and negligible the element of social backwardness is present. Where people have traditional apathy for education on account of social and environmental conditions it is an illustration of educational backwrdness.24 As the residents of these areas do suffer on both counts reservation in their favour was held to be valid. In Indra Sawhney the court made an exception in favour of “population inhabitating in far flung and remote areas”. In A. K. Gupta the court directed the Government of U.P. to grant reservation to the residents of hill and Uttarakhand not “horizontally” under Art. 15(1), but “vertically” as OBCs under Article 15(4). In Jagdish Negi it was held that a 2% reservation for residents of Urrarakhand in UP was valid out of a total of 27% reservation for OBCs.

It might be worthwhile to note that in Indra Sawhney the 9-judges bench of the apex court has entrusted the task of entertaining examining and recommending on matters of inclusions / under inclusion / over-inclusion in the OBCs lists to permanent
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bodies / commissions whose advice is ordinarily binding upon the Government concerned.

The Supreme Court has rendered a very good number of decisions on this point. The most important among them is M. R. Balaji v. State of Mysore\textsuperscript{483}. Though the case is related to the admissions in the professional colleges, yet the principle local down is equally applicable to the Government jobs. The state of Mysore reserved 18 percent seats of the admission in medical college. Of the total reservation of the seats 18 percent were reserved for the Scheduled Castes and Scheduled Tribes. The rest of the seats were reserved for the backward classes. The backward classes were again divided as more backward classes. The Supreme Court struck down the order as unconstitutional for its exclusive reliance as caste criterion. Gajendragadkar, J. observed that the social and educational backwardness is in the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are poor automatically become socially backward. The court farther observed that there are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations also plays a major part in determining the backwardness of a community of persons. The court stressed the fact that, Article 15(4) and 16(4) used the words backward classed and not backward castes of citizens. A classification based solely on castes facts to take into account backwardness amongst Muslims and the Christians. Balaji is highly commended economic trust of backwardness and hands with the centre. Balaji was widely hailed as completely outlawing caste in the selection of OBCs. This decision also marred the policies of reservation for OBCs. The reservation policies were subjected to close and rigorous scrutiny by the courts to find compliance with the legal prescriptions. The courts began to demand recent socio-economic data for determining socially and educationally backward classes\textsuperscript{484}. In Triloki Nath Tikku v. State of Jammu and

\textsuperscript{483} A I R 1963 S C 350
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Kashmir485, an argument was made on behalf of the state that mere under representation of certain classes in the services under the state was a conclusive evidence of their backwardness for the purposes of Article 16(4). The state sought to justify job-reservation for Muslims, Hindus, of Jammu & Kashmiri pandits who were under represented in services. Rejecting these arguments, Subba Rao C. J. ruled that although Balaji turned upon Article 15(4), the principle laid down therein equally applied to the reservations under Article 16(4). The learned chief justice observed that if the argument based upon inadequate representation was accepted, “it would really exclude the backward classes from the benefit of Article 16(4) and confer benefits only on a class of citizens who thought rich and cultured have take to other avocations of life.” He ruled that in order to invoke Article 16(4) two conditions must be satisfied:

1. A class of citizens is backward socially and educationally as explained in Balaji case;
2. The said class is not adequately represented in the services under the state.

The list of under representation of certain classes in the state services is only one of the many attributes of backwardness. This list is often applied along with other relevant tests, for the purposes of delineating socially and educationally backward classes. Even the backward classes commission applied the list of under representation in services only as indicative of backwardness of certain groups both for the purpose of Article 15(4). But Article 16(4) farther requires the state to assess the adequacy or in adequacy of representation of the backward classes as drawn. It is submitted that in the context of Article 16(4) the application of the statistics regarding under representation in services may involve two stages. One at the stage of classification of citizens as backward and non-backward and the other when the state makes an assessment of, the inadequacy of representation of the backward classes in services. It may be that certain groups which have been classified as socially and

485 A I R 1967 S C 1283.
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educationally backward classes for purposes of Article 15(4) may be adequately represented in the services under the state consequently those groups will have to be eliminated from the list prepared for the purposes of Article 16(4). Therefore, the groups drawn or the purposes of Article 15(4) read to be groups for the purpose of Article 16(4).486

In Chitralekha v. state of Mysore487, the basis of backward class-classification was income and occupation. A family whose income was below Rs. 1200/- per annum and persons or classes following the occupations of agriculture, petty business, inferior service or occupations involving manual labour were in general considered to be socially and educationally backward entitled to reserved seats in professional and technical colleges. Subba Rao J. said Article 15(4)… does not speak of castes but only speaks of classes. If the makers of the constitution intended to take castes also as a unit of social and educational backwardness, they would have said so as they have said of the Scheduled Castes and Scheduled Tribes. The juxta position of the expression “Backward class” and “Scheduled Castes” in Article 15(4) also reads to a reasonable inference that the expression classes are not synonymous with caste”.

It is submitted that in dealing with the question whether castes can be equated with ‘classes’ Subba Rao J.S opinion reflected the activities of Indian social and political structure in which various dominant caste-groups represented in the legislatures are able to exact strong political pressure to be classified as backward for getting state preference. Subba Rao J. wanted to thwart any such communal manipulation when he observed; “If we interpret classes as ‘castes’ the object of the constitution will be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really deserve. This anomaly will not arise if

487 A I R 1964 S C 1823.

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without equaling castes with class, caste is take as only one of the considerations to ascertain whether a person belongs to a backward class or not. On the other hand if the entire sub caste by and large is backward it may be included in the Scheduled Castes by following the appropriate procedure laid down by the constitution\textsuperscript{488}. Subba Rao J. keyed the purpose of compensatory discrimination to Article 46 which obligates the state to promote the educational and economic interest of the weaker sections of the society. His lordship believed that the purpose of compensatory treatment was to help those who are backward due to historical reasons and not to “give weight age to progressive sections of our society under the false colour of caste to which they happen to belong” this interpretation helped the really backward classes among the backward classes. The argument of Subba Rao J. was that if cast as a whole was treated as backward it was impossible to isolate the really backward classes\textsuperscript{489}.

It is also submitted that the team “backward class” is a more comprehensive team than the backward castes, tribes and communities. Backward class read not necessarily be the closed status or as creative groups based upon their birth but may be groups based upon many other attributes having no relation with one caste, religions or race. Backward classes can be grouped on the basis of their occupational and territorial characteristics as well\textsuperscript{490}. Both Balaji and Chitralekha classified that ‘castes’ as such cannot be the unit of backwardness. Both these decisions repudiated the classification of a caste as a whole as backward. Subba Rao J. in Chitralekha emphatically observed, “under no circumstances can a class be equated with ‘caste’ though caste of and individual or a group of individuals may be considered along with other relevant factors.”\textsuperscript{491}

\textsuperscript{488} Chitralekha v. State of Mysore, A I R 1464 S C 1823
\textsuperscript{489} Ibid.
\textsuperscript{490} Supra note 486 at 146
\textsuperscript{491} Chitralekha v. State of Mysore. A I R 1964 S C 1823
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In *P. Rajendran v. State of Madras*, the court upheld a backward-class-classification based solely on caste. Its lordship accepted the states contention that although the list was prepared solely on caste, each of the castes as a whole were found to be socially and educationally backward. The court did not require the state to show the material on which it had classified backward classes. The burden of proof, was this placed upon the petitioner and since the petitioner had failed to show that the castes specified as backward were really not backward, the court upheld the caste wise classification. Ignoring the dictate of Balaji and Chitralekha, Wanchoo e.j., ruled, “But it must not be forgotten that caste is also a class of citizens and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste.” It is submitted that in equating ‘caste’ with classes the court in Rajendra approved of a criteria which Balaji and Chitralekha had expressly disapproved.

In *State of Andhra Pradesh v. P. Sugan*, the Supreme Court speaking through Shah J. struck down a caste-wise classification of backward classes as lying outside the power conferred under Article 15(4). Deviating from the Rajendran approach shah J. placed the onus of the state to show that it had applied the relevant criteria for designating backward classes. His lordship refused to accept as conclusive, the states’ averment in the affidavit as to the backwardness of the specified castes. Since the state could not discharge the burden, the law was declared to be unconstitutional.

In *A. Periakarruppan v. state of Tamil Nadu*, the Supreme Court relied heavily on Rajendran case as an authority for the preposition that a caste as a whole can be treated as backward. The court upheld a classification made solely on the basis

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492 AIR 1968 SC 1012
493 AIR 1968 SC 1379.
494 Ibid.
495 AIR 1971 SC 23603.
of caste. The most striking and perhaps objectionable feature of this case is that it drew support from the report of Kaka Kalelkar commission which Balaji had discussed in detail and had repudiated it. Holding caste and class are synonymous in certain situations the court observed: there is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the fact of life.

Ultimately the Balaji-Chitralekha view prevailed in the post Balaram decisions. The break-through from the Rajendram periakaruppan – Balaram approach was initiated by palekar J. in Janki Prasad v. state of Jammu & Kashmir,

involving a Jammu and Kashmir reservation order 1970 for the purposes of Article 16(4). It was held that the order was unconstitutional because the principles governing the reservation of posts in the employment the state had not been correctly applied. The court found that some of the occupation and some castes specified as low social castes could not be held as indicative of social and educational backwardness and directed the state to revise its lists. It was held that mere educational backwardness or social backwardness did not by itself make a class of citizens backward. In order to qualify for being called a backward class of citizens under Article 16(4), he must be a member of socially and educationally backward class. Retreating to Balaji and Chitralekha, palekar J. stated that the benefits of reservation of jobs could be given only to the really deserving and ready backward groups whose backwardness should be comparable to the Scheduled Castes and tribes. He struck a rate of caution against including the well off members of the backward communities in the list of backward classes.

The holding in Janaki Prasad confirms the idea underlying compensatory discrimination. The court’s rejection of an exclusive economic test for backwardness indicates that the policy is not to give preference to every poor citizen regardless of his social and educations status but rather to help those whose backwardness is

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496. A I R 1971 S C 23603
497 A I R 1973 S C 930.
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associated with traditional social structure of our society which denied access to certain groups and communities to have their fair share in the opportunity structure of the larger society. The court also emphasized the gradual exclusive of those groups from the task of backward cases who have shown sufficient advancement by taking advantage of the states developmental programme.

