Chapter - III
The