In State of U. P. v. Pradip Tandon\textsuperscript{498}, an argument was made that all people coming from rural areas of Uttar Pradesh were socially and educationally backward classes for the purposes of reserved seats in the state’s medical and engineering college. Repelling this argument Raj C. J., citing with approval the observation of Viadalingam in Janki Prasad, ruled that the eighty per cent of Uttar Pradesh was not homogeneous and not all of them could be regarded as backward. He observed “if poverty is the exclusive task, a large population in our country would be socially and educationally backward class of citizens poverty is evident everywhere and perhaps more so in educationally and socially affluent classes\textsuperscript{499}. Similarly, where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, if is an illustrations of educational backwardness. Lack of educational institutions and educational aids and lack of awareness of the value of education also made a class of citizens, educationally backward. The most significant thing about Pradip Tandon is that if cleanly repudiates the notion that in certain circumstances caste as a whole can be treated as backward and thus the Rajendren view stands discarded\textsuperscript{500} Reitrating the Balaji – Chitralekha approach Raj C. J., stressed the read to interpret the expression classes in Article 15(4) or class in Article 16 (4) for the purpose of finding out the necessary attributes of backwardness. He said that the groups of citizens to whom Article 15 (4) or 16 (4) applied were the classes of citizens and not castes of citizens. He said: Broadly stated, neither caste, nor race, nor religion can be made the basis of classification for the purposes of determining social

\textsuperscript{498} A I R 1975 S C 563.

\textsuperscript{499} Ibid.

\textsuperscript{500} Ibid
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and educational backwardness within the meaning of Article 165 (4). When Article 15 (4) forbids discrimination on grounds only of religion, race, caste, caste cannot be made one of the criteria for determining social and educational backwardness. If caste or religion is recognized as a criterion of social and educational backwardness, Article 15 (4) will stultify Article 15 (1). When a classification takes recourse to caste as one of the criteria in determining socially and educationally backward classes the expression “classes” in that cast violates the will of expression unius exclusion alterius. The socially and educationally backward classes of citizens are groups other than groups based on caste\(^501\).

It may be submitted that the expression ‘class’ is wider and more comprehensive than the expression ‘caste’ or community. The terms class takes in all conceivable attribute of backwardness based upon caste religion, occupation, income location and the like. The common indicators of backwardness will be low social position, low level of income and occupation, low level health and nutrition inadequate housing, adverse environmental conditions etc. classifications of backward classes on the basis of the conditions of hardship and difficulty due to the environmental factors is only one of the many other forms of backward – class – classification. The pre-Pradip Tandon rulings on compensatory discriminations proceeded on the assumption that the aim of the compensatory measures was to remedy the social inequalities associated with occupational or caste stigma leading to economic backwardness but Pradip Tandon is ratable for providing new openings in the area of compensatory discrimination. It authorizes the state to provide preferential treatment even to those groups whose backwardness is not associated with traditional social structure but who are backward due to geographical or environmental reason\(^502\).


\(^502\) Ibid.
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In *K.S. Jaishree v. State of Kerala*\(^{503}\), the impugned order of September 2, 1975, had classified families from backward classes with an annual income of Rs.10,000/- or more into a sub-class and they were denied the benefits of reservation order in respect of admission to the state medical and engineering colleges. Ray. C. J., speaking for the court emphasized the need of adopting means-cum caste/community test in classifying backward classes. He held that the rich people among the backward castes/communities ceased to be socially and educationally backward classes even though they had not required any high level of education with the economic advancement the social disabilities of the member of the backward castes and communities were to a large extent disappeared. This case urges the state Governments to shape their policies of reservation in such a way as to help the really ready and deserving. Jaishree clearly indicates that a classification based solely on caste or community without any regard to the advancement made by the members of backward classes should be discarded\(^{504}\).

In *K. C. Vasanth Kumar v. State of Karnataka*\(^{505}\), the Supreme Court had an occasion to consider the question of characterizing backward classes. The Kamala Government wanted to appoint a commission to go into this question and the Government requested the court to lay down guidelines for the commission in the discharge of its task. However, the judges expressed a diversity of views on this complex question. Five judges participating in the decision wrote five separate opinions. According to Chandrachud, C. J., two tests should be conjunctively applied for indentifying backward classes: one, they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness; and, two, should satisfy the means test, that is to say, the test of economic backwardness, laid down by the state Government in the context of the prevailing economic conditions.

\(^{503}\) A I R 1976 S C 2381.

\(^{504}\) Ibid.

\(^{505}\) A I R 1985 S C 1495.
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Desai, J., was against ‘caste’ being regarded as a major determinant of backwardness. He argued if state patronage for preferred treatment accepts caste as the only insignia for determining social and educational backwardness, the danger looms large that this approach alone would legitimize and perpetuate caste system which contradicts secular principles and also run against Art.16(2). Also, caste based reservation had been usurped by the economically well-placed section in the same caste”. According to Desai J., the only criterion which and be realistically devised is the one of economic backwardness.” Adoption of an economic criterion would translate into reality two constitutional goods; one, to strike at the perpetuation of the caste stratification of the Indian society and to take a firm step towards establishing a casteless society; and, two, to progressively eliminate poverty506.

According to Chinnappa Reddy, J., “poverty, caste, occupation and habitation are the principal factors contributing to social backwardness.” As regards caste his view was that the caste system has firm links with economic power and that “caste is the primary index of social backwardness, so that social backwardness is often readily identifiable with reference to person’s caste.”507 According to Sen508, J., “the predominant and the only factor for making special provisions under Article 15(4) or for reservation of posts and appointment under Article 16(4) should be poverty, and caste or a sub-caste or a group should be used only for purposes of identification of persons comparable to scheduled caste and Scheduled Tribes.” Venkatoramiah509, J., stressed upon the relevance of caste factor as an index of backwardness. According to him, the expression ‘backward classes’ can only refer to certain castes, races, tribes or communities or parts there of other then Scheduled Castes, Scheduled Tribes and Anglo-Indian communities, which are backward’ and castes or community is an important and relevant factor in determining social and educational backwardness.” He, however, suggested caste-cum-means test as a “rational task’ to identify

507 Ibid.
508 Ibid.
509 Ibid.
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backward people for purposes of Article 15 (4) and 16 (4) for all members of a caste read not be treated as backward. The only point on which there appears to be a unanimity of views are ‘caste’ cannot be the sole determinant of backwardness, but it is not an irrelevant task either and can be taken into account along with certain other factors. Also, backwardness is something comparable to the position of the Scheduled Castes and scheduled tribes. Poverty is also a relevant actor to determine backwardness.

Conclusion:510

Beginning from Balaji’s case to K. C. Vasanth Kumar’s Case it has been firmly established that gross over inclusion will not to tolerated and only those groups can be designated as OBCs who are found to be demonstratively backward by application of tangible criteria. It has repeatedly been emphasized that the application of criteria of social and educational backwardness should be supported by adequate data, recent enough to be relied upon as reflective of current conditions. According to Balaji’s case caste status, can in no circumstance be the sole determinant of social backwardness. In relation to Hindus, however, caste status could be one of the possible measures of backwardness to be used in conjunction with other neutral or non-communal tests of poverty, occupation, location etc. social backwardness, is on the ultimate analysis, the result of poverty, to a very large extent and social backwardness which resulted from poverty is likely to be aggravated by considerations of caste to which the poor citizen might belong but that only shows the relevance of both caste and poverty in determining social backwardness. Then the OBCs should, in the matter of their social backwardness be comparable to the Scheduled Castes and Scheduled Tribes. It has also been held that only those groups can be identified s educationally backward classes which are well below the state average of literacy. Since the aim of compensatory discrimination is to offset the

 accumulated results of historic injustice, the OBCs should be both socially and educationally backward. Aggregate reservations should be kept reasonably below 50 percent of the available places so that substantial numbers of places are left open for merit competition. All these guidelines have been supplied by the Supreme Court for reconciling the competing claims of meritocracy and claims for redressal of rooted inequalities and historic injustice\textsuperscript{511}.

Are the “backward castes” synonymous with “backward classes”? Mandal’s answer is in the affirmative. A team of sociologists headed by professor M. N. Srinivas advised the Commission that its task was to lay down “criteria for identifying recognizable and persistent collectivities” and not individuals and that in the Indian context “classes” would be only castes and communities. Criticizing the Balaji principle that “casts” cannot be equated with “classes”, the report says that the Balaji view represents the “most conservative view on the relevances of caste for determining social backwardness and synonymicy between ‘classes’ and ‘castes’, (p. 26). The report asserts that in some cases caste-wise classification has been upheld by the Supreme Court on the basis that “a caste is also a class of citizens”.

In identifying OBCs, the Mandal Commission uses caste in two ways. First, it uses caste groups as units or Classes to be classified, and second, it uses the castes status or caste standing of a group in the social hierarchy. As the criterion of social backwardness. The report says that “caste being the basic unit of social organization of Hind Society, castes is the only readily and clearly recognizable and persistent collectivities”. In considering the legality of Mandal, one has, therefore, to distinguish clearly the two uses of castes, one, in the sense of an endogamous or corporate group as Unit of classification and the other in the sense of caste as a status, as a measure of backwardness. In all contemporary discourse about reservation, there is a tendency to use the expression “caste based reservation”, “caste criterion,” “caste test” without clarifying whether it is the caste as a unit or caste as a measuring rod that is meant\textsuperscript{512}.

\textsuperscript{511} Ibid
\textsuperscript{512} Ibid
The crucial issue is not whether ‘castes’ can be equated with ‘classes’, but, rather whether ‘classes’ under Articles 15(4) and 16 (4) (authorizing reservations) can be composed of caste and communal groups. Even if one agrees with Mandal that castes can be units of classification, the use of castes as units requires generation of data broken down along caste lines. The absence of current caste-wise population would render it exceedingly difficult to assess the current conditions of castes and communities. Mandal Commission has classified 3,743 caste and communal groups as socially and educationally backward classes⁵¹³.

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⁵¹³ Ibid
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1931 figures cannot afford any workable guide for 1990. In some cases the courts have struck down reservation schemes because of absence of evidence that the commission has acted on concrete and reliable data for ascertaining social and educational backwardness of the listed groups. In Balaji, the Supreme Court insisted on much higher quality of data than has been employed by Mandal. The court observed that “evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way”. The judiciary, while examining Mandal, might like to see whether data and material referred to in the report of the commission justify its conclusions514.

4. XII. OBC’s AMONG HINDUS

It may be clarified that the classes, castes or communities identified as backward as a result of this survey done by the Second Backward Class Commission, belong to Hindu religion only. As the unit of identification in the above survey is caste and caste is a peculiar feature of Hindu society only, the results of the survey cannot have much validity for non Hindu communities515.

The Supreme Court has held “but it must not be forgotten that a caste is also a class of citizen and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is socially and educationally backward classes of citizens within the meaning of Article 15(4) Further, a caste has always been recognized as a class. There is gainsaying the fact that there are' numerous castes in this country which are socially and educationally backward, and, if after collecting the necessary 'data it is found that the caste as a

514 Ibid
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whole is socially and educationally backward, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. It is observed that in the Indian context such collectivities can be caste or other hereditary groups\textsuperscript{516}. In fact, castes being the basic unit of social organisation of Hindu society, castes are the only readily and clearly recognizable and persistent collectivities.

In view of the foregoing, the Commission has also applied some other tests like stigmas of low occupation, criminality, nomadism, beggary and untouchability to identify social backwardness. Inadequate representation in public services was taken as another important test\textsuperscript{517}.

Thus, the Commission has adopted a multiple approach for the preparation of comprehensive list of Other Backward Classes for all the States and Union Territories. The main sources examined for preparation of these lists were\textsuperscript{518}:-

i) Socio-educational field survey:

ii) Census Report of 1961 (particularly for the identification of primitive tribes, hill tribes, forest tribes and indigenous tribes);

iii) Personal knowledge gained through extensive touring of the country and receipt of voluminous public evidences as described Chapter X of this Report; and

iv) Lists of OBCs notified by various State Governments.

It may be pointed out that the use of personal knowledge by the Commission in the aforesaid manner has been upheld by the Supreme Court in \textit{S. V. Balram v. State of Andhra Pradesh}\textsuperscript{519}. In this case the Court referred to the criticism leveled at the Commission that it had used its personal knowledge for the purpose of characterizing a particular group as backward. That, in the circumstances of the case, is inevitable

\textsuperscript{516} Ibid
\textsuperscript{517} Ibid
\textsuperscript{518} Ibid
Identification and Determination of Backward Classes

and there is nothing improper or illegal. The very object of the Commission in touring various areas and visiting the huts and habitations of people is to find out their actual living conditions.

In this context it may also be stated that in some cases, the findings based on socio-educational field survey happened to be inconsistent with the living social reality. For example, the social status of Kasera caste in Bihar, Dhobi in Gujarat, Agasa in Karnataka, Kumbhar in Rajasthan, Badager in Tamil Nadu, etc. is known to be very low. Yet these castes scored below 11 points and, thus, qualified for ranking as forward. Such aberrations are bound to occur in any sociological survey which is based on statistical methods owing to lopsidedness of the sample covered. The only corrective to these aberrations is the intimate personal knowledge of local conditions and the use of massive public evidence produced before the Commission. The results of the field survey have been carefully scrutinized and such aberrations rectified as far as possible.

Whereas the Commission has tried to make State-wise lists of OBCs as comprehensive as possible, it is quite likely that several synonyms of the castes listed as backward have been left out. Certain bastes are known by a number of synonyms which vary from one region to the other and their complete coverage is almost impossible. In view of this the Commission recommended that if a particular caste has been listed as backward then all its synonyms whether mentioned in the State lists or not should also be treated as backward.

Upholding the criteria as laid down by the Mandal commission, the Supreme Court in India Sawhney v. Union of India, said that clause (4) of Article 16 does not contain the qualifying words “socially and educationally as does class (4) or Art. 15. It may be remembered that Article 340 does employ the expression “socially and

519 Ibid
521 AIR 1993 S C 477.
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educationally backward classes and yet that expression does not find place in Article 16(4). The reason is obvious backward class of citizens’ in the Article 16(4) takes in Scheduled Tribes, schedule castes and all other backward classes of citizens including the socially and educationally backward classes. This, certain classes which may not qualify for Article 15(4) may qualify for Art. 16 (4). It is equally relevant to notice that Article 340 does not expressly refer to services or to reservations in services under the state, though it may be that the commission appointed there under may recommend reservation in appointments / posts in the services of the state as one of the steps for removing the difficulties under which SEBCS are laboring and for improving their conditions. This, SEBCS referred to in Article 340 is only one of the categories for who9m Article 16(4) was enacted; Article 16(4) applies to a much larger class than the one contemplated by Art. 340 It would, this is not correct to say that backward classes of citizens in Article 16(4) are the same as the socially and educationally backward classes in Article 15(4).

Further, if one keeps in mind the context in which Article 16(4) was enacted it would be clear that the stress was upon social backwardness. It goes without saying that in Indian context, social backwardness leads to educational backwardness and both of them together lead to poverty-which in turn breeds and perpetuates the social and educational backwardness. They feed upon each other constituting a vicious circle. It is a well known fact that till independence the administrative apparatus was manned almost exclusively by members of the upper castes. The shudras, the schedules castes and the Scheduled Tribes and to the similar backward social groups among Muslims and Christians had practically not entry into the addimini9starative apparatus. It was this imbalance which was sought to be redressed by providing for reservations in favor of such backward classes. Accordingly the court opined that the backwardness contemplated by Article 16(4) is mainly social backwardness.
4. XIII. OBC’s AMONG NON-HINDUS

There is no doubt that social and educational backwardness among non-Hindu communities is more or less of the same order as among Hindu Communities. Though castes system is peculiar to Hindu society yet, in actual practice, it also pervades the non-Hindu communities in India in varying degrees. There are two main reasons for this phenomenon: first, caste system is a great conditioner of the mind and leaves an indelible mark on a person’s social consciousness and culture mores. Consequently, even after conversion Hindus Carried with them their deeply ideas of social hierarchy and stratification. This resulted to the Hindu converts inadvertently as Trojan horses of caste system among highly egalitarian religions such as Islam, Christianity, Sikhism etc. Secondly, non Hindu minorities living in Hindu India could not escape from its social and cultural influences. Thus, both from within and without, caste amongst non-Hindu communities received continuous sustenance and stimulus.

Sayyads and Sheikhs are the priestly castes like the Brahmins and the Mughals and Pathans, amous for their chivalry, are equal to the Kshatryas. There are occupational castes that are considered lower castes in the hierarchy. Thus castes are hereditary names based on their occupation and there is basic tendency among them to practice endogamy. They are descendents of the members of the Hindu clean castes who have been converted to Islam either in groups from different or as whole castes.

On the same point Dr. Imtiaz Ahmed observes, “There is a notion of hierarchy among the Muslims, though it is hard to say how far the criterion of the ranking among them can be said to conform to the Hindu model .... It is clear, that castes exist as a basis of social relations amongst them (Muslims) but its form has been greatly weakened and modified as it differs from the Hindu model in certain

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522 Ibid
523 Ibid
524 Ibid
Similar is the situation among Indian Christians. Christians in Kerala are divided into various denominations on the basis of beliefs and rituals and into various ethnic groups on the basis of their caste background ... even after conversion, the lower caste converts were continued to be treated as Harijans by all sections of the society including the Syrian Christians, even though with conversion the former ceased to be Harijans and untouchables. In the presence of rich Syrian Christians the Hanjan Christians had to remove their head-dress while speaking with their Syrian Christian masters. They had to keep their mouth closed with a hand ... It was found that, the Syrian and Pulaya members of the same Church conduct religious rituals separately in separate buildings. Thus lower caste converts to a very egalitarian religion like Christianity, ever anxious to expand its membership, even after generations were not able to efface the effect of their caste background.

About Sikhs the Hindu caste model is almost literally replicated and the fact is too well-known to need any elaboration. But despite the prevalence of caste system among non-Hindu communities in varying degrees, the fact, the matter is that all these religions are totally egalitarian in their Hook, they proclaim absolute equality of all their co-religionists and any social differentiation based on caste is anathema to them. In view of this, caste cannot be made the basis for identifying socially and educationally backward classes among non-Hindu communities. Commission therefore, shall have to evolve other rough and ready criteria for identifying non Hindu OBCs. On the face of it, the criterion of poverty appears to be the most plausible, but it is full of pitfalls, For instance, even a highly respected and well educated Syrian Christian may be poor. Thus he will not satisfy the constitutional provision, of social and educational backwardness. Secondly economic criterion is very difficult to apply. A person who is poor today may be well off tomorrow and vice-versa. Moreover, verification, of economic status is very

525 Ibid
526 Ibid

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After giving a good deal of thought to these difficulties the Commission has evolved the following rough and ready criteria for identifying non Hindu OBCs:-

(i) All untouchables converted to any non, Hindu religion; and

(ii) Such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list of Hindu OBCs. (Examples: Dhobi, Teli, Dheemar, Nai, Gujar, Kumhar, Lohar, Darji, Badhai etc.).

4. XIV. SACHAR COMMITTEE REPORT

On March 9, 2005 the Prime Minister issued a Notification for the constitution of a High Level Committee to prepare a report on the social, economic and educational status of the Muslim community of India. The Seven Member High Level Committee, chaired by Justice Rajinder Sachar, submitted its final report to the Prime Minister on November 17, 2006. The Sachar Committee compiled data from a number of sources. The Report says that the Features of the Hindu caste system, such as hierarchical ordering of social groups, endogamy and hereditary occupation have been found to be amply present among the Indian Muslims as well. The Census of India, 1901 listed 133 social groups wholly or partially Muslim. The present day Muslim Society in India is divided into four major groups: (i) the Ashrafs who trace their origins to foreign lands such as Arabia, Persia, Turkistan or Afghanistan, (ii) the upper caste Hindus who converted to Islam, (iii) the middle caste converts whose occupations are ritually clean, (iv) the converts from the erstwhile untouchable castes, Bhangi (scavenger), Mehtar (sweeper), Chamar (tanner), Dom and so on.

527 Ibid
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These four groups are usually placed into two broad categories, namely, ‘ashraf’ and ‘ajlaf’. The former, meaning noble, includes all Muslims of foreign blood and converts from higher castes. While ‘ajlaf’ meaning degraded or unholy, embraces the ritually clean occupational groups and low ranking converts. In Bihar, U.P and Bengal, Sayyads, Sheikhs, Moghuls and Pathans constitute the ‘ashrafs’. The ‘ajlaf’, are carpenters, artisans, painters, graziers, tanners, milkmen etc. According to the Census of 1901, the ajlaf category includes ‘the various classes of converts who are known as Nao Muslim in Bihar and Nasya in North Bengal. It also includes various functional groups such as that of the Jolaha or weaver, Dhunia or cotton-carder, Kulu or oil-presser, Kunjra or vegetable-seller, Hajjam or barber, Darzi or tailor, and the like. The 1901 Census also recorded the presence of a third category called Arzal: ‘It consists of the very lowest castes, such as the Halalkhor, Lalbegi, Abdal, and Bediya. Muslim groups currently bracketed under the category ‘OBC’ come essentially from the non-ashraf section of the Muslim population. They are the converts from the middle and lower caste Hindus and are identified with their traditional occupation.

RECOMMENDATIONS OF THE COMMITTEE

Committee’s analysis shows that while there is considerable variation in the conditions of Muslims across states, (and among the Muslims, those who identified themselves as OBCs and others), the Community exhibits deficits and deprivation in practically all dimensions of development. In fact, by and large, Muslims rank somewhat above SCs/STs but below Hindu-OBCs, Other Minorities and Hindu-General (mostly upper castes) in almost all indicators considered. Among the states that have large Muslim populations, the situation is particularly grave in the states of West Bengal, Bihar, Uttar Pradesh and Assam. Interestingly, despite such deficits, the Community has lower infant mortality rates and sex-ratios. In addition to the 'development deficit', the perception among Muslims that they are discriminated against and excluded is widespread, which exacerbates the problem. The Committee
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strongly suggests that the policies to deal with the relative deprivation of the Muslims in the country should sharply focus on inclusive development and 'mainstreaming' of the Community while respecting diversity.

4. XV. POST SACHAR SCENARIO

After the submission of the Sachar Committee Report several state Governments started initiative to include Muslims in the category of OBCs and provided reservation in the state’s services.

The former chief minister of West Bengal Budhadeb Bhattacharyee had I February, 2010, announced the OBC quota for Muslims, acting on the recommendation of the Justice Ranganath Mishra Commission.\textsuperscript{528} In 2012, a Bill was Passed in the West Bengal Assembly that will provide 17 per cent reservation for Other Backward Classes, other than SC/ST, in two categories.\textsuperscript{529} The two categories are: OBC - A, (10\%) which consists of more backwards among backwards (where 99 per cent are Muslims and few are Hindus) and OBC – B (7\%) where less backward (where 99 per cent are Hindu and only 1 per cent are Muslims)

**Estimated Population of OBCs\textsuperscript{530}**

Systematic caste-wise enumeration of population was introduced by the Registrar General of India in 1881 and discontinued in 1931. In view of this, figures of caste-wise population beyond 1931 are not available. But assuming that the inter se rate of growth of population of various castes, communities and religious-groups over the last half a century has remained more or less the same, it is possible to work out the percentage that all these groups constitute of the total

\textsuperscript{528} Indian Express: Updated Tue, 29 Jan 2013, 15:53 IST, Internet Edition.
\textsuperscript{529} Ibid
\textsuperscript{530} Ibid at 56.
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population of the country.

Working on the above basis the Commission culled out caste/community-wise population, figures, from the, census records of 1931 and, then grouped them into broad caste-clusters and religious groups. These collectivities were subsequently aggregated under five major heads, i.e. (i) Scheduled Castes and Scheduled, Tribes (ii) Non-Hindu Communities, Religious groups, etc., (iii) Forward Hindu Castes and Communities. (iv) Backward Hindu Castes and Communities; and (v) Backward Non-Hindu Communities\textsuperscript{531}.

The population of Hindu OBCs could be derived by subtracting from the total population of Hindus, the, population of Schedule Castes, Scheduled Tribes and. that of forward Hindu castes and communities and it worked out to 52%. But the same approach could not be adopted in respect of non-Hindu OBCs. Assuming that roughly the proportion of OBCs amongst non-Hindus was of the same order as amongst the Hindus population of non-Hindu OBCs was also taken as 52% of the actual proportion of their population of 16.16%, or 8.40%. Thus the total population of Hindu and non-Hindu OBCs naturally, added up to nearly 52% (43.70%+ 8.40%) of the country's Population. From the foregoing it will be seen that excluding Scheduled Castes and Scheduled Tribes, Other Backward classes constitute nearly 52% of the Indian population\textsuperscript{532}.

\textsuperscript{531} Ibid
\textsuperscript{532} Ibid
4. XVI. REPORTS OF THE TWO NATIONAL BACKWARD CLASS COMMISSIONS

First Backward Class Commission, 1953

Over the years there has been an ongoing debate on the question of an acceptable criterion for determining social and educational backwardness. Despite the reports of state backward classes committee, the court ruling and policy declarations, the problem of identifying backward classes has remained unresolved. Consequently the age old issue of job-reservation continues to the cause of social tensions and political conflicts\(^{533}\), because the constitution neither enumerates the classes of citizens who are backward nor lays down the criteria for determining backwardness. However, Article 340 envisages the setting up of a commission to investigate the conditions of socially and educationally backward classes and the difficulties under which they labour and to suggest remedial measures\(^{534}\).

In pursuance of Article 340, on January 29, 1953 the president of India appointed the First Backward Classes Commission with Kaka Kalelkar as its Chairman. The commission was directed to determine the criteria to be adopted in considering whether any section of people (in addition to the Scheduled Castes and tribes) should be treated as socially and educationally backward classes and in accordance with such criteria to prepare a list of such classes. The commission was also directed to investigate the conditions of all such socially and educationally backward classes and the difficulties under which they labour and make recommendations: (a) as to the steps that should be taken by the Union or any State to remove such difficulties or to improve their conditions;


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(b) as to the grants that should be made.

After two years of hard work the Commission prepared a list of 2,399 castes and community and recommended various measures for their economic and social advancement. The commission submitted its report on March 1955. The Commission issued a questionnaire comprising 182 question for eliciting the views of the state Governments and the general public on various aspects of its inquiry. It also undertook extensive touring of the country to collect on the spot evidence.

After sifting and sorting the facts collected as above the Commission formulated the following criteria for identifying socially and educationally backward classes-

(i) Low social position in the traditional caste hierarchy of Hindu society.
(ii). Lack of general educational advancement among the major section of a caste or community.
(iii). Inadequate or no representation in Government service.
(iv). Inadequate representation in the field of trade, commerce and industry.

It also prepared a list of 2399 backward castes or communities for the entire country, and 837 of them were classified as most backward. The recommendations of the Commission for the upliftment of the backward classes are extremely wide-ranging and comprehensive.

Survey made by Backward Class Commission:

A country-wide socio-educational survey covering 405 out of 407 Districts was conducted with the help of various states from February to June, 1980. Voluminous data gathered from the survey was computerized and 31 primary lobbies were generated from this data in respect of each state and Union Territory. On the basis of these tables, 11 Indicators or criteria for social and educational backwardness were derived and they were grouped under 3 broad heads, i.e., Social, Educational and
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Economic. In view of their relative importance, 3 points were assigned to each one of the Social Indicators, 2 to Educational Indicators, and 1 to Economic Indicators. This added up to a total score of 22 points. All these 11 indicators were applied to each state. States obtaining a minimum score of 11 points on this scale were listed as socially and educationally backward.

A large number of castes were identified as backward in each state as a result of the Socio-Educational Survey. As this survey covered only 2 villages and one urban block per District, a large number of castes were naturally left out. Moreover, in some cases, the size of the sample was so small that the results were not dependable.

In view of this two supplementary approaches were adopted to prepare complete lists of OBCs for each state. First, state-wise list of the 11 groups of primitive tribes, exterior castes, criminal tribes, etc, contained in the Registrar General of India’s compilation of 1961 were culled and included in the Commission’s lists of OBCs. This was done as the social and educational status of these castes and communities was more or less akin to Scheduled Castes and Scheduled Tribes. Secondly, based on the public evidence and personal knowledge of the Members of the Commission, state wise list of those OBCs were drawn up which could not be covered by the socio-educational survey.

This report, however, was not accepted by the Government as it did not apply any objective tests for identifying backward classes and opposed the adoption of caste as one of the criteria for backwardness. Five out of eleven Members of the Commission had given notes of dissent. The government felt that the commission had classified a very large section of the population as backward and if special assistance had to be extended to all these people, the really needy will be swapped by the multitude. The government was also opposed to the caste as one of the criteria for backwardness and preferred the application of economic tests.
Identification and Determination of Backward Classes

One serious defect noticed by the government in the report of first Backward Classes Commission was that it had not formulated any objective criteria for classifying Other Backward Classes. The need for field surveys and formulation of objective tests has also been repeatedly emphasized by the Supreme Court in several cases. In view of this, the Commission has taken special care to tap a number of independent sources for the collection of primary data.

Second Backward Classes Commission (Mandal Commission) Report, 1979

By an Order made by the President of India, in the year 1979, under Article 340 of the Constitution, a Backward Class Commission was appointed to investigate the conditions of socially and educationally backward classes within the territory of India, which Commission is popularly known as Mandal Commission. The term and reference of the Commission were:

i) To determine the criteria for defining the socially and educationally backward classes;

ii) To recommend steps to be taken for the advancement of the socially and educationally backward classes of citizen so identified;

iii) To examine the desirability or otherwise of making provisions for the reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or of any state; and

iv) To present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

The Commission submitted its report with a minute of dissent of one of its member on 31st December 1980. The commission appeared to have identified as many as 3743 castes as socially and educationally backward and made its recommendations.
Identification and Determination of Backward Classes

RECOMMENDATIONS

The upliftment of Other Backward Classes is part of the larger national problem of the removal of mass poverty. This is only partially correct. The deprivation of OBCs is a very special case of the larger national issueS: here the basic question is that of social and educational backwardness and poverty is only a direct consequence of these two crippling caste based handicaps. As these handicaps are embedded in our social structure, their removal will require far-reaching structural changes. No less important will be changes in the perception of the problems of OBCs by the ruling classes of the country.

Reservations

One such change in the attitude of the ruling elite pertains to the provision of reservation in government services and educational intuitions for the candidates of other Backward Classes. It is generally argued that looking to the large population of OBCs (52%), recruitment of a few thousands OBCs every year against reserved vacancies is not going to produce any perceptible impact on their general condition. On the other hand, the induction of a large proportion of employees against reserved vacancies will considerably impair the quality and efficiency of the government services. It is also siated that the benefits of such reservations will be skimmed off by those sections of OBCs which are already well off and the really backward sections will be left high and dry. Another argument advanced against this approach is that the policy of large scale reservations will cause great heart burning to those meritorious candidates whose entry into service will be barred as a result thereof.

All the above arguments are based on fairly sound reasoning. But these are also the arguments advanced by the ruling elite which is keen on preserving its

536 Ibid
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privileges. Therefore, like all such reasoning, it is based on partisan approach. By the same token, while illuminating some immediate areas of concern it tends to ignore much larger issues of national importance.

It is not at all our contention that by offering a few thousand of jobs to OBC candidates we shall be able to make 52% of the Indian population as forward. But we must recognize that an essential part of the battle against social backwardness is to be fought in the minds of the backward people. In India government service has always been looked upon as a symbol of prestige and power. By increasing the representation of OBCs in Government services, we give them an immediate feeling of participation in the governance of this country. When a backward class candidate becomes a Collector or a Superintendent of Police, the material benefits accruing from his position are limited to the members of his family only. But the psychological spin off of this phenomenon is tremendous; the entire community of that backward class candidates feels socially elevated. Even when no tangible benefits flow to the Community at large the feeling that now it has its "own man" in the "corridors of power" acts as morale booster⁵³⁷.

In a democratic set-up every individual and community has a legitimate right and aspiration to participate in ruling this country. Any situation which results in a near denial of this right to nearly 52% of the country’s population needs.

Apprehensions regarding drop in the quality of Government services, owing to large scale induction of S.C, S.T and O.B.C. candidates against reserved post may be justified only up to a point. But is it possible to maintain, that all candidates selected on merit turn out to be honest; efficient, hard-working and dedicated? At present, top echelons of Government services are manned predominantly by open competition candidates and if the performance of our bureaucracy is any indication, it has not exactly covered itself with glory. Of course,

⁵³⁷ Ibid
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this does not imply that candidates selected against reserved posts will do better. Chances are that owing to their social and cultural handicap they may be generally a shade less competent. But, the other hand they will have the great advantage of possessing test hand knowledge of the sufferings and problems of the backward sections of society. This is not a small asset for field workers and policy makers even at the highest level.

It is no doubt true that the major benefits of reservation and other welfare measures for Other Backward Classes will be cornered, by the more advanced sections of the backward communities. But is not this a universal phenomenon. All reformist remedies have to contend with low recovery along with the hierarchical adient; there no quantum jumps in social reform. Moreover, human nature being what it is, a "new class" ultimately does emerge even in classless societies. The chief merit of reservation is not that it will introduce egalitarianism amongst OBCs when the rest of the Indian society is seized by all sorts of inequalities. But reservation was certainly erode, the hold of higher castes on the services and enable, OBCs in general to have a sense of participation in running the affairs of their country.

It is certainly true that reservation for OBCs will cause a lot of heart burning to others. But should the mere fact, of this heart burning be allowed to operate as a moral veto against social reform. A lot of heart burning was caused to the British when the black left India. It burns the hearts of all whites when the black protest against apartheid in South Africa. When the higher castes constituting less than 20% of the country's population subjected the rest to all manner of social injustice, it must have caused a lot of heart burning -to the lower castes. But now that the lower castes are asking for a modest share of the national cake of power and prestige, a chorus of alarm is being raised on the plea that this will cause heart burning to the ruling elite of all the spacious arguments advanced against reservation for backward classes, there is none which beats this one about 'heart-burning' in sheer sophistry.538

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538 Ibid
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In fact the Hindu society has always operated a very rigorous scheme of reservation, which was internalised through caste system. Eklivyā lost his thumb and Shambhuk his neck for their breach of caste rules of reservation. The present furore against reservations for OBCs is not aimed at the principle itself, but against the new class of beneficiaries, as they are now clamouring for a share of the opportunities which were all along monopolised by the higher castes.

Quantum and Scheme of Reservations

Scheduled Castes and Scheduled Tribes constitute 22.5% of the country's population. Accordingly, a pro-rata reservation of 22.5% has been made for them in all services and public sector undertakings under the Central Government. In the States also, reservation for SCs and STs directly proportional to their population in each State.

As stated above the population of OBCs, both Hindu and non-Hindu, is around 52% of the total population of India. Accordingly 52% of all posts under the Central Government should be reserved for them. But this provision may get against the law laid down in a number of Supreme Court judgements wherein it has been held that the total quantum of reservation under Articles 15 (4) and 16(4) of the Constitution should be below 50%. In view of this the proposed reservation for OBCs would be to be pegged at a figure which, when added 12.5% for SCs and STs, remains below 50%. In view of this legal constraint, the Commission is obliged to recommend a reservation of 27% only, even though their population is almost twice this figure\(^{539}\). States which have already introduced reservation for OBCs exceeding 27% will remain unaffected by this recommendation.

With the above general recommendations regarding the quantum of

\(^{539}\) Ibid
reservation, the Commission proposes the following over-all scheme of reservation for OBCs:-

(1) Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27 %.

(2) The above reservation should also be made applicable to promotion quota at all levels.

(3) Reserved quota remaining unfilled should be carried forward for a period of three years and dereserved thereafter.

(4) Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner as done in the case of SCs and STs.

(5) A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of SC and ST candidates.

The above scheme of reservation in its toto should also be made applicable to all recruitment to public sector undertakings both under the Central and State Governments, as also to nationalized banks.

All private sector undertakings which have received financial assistance from the Government in one form or the other should also be obliged to recruit personnel on the aforesaid basis.

All universities and affiliated colleges should also be covered by the above scheme of reservation.

To give proper effect of these recommendations, it is imperative that adequate statutory provisions are made by the Government to amend the existing enactments, rules, procedures, etc. to the extent they are not in consonance with the same.

Educational Consciousness

Our educational system is elitist in character, results in a high degree of wastage and is least suited to the requirements of an over-populated and developing-
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country. It is a legacy of the British rule which was several criticized during the independence struggle, and has not undergone any structural changes. enough it is least started to the needs of back-ward classes, yet, they are forced to run the rat-race with others as no options are available to them. As educational reform was not within the terms of reference of this commission. We are also forced to trend the eaten track suggest only the palliative measure within the existing framework.540

Various State Governments are giving a number of educational concessions to other Backward Class students like exemption of tuition fee free supply of books and clothes, mid-day meal special hostel facilities, stipends, etc. These concessions are all right as far as they go. But they do not go far enough. What is required is, perhaps, not so much the provision of additional funds as the framing of integrated scheme for creating the proper environment and incentives for serious and purposeful studies.

It is well known that most backward class children are irregular and indifferent students and their drop-out rate is very high. There are two mail reasons for this: First, these children are brought UI in a climate of extreme social and cultural deprivation and, consequently, proper motivation for schooling is generally lacking. Secondly, most of these children come from very poor homes and their parents are forced to press them into doing small chores from a very young age. Upgrading the cultural environment is a very slow process. Transferring these children to an artificially upgraded environment is beyond the present sources of the country. In view of this It is recommended that this problem may be tackled on a limited and selective basis on two frosts.

First, an intensive and time bound programme for adult education should be launched in selected pockets with high concentration of OBC population. This is a basic motivational approach, as only proper motivated parents will take serious interest in educating their children. Secondly, residential schools Should be set up in

540 Ibid
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these areas for backward class students to provide a climate specially conducive to serious studies. All facilities in these schools including board and lodging, will have to be provided free of cost to attract students from poor and backward homes, separate Government Hostels for OBC students with the above facilities will be another step in the right direction.

A beginning on both these fronts will have to be made on a limited scale and selective basis. But the scope of these activities should be expanded as last as the resources permit. Adult education programme and residential schools, started on a selective basis will operate as growing-points of consciousness for the entire community and their multiplier effect is bound to be substantive, Whereas Several States are extended a number of adhoc concession to backward class students, few serious attempts has been made to integrate these facilities - into a comprehensive scheme for a qualitative up gradation of educational environment available to OBC students.

After all educational is the best catalyst of change and educating the, backward classes is the surest way to improve their self image and raise their social status As OBCs cannot afford the high wastage rates of our educational system, it is Important that their educational system it is very important that their education is highly biased in favour of all reservation in services will absorb only a very small percentage of the educated backward classes, and the rest should be suitably equipped with vocational skills to enable them to get a return on having invested several year in education.\textsuperscript{541}

It is also obvious that even if all the above facilities are given to OBC students, they will not be able to compete on an equal footing with others in securing admission to technical and professional institutions. In view, of this it is recommended that seats should be reserved for OBC students in all scientific,
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technical and professional institutions run by the Central as well as State Governments. This reservation will fall under Article 15(4) of the Constitution and the quantum of reservation should be the same as in the Government services, i.e., 27%. Those which have already reserved more than 27% seats for OBC students will remain unaffected by this recommendation\textsuperscript{542}.

While implementing the provision for reservation it should also be ensured that the candidates who are admitted against the reserved quota are enabled to derive full benefit of higher studies. It has been generally noticed that these OBC students coming from an impoverished cultural background, are not able to keep abreast with other students. It is, therefore, very essential that special coaching facilities are arranged for all such students in our technical and professional institutions. The concerned authorities should clearly appreciate that their job is not finished once candidates against reserved quota have been admitted to various institutions. In fact the real task starts only after that. Unless adequate follow-up action is taken to give special coaching assistance to these students, not only these young people will feel frustrated and humiliated but the country will also be landed with ill-equipped and sub-standard engineers, doctors and other professionals.

Financial Assistance

Vocational communities following hereditary occupations have suffered heavily as a result of industrialization. Mechanical production and introduction of synthetic materials has robbed the village potter, oil crusher, black-smith, carpenter, etc. of their traditional means of livelihood and the pauperization of these classes is a well known phenomenon in the country-side\textsuperscript{543}.

It has, therefore become very necessary that able institutional finance and

\textsuperscript{542} Ibid
\textsuperscript{543} Ibid

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technical assistance is made available to such member of village vocational communities who want to up small scale industries on their own. Similar assistance should also be provided to those promising OBC candidates who have obtained special vocational training.

State Governments have created various financial and technical agencies for the promotion of small and medium scale industries. But it is well known that only the more influential members of the community are able to derive benefits from these agencies'. In view of this, it is very essential that separate financial institutions for providing financial and technical assistance are established for the backward classes. Some State Governments like Karnataka and Andhra Pradesh have already set up separate financial corporations etc. for OBCs\(^{544}\). Cooperative Societies of occupational groups will also help a lot. But due care should-be taken I hat all the office-bearers and members of such societies belong to the concerned hereditary occupational groups and outsiders are not allowed to exploit them by infiltrating into such cooperatives.

The share of OBCs in the industrial and business life of the country is negligible and this partly explains their extremely low income levels. As a part of its overall strategy to uplift the back-ward classes, it is imperative that all State Governments are suitably advised and encouraged to create a separate network of financial and technical institutions to foster business and industrial enterprise among QBCs.

**Structural Changes**

Reservations in Government employment and educational institutions, as also all possible financial assistance will remain mere palliatives unless the problem of backwardness is tackled at its root. Bulk of the small land-holders, tenants,

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\(^{544}\) Ibid
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agricultural labour impoverished village artisans; unskilled workers etc. belong to Scheduled Castes, Scheduled Tribes and Other Backward Classes. “Apart from social traditions, the dominance by the top peasantry is exercised through recourse to informal bondage which arises mainly through money-lending, leasing out of small bits of land and providing house-sites and dwelling space to poor peasants. As most of the functionaries of Government are drawn from the top peasantry, the class and, caste linkage between the functionaries of Government and the top peasantry remain firm. This also tills the socio-political balance in favour of the top peasantry and helps it in having its dominance over others\textsuperscript{545}.

The net outcome of the above situation is that notwithstanding their numerical preponderance, backward classes continue to remain in mental and material bondage of the higher castes and rich peasantry. Consequently, despite constituting nearly $3/4$th of the country's population, Scheduled Castes, Scheduled Tribes and Other Backward Classes have been able to acquire a very limited political clout, even though adult franchise was introduced more than three decades back. Through their literal monopoly of means of production of higher castes are able to manipulate and coerce the backward classes into acting against their own interests In view of this, until the strangle of the existing production relations is broken through radical land reforms, the abject dependence of under privilege; classes on the dominant higher castes will continue indefinitely: In fact there is already a sizeable volume of legislation on the statute books that abolish zamindari, place ceilings on land holdings and distribute to the landless. But in actual practice its implementation has been halting, half-hearted and superficial. The States like Karnataka, Kerala and West Bengal which have gone about the Job more earnestly have not only succeeded in materially helping the Backward classes, but also reaped rich political divided into the bargain\textsuperscript{546}.

It is the Commission's firm conviction that a real transformation of the

\textsuperscript{545} Ibid
\textsuperscript{546} Ibid
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existing production relations is the most important single step that can be taken for the welfare and upliftment of all backward classes. Even if this is not possible in the industrial sector for various reasons; the agricultural sector, a change of this nature is both feasible and overdue.

The Commission, therefore; strongly recommends that all the State Governments should be directed to enact and implement progressive land legislation so as to effect basic-structural 'changes' in the existing production relation in the countryside.

At present surplus land is being allotted to SCs and STs. A part of the surplus land becoming available in future as a result of the operation of land ceiling laws etc. should also be allotted to be OBC landless labour.

Miscellaneous

(1) Certain sections of some occupational units like Fishermen, Banjaras, Bansforas, Khatwes etc. still suffer from the stigma of unsociability in some parts of the country. They have been, listed as O.B. Cs by the Commission, but their inclusion in the lists of Scheduled Castes/Scheduled Tribes may be considered by the Government.

(2) Backward Classes Development Corporation should be set up both at the Central and State levels to implement various socio-educational and economic measures for their advancement.

(3) A separate Ministry/Department for O.B. Cs at the Centre and states should be created to safeguard their interests.

(4) With a view to giving better representation to certain very backward sections of O.B. Cs like the, Gaddis in Himachal Pradesh, Neo-Buddhists in Maharashtra, Fishermen in the Coastal areas, Gujjars in J & K, it is recommended, that areas of

547 Ibid
548 Ibid
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their concentration may be carved out into separate constituencies at the time of delimitation.

Central Assistance:

At present no Central Assistance is available to any State Government for implementing any welfare measures for Other Backward Classes. The 18 States and Union Territories which have undertaken such measures have to provide funds from their own-resources, practically every State Government pointed out that unless the Centre is prepared to liberally finance all special schemes minor the upliftment of OBCs will be beyond the available resources of the States to undertake any worthwhile programme for the benefit of other Backward classes.549

The commission fully shares views of the State Governments in this matter and strongly recommends that all development programme specially designed for Other Backward Classes should financed by the Central Government in the same manner and to the same extent as done the case of Scheduled Castes and Scheduled Tribes.

Regarding the Period of operation of the Commission’s recommendations, the entire scheme should be reviewed after twenty years. We have advisedly suggested this span of one generation, as the raising of social consciousness is generational progress. Any review at a shorter interval would be rather arbitration and will not give a fair indication of the impact of our recommendations on the prevailing status and life-styles of O.B.Cs.550

Social Backwardness and Caste551

549 Ibid
550 Ibid
551 Ibid, Chapter IV, at 14.
Castes are the building bricks of the Hindu social structure. They have kept Hindu society divided in a hierarchical order for centuries. This has resulted in a close linkage between the caste ranking of a person and his social, educational and economic status. This manner of stratification of society gave the higher castes deep-rooted vested interests in the perpetuation of the system. The priestly castes evolved an elaborate and subtle scheme of scripture, ritual and mythology and perpetuate their supremacy and, hold the lower castes in bondage for ages. Most of our Shastras uphold the four fold Varna system and, because of this religious sanction, caste system has lasted longer than most other social institutions based on inequality and inequity.\footnote{Ibid}

In view of the permanent stratification of society in hierarchical caste order, members of lower castes have always suffered from discrimination in all walks of life and this has resulted in their social, educational and economic backwardness. In India, therefore, the low ritual caste status of a person has a direct bearing on his social backwardness. Caste system has been able to survive over the centuries because of its inherent resilience and its ability to adjust itself to the ever changing social reality moreover, caste restrictions have loosened considerably as a result of the rule of law introduced by the British, urbanisation, industrialization, speed of mass education and above all, the introduction of adult franchise after independence. But all the above changes mark only shift of emphasis and not any material alteration in the basic structure of caste.\footnote{Ibid}

It is generally agreed that whereas certain castes taboos have weakened as a result of the above changes, the importance of casteism in Indian politics is on the increase. This perhaps, was inevitable. Caste system provided the political leadership with readymade channel of communication and mobilization and, in view of this, the importance of caste was bound to increase in Indian politics.

\footnote{Ibid}
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Social Justice, Merit and Privileges\textsuperscript{554}

Equality before the law is a basic Fundamental Right guaranteed under Article 14 of the Constitution. But the principle of equality is a double edged weapon. To treat unequals as equals is to perpetuate inequality. The humaneness of a society is determined by the degree of protection it provides to its weaker, handicapped and less gifted members. Equality of opportunity and equality of treatment places the weak and strong on par and to that extent, it amount to denial of social justice. In fact, it is equality of result which is the acid test of society’s egalitarian pretentions. In a highly unequal society like ours, it is only by giving special protection and privileges to the underprivileged section of society that we can enable the weak to resist exploitation by the strong.

Caste is an important factor in the identification of Other Backward Classes among Hindu communities. Backwardness must be social and educational and not either social or educational. Caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4)\textsuperscript{555}.

Recommendations\textsuperscript{556}

Reservation for SCs and STs is in proportion to their population, i.e. 22.5%. But as there is a legal obligation to keep reservation under Article 15(4) and 16(4) of the Constitution below 50%, the Commission recommends a reservation of 27% for OBCs. This reservation should apply to all Government services as well as technical and professional institutions, both in the centre and the states.

\textsuperscript{554} Ibid, chapter- VI, at 21.
\textsuperscript{555} Ibid
\textsuperscript{556} Ibid
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Special educational facilities designed at upgrading the cultural environment of the students should be created in selected areas containing highly concentration of OBCs. Special emphasis should be placed on vocational training. Separate coaching facilities should be provided in technical and professional institutions to OBCs students to enable them to catch up with students from open quota. Special programmes for upgrading the skills of village artisans should be prepared and subsidized loans from financial institutions granted to them for setting up small scale industries. To promote the participation of OBCs in the industries and business life of the country, a separate net-work of financial and technical institutions should be created by all state Governments.

The report of the Mandal commission was laid before each house of parliament and discussed on two occasions – once in 1982 and again is the year 1983. The proceedings of the Lok Sabha contains the statement of Sri R. Venkataraman, the then Minister for defence and home affairs. He expressed the view that “the debate has cut across party lines and a number of people on this side have supported the recommendations of the Mandal commission. A large number of people on the other side have also supported it. If one goes through the entire debate one will be impressed with, a fairly unanimous desire on the part of all sections of the house to final a satisfactory solution to this social evil of backwardness of Scheduled Castes / Scheduled Tribes etc. which is a festering sore in our body politic.” The Hon’ble Minister then proceeded to state, “the members generally said that the recommendations should be accepted. Some members said that it should be accepted in to. Some members have said that it should be accepted with certain reservations. Some members said, there should be other criteria than only social and educational backwardness. All these are ideas which Government will take into account. The problem that confronts Government today is to arrive at a satisfactory definition of backward classes and bring about an acceptance of the same by all the state concerned.” Hon’ble Minister referred to certain difficulties the Government was facing in implementing the recommendations of the commission on account of the
large number of castes identified and an account of the variance in the state lists and the Mandal commission list and stated that consultation with various departments and state Governments was in progress in this behalf the stated that a meeting of the chief ministers would be conveyed shortly to take decision in the matter\textsuperscript{557}.

The report was again discussed in the year 1983. The then Hon’ble minister for home Sri. P.C. Sethi, while replying to the debates stated, “while referring to the commission whose report has been discussed today, I would like to remind the house that although this commission had been appointed by our predecessor Government, we now desire to continue with this commission and employment its recommendations.”

No action was, however, taken on the basis of the Mandal commission report until the issuance of the office memorandum on 25\textsuperscript{th} September, 1991. On that day, the then Prime Minister Sri. V. P. Singh made a statement in parliament in which he stated inter alia as follows: “After all, if you take the strength of the whole of the Government employees as a proportion of the population, if will be 1% we are under no illusion that this 1% of the population, or a fraction of it will resolve the economic problems of the whole section of 52%. No, we consciously want to give them a position in the decision making of this country, a shave in the power structure. We talk about merit. That the section which had 52% of the population gets 12.55% in government employment. What is the merit of the system? That is class- (i) employees of the Government if gets only 4.69%, for 52% of the population in decision-making at the top echelons if is not even one tenth of the population of the country; in the power structure it hardly 4.69%, I want to challenge first the merit of the system itself before we come and question on the merit, whether on merit to reject this individual or that and we want to change the structure basically, consciously, with open eyes. And I know when changing the structure comes, there will be resistance.

\textsuperscript{557} Indra Sawhney v. Union of India. AIR 1993 S C 477. at 513.
What I want to convey is that treating unequal as equals is the greatest injustice, and correction of this injustice is very important and that is what I want to convey.”558

Government has carefully considered the report and the recommendations of the commission in the present context regarding the benefits to be extended to the socially and educationally backward classes as opined by the commission and are of the clear view that at the outset certain weightage has to be provided to such classes is the services of the union and their public undertakings. Accordingly orders are issued as follows:-

(i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for socially and educationally backward classes.
(ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detail instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
(iii) Candidates belonging to SEBC recruited as the basis of merit is an open competition on the same standard prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
(iv) The SEBC would comprise is the first phase the castes and communities which are common to both the list in the report of the Mandal Commission and the State Government’s list. A list of such castes/communities is being issued separately.
(v) The aforesaid reservation shall take effect from 07.08.1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these order559.

Similar instructions in respect of public sector undertaking and financial institutions including public sector banks will be issued by the department of public Enterprises and Ministry of Finance respectively560.

558 Ibid.
559 Indra Sawhny v. Union of India, A I R 1993 S C 447.
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Soon after the issuance of the said memorandum there was widespread protest in certain Northern States against it. There occurred serious disturbance to law and order involving damage to private and public property. Some young people lost their lives by self-immolations. Writ petitions were filed in the court questioning the said memorandum along with applications for staying the operation of the memorandum. It was stayed by the Supreme Court. After the change election held in the first half of 1991, another office memorandum was issued on 25th September, 1991 modifying the earlier memorandum dated 13th August, 1990. The later memorandum reads as follows: subject: Recommendation of the second backward classes commission (Mandal Report)-Reservation for socially and educationally backward classes in services under the Government of India. The undersigned is directed to invite the attention to O. M. of even number dated the 13th August, 1990, on the above mentioned subject and to say that in order to enable the poorer sections of the SEBCS to receive the benefits of reservation on a preferential basis and to provide reservation for other economically backward sections of the people not covered by any of the existing schemes of reservation, Government have decided to amend the said memorandum with immediate effect as follows:

(i) Within the 27% of the vacancies in civil posts and services under the Government of India reserved for SEBCS, preference shall be given to candidates belonging to the poorer sections of the SEBCS. In case sufficient number of such candidates one not available, unfilled vacancies shall be filled by the other SEBCS candidates.

(ii) 10% of the vacancies in civil posts and services under the Government of India shall be reserved for other economically backward section of the people who are not covered by any of the existing schemes of reservation.

560 Ibid.
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(iii) The criteria for determining the poorer sections of the SEBCS or the other economically backward sections of the people who are not covered by any of the existing schemes or reservations are being issued separately\textsuperscript{561}.

The O. M. of even number dated the 13\textsuperscript{th} August, 1990, shall be deemed to have been amended to the extent specified above\textsuperscript{562}.

The resentment against the office\textsuperscript{3} memorandum dated 13\textsuperscript{th} August, 1990 and 25\textsuperscript{th} September 1991 led to filing of several writ petition in the supreme court ad resulted the case in the name of Indra sawhney v. Union of India,\textsuperscript{563}

In \textit{Indra Sawhney v. Union of India,}\textsuperscript{564} the court took the entire problem relating to the declarations made in two office memorandums dated 13\textsuperscript{th} August 1990 and 25\textsuperscript{th} September 1991 and for the convenience and clarity the court framed all the issues in question form for which the decision of the court were sought. The questions were as follows:

1. Whether the ‘provision’ contemplated by Article 16(4) must necessarily be made by the legislative wing of the state?
2. Whether clause (4) of Article 16 is an exception to clause (1) of Article 16?
3. Whether clause (4) of Article 16 is exhaustive of the special provisions that can be made in favor of ‘backward class of citizens’?
4. Whether reservations can be made under clause (1) of Article 16 or whether it permits only extending of preferences / concessions?
5. What does the expression backward class of citizens in Article 16 (4) means?
6. Whether backward classes can be identified on the basis and with reference to caste alone?

\textsuperscript{561} Indra Sawhncy v. Union of India, A I R 1993 S C  477 at 516.
\textsuperscript{562} Ibid.
\textsuperscript{563} Ibid.
\textsuperscript{564} Ibid.
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7. Whether a class, to be designated as a backward class, should be situated similarly to the SCs/STs?

8. Whether the means list can be applied in the course of identification of backward classes? And if the answer is yes, whether providing such a list is obligatory?

9. Whether the backward classes can be identified only and exclusively with reference to economic criteria?

10. Whether a criterion like occupation cum-income without reference to caste altogether can be involved for identifying the backward classes?

11. Whether the backward classes can be further categorized into backward and more backward categories?

12. To what extent can the reservation be made?

13. Whether the 50% rule enunciated in Balaji case (AIR 1963 S C 649) is a binding rule or only a rule of caution or rule of prudence?

14. Whether the 50% rule, if any, is confined to reservation made under clause(4) of Article 16 or whether it takes in all types of reservations that can be provided under Article 16?

15. Further while applying 50% rule, if any, whether an year should be taken as a unit or whether the total strength of the cadre should be looked to?

16. Whether Devadasan (AIR 1964 S C 179) was correctly decided?

17. Whether Article 16 permits reservations being provided in the matter of promotions?

18. Whether reservations are anti-meritarian?

19. Whether the extent of judicial review is restricted with regard to the identification of backward classes and the percentage of reservations made for such classes to a demonstrably preserves identification or a demonstrably unreasonable percentage?

20. Whether the reservation of 10% of the post in favor of other economically backward sections of the people who are not covered by any of the existing schemes of the reservations made by the office memorandum dated 25-09-1991 permissible under Article 15?565

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565 Answer of these questions are presented in their respective places.
4. XVII. FURTHER CLASSIFICATION OF BACKWARD CLASSES

In *M. R. Balaji v. State of Mysore*\(^{566}\), it was held that the sub-classification made by the order between backward classes and more backward classes does not appear to be justified under Article 15(4). Article 15(4) authorizes special provision being made for the rashly backward classes, what the impugned order in substance purports to do is to cleanse impugned order in benefit of all the classes of citizens who are less advanced compared to the advanced classes in the state end that is not the scope of Article 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the state is treated as backward, and that illustrates how the order in fact divides the population of the state into most advanced and the rest, and puts to latter into two categories of backward and more backward. The classification of the two categories, therefore, is not warranted by Article 15(4). Chirrappa J. in *K.C. Vasant Kumar v. State of Karnataka*\(^{567}\), “said we do not see why an principle there cannot be a classification into Backward classes and more backward classes, if both classes are not merely a little behind but far for behind the most advanced classes. In fact such a classification would be necessary to help to more backward classes: otherwise those of the backward classes who might be a little more advanced them the more backward classes might take a way with all the seats”.

In *Indra Sawhney v. Union of India*\(^{568}\), the court held that there is no constitutional or legal bar to a state categorizing the backward classes as backward and more backward. We are not saying that it ought to be done. We are concerned with the question if a state makes such a categorization, whether it would be invalid?

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\(^{566}\) A I R 1963 S C 649.

\(^{567}\) A I R 1985 S C 1495

\(^{568}\) A I R 1993 S C 477.
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We think not. Let us take the criteria evolved by Mandal commission. Any caste, group or class which scored eleven or more points was treated as a backward class. Now it is not as if all the several thousands of castes / groups / classes which have scored points between 20 to 22 and there may be some who have scored points between eleven and thirteen. It cannot reasonably be denied that there is no difference between the two sets of castes / groups / classes. To give an illustration, take two occupational groups viz., goldsmiths and vaddes (transitional stone-cutters in Andhra Pradesh) both in duded within other backward classes. None can deny that goldsmiths are far less backward that vaddes if both of them are group together and reservation provided, the inevitable result would be that gold-smiths would take away all the reserved points leaving none for vides. In such a situation, a state may think it advisable to make a reservation even among other backward classes so as to ensure that the more backward among the backward classes obtain the benefits intended for them. Where to draw the line and how to effect the sub-classification is, however matter for its commission is and the state and so long as it is resemble down, The court may not intervene. It this connection, reference may be made to the categorization obtaining in Andhra Pradesh. The backward classes have been divided into four categories. Group-A comprises of “Aboriginal tribes vimukta jatis. No medic and semi-no medic tribes etc.” group-B comprise professional group live toppers, weavers, carpenters, ironsmiths, goldsmiths, kamsalins etc. group-C pertains to “Scheduled Castes convert to Christianity and their progeny”, while Group-D comprises of all other classes / communities / groups, which are not in duded in groups A, B and C. The 25% vacancies reserved for backward classes are sub-divided between them in proportion to their respective population. This categorization was justified in Balaram case\(^{569}\). This is merely to show that even among backward classes, there can be a sub-classes, there can be a sub-classification an a reasonable basis\(^{570}\).

\(^{569}\) AIR 1972 S C 1375
\(^{570}\) Ibid
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There are of course types and degree of backwardness. Some are backward only economically while others are backward educationally as well as socially. Although economic backwardness at the root of social and educational backwardness on account of the caste taboo, educational and social advancement was denied even to the economically sound. The Scheduled Castes and Scheduled Tribes are, therefore, backward in all respects. Among the backward, further, the level of backwardness varies. Even among the scheduled casts and Scheduled Tribes some are more backward than others. Hence, it stand to reason that those who are backward in all respects such of the schooled casts and Scheduled Tribes should get preference over other and among the scheduled cast and tribes who are more backward should get priority over those who are less backward571.

There is another way of looking at this issue. Article 16(4) recognizes only viz, backward classes of citizen it does not speak separately of scheduled cast and scheduled tribe, as does Article 15 (4). Even so it is beyond controversy that Scheduled Castes and Scheduled Tribes are also included in the expression “backward class of citizens” and that separate reservations can be provided in their favors. It is a well accepted phenomenon throughout the country. What is the logic behind it? It is that if Scheduled Castes and Scheduled Tribes and other backward classes are lumped together, OBC. Will take away all the vacancies lumped Scheduled Castes and Scheduled Tribes high and dry. The same logic also warrants categorization as between more backward and backward. The state can do it; it is not impermissible in law572.

It is held that depending upon the facts of each case, sub-classification of the backward would be justifiable provided separate quotas are prescribed for each of them.

572 Indra sawhrey v. Union of India, A I R 1993 S C 477 at.563.
4. XVIII. CARRY FORWARD RULE

In *T Devadasan v. Union of India*[^573^] (AIR 1964 SC 179), case on 19-9-1950 the Government of India published a resolution indicating their policy in regard to communal representatives in the services. The rule of such resolution was modified in 1963 and the modified rule provided that that 17½% of the total vacancies in a year would be reserved for being filed from amongst candidates belonging to Scheduled Castes and tribes. The further provided that if in any year suitable candidates were not available from amongst such classes the reserved posts would be deserved, filled by candidates from other classes and corresponding number of post could be carried forward to the next year. If in the subsequent year the same thing happened the posts unfilled by candidates from Scheduled Castes and tribes could be carried forward to the third year. In the third year the number of posts to be filled from amongst candidates of Scheduled Castes and tribes would thus be 17 ½% of the total vacancies to be filled in the years plus the total unfilled vacancies which had been carried forward from the two previous years. The sub thus permitted a perpetual carry forward of unfilled reserved regencies in the two years preceding its year of recruitment and provided addition to them of 17 ½% of the total vacancies to be filled in the recruitment year. If two successive years no candidate from amongst the scheduled cast and tribes was found to be qualified for filling any of the reserved posts, and supposing the be filled in a particular service was 100, by operation of the carry forward rule the vacancies to be filled by persons form amongst the Scheduled Castes and tribes would be 54 as against 46 by persons from amongst the more advanced classes. The reservation would thus be more them 50%. On the basis of reservation permitted by the carry forward rule as modified in 1955, in the year 1961, out of the 45 vacancies, actually filled, 29 went to members of the Scheduled Castes and tribes. That came to about 64% of reservation. The question for consideration was whether the carry forward

[^573^]: AIR 1964 SC 179.
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rule as modified in 1955 was unconstitutional either because its operation would practically destroy the foundational right guaranteed by Article 16(1) of the constitution or because it was violation of the guarantee contained in Article 14 of the constitution.\(^{574}\)

The court held that the carry forward rule as modified in 1955 was bad and must be struck down as invalid and unconstitutional. The court further held that the effect of carry forward rule as modified in 1955 would apparent if in the illustration which we have talent that were in the third years 50 total vacancies instead of 100. Out of these 50 vacancies 9 would be reserved for the scheduled cast and Scheduled Tribes. Assign to that the 36 carried forward from the two previous years, we would have a total of 45 reserved vacancies out of 50, that is, a percentage of 90. In the cast before us 45 vacancies have actually been filled out of which 29 have gone to members of the Scheduled Castes and tribes on the bases of reservation permitted by the carry forward rule. This comes to about 64.4% of reservation. Such being the result of the operation of the carry forward rule we mush on the basis of the decision in M.R. Balaji\(^{575}\) case hold that the rule is bad. Indeed, even in General manager Southern Railway v. Rangachari\(^{576}\) which is a case in which reservation of vacancies to be filed by promotion was upheld by this court. Gajendragadkar J. who delivered the majority judgment observed:

“It is also true that the reservation which can be made under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interest of other employees .In exercising the powers under Article 16(4) the problem of adequate representation of the backward class of citizens must be fairly and objectively considered and an attempt must always be made to strive a reasonable the balance between the claims of backward classes and the claries of

\(^{574}\) T..Devadasan v. Union of India, A I R 1964 S C 179.


\(^{576}\) A I R 1962 S C 36.
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other employees as well as the important consideration of the efficiency of administration. It is clear from both these decision that the problem of giving adequate reorientation to members of backward classes enjoined by Article 16(4) of the construction is not to be tacked by framing a general rule without bearing in mind its repercussions from year to year. What praise method. Should be adopted for this purpose is a matter for the Government to consider577.

Finally it was held that the carry forward rules modified is declared invalid578. In Akhil Bharatiya sashih Karamchan sangh (railways) v. Union of India579, the supreme court of India has shown positive response towards that reservation policy, which provided 64% reservation in selection posts of the scheduled caste and Scheduled Tribes candidates, was challenged. For 2 to 3 years. Consequently to that, reservation went up to 64% this excess reservation and carry forward rule was challenged by the Sangh as unconstitutional and ultravires. The Supreme Court upheld its validity of the railway board circular and said that it was valid. The court also upheld the carry forward rule. The court observed that, mathematical precision could not be applied in dealing with human problems. It pointed out that some excess will not affect the reservation but substantial excess will make the selection void. Justice Chinnappa Reddy went a step ahead and ahead and observed that, the rule of 50% laid down in the earlier cases was only for the guidance of judges and they were not bound by its this indeed is a remarkable judicial departure from its earlier rule laid down in Balaji and Devadasan cases.

In Indra Sawhney v. union of India580, the Supreme Court overruled the decision in Davadasan581 the court was of the opinion that on its own reserving , the

578 Ibid.
579 A I R 1981 S C 298.
580 A I R 1993 S C 477.
581 A I R 1964 S C 179
derision in so far as it strikes down the rule of carry forward is not sustainable. The most that could have been some in that case was to quash the appointments in excess of 50%, in as much as, as a matter of fact, more than 50% of the vacancies for the year 1960 came to be reserved by virtue of the said rule. The court held that the same rule of 50% shall be applied here but a year should be taken as the unit or basis, as the case may be, for applying the rule of 50% and not the entire cadre strength. The court reiterated that a carry forward rule need not necessarily be in the same terms as the one formed in Devadasan case\(^{582}\); a given rule may say that its unfilled reserved vacancies shall not be filled by unreserved category candidates but shall be carried forward as such for a period of three years. In such a case, contention may be viscid that reserved post remain a separate category altogether. In courts opinion however the result of application of carry forward rule, in whatever manner it is operated, should not result in breach of 50% rule\(^{583}\).

In *State Bank of India Scheduled Castes / Tribes Employers Welfare Association v. State Bank of India*\(^{584}\), the contentions of the employees the privieous unfilled vacancies reserved for scheduled cast / tribe employees lapsed after the expiry of three years, that should not allowed to laps and secondly that in any given not more than 50% of the vacancies should be available for being filled in by scheduled cast and scheduled tribe candidates, is isolative of Article 16. the court held that both there contentions, namely, about the carrying forward of reserved vacancies for a period of three years at the end of which they tapers, and the percussion that any given year not more than 50% of the available vacancies should be reserved, have seen negative by this court in the case of *Akhil Bharatiya Soshih Karmachari sangh (railway) case*. In the light of this judgement, the scheme formulated by the state bank of India under to two circular thus cannot be faulted\(^{585}\).

\(^{582}\) Ibid
\(^{583}\) Ibid
\(^{584}\) A I R 1996 S C 1838
\(^{585}\) Ibid.
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In *State of Punjab v. G.S. Gill*\(^{586}\), the court held that the carry forward rule is constitutionally permissible. It is an extension of the principle of providing facilitated and opportunity to sesame adequacy of the representation to dalits and tribes mandated by Article 335. It should be carried for three years. Even in the post when the vacancy as pen roster was available, but candidates were not available, same could be carried forward for three years. However, in each recruitment year, the carry forward rule cannot exceed 50% of the vacancies. That question does not arise in a situation where there is single post/cadre. The court farther held that whether or not reserved vacancies should be de-reserved is a matter falling primarily within the administrative discretion of the Government. There is no right general candidates to seek filling up of vacancies belonging to the reserved category and to insist on de reservation so long as it is possible in law to fill the reserved vacancies. In other words, carried forward unfilled vacancies reserved for dalits and tribes should be filled up only by the reserved candidates and general candidates have no right to seek direction for degeneration thereof for filling up of the same by general candidates. It would thus be clean that carry. Forward rule is a permissible constitutional rule. Carry forward would be done for three years\(^ {587}\).

\(^{586}\) A I R 1997 S C 2324

\(^{587}\) State of Punjab v. G.S Gill, A I R 1997 S C 2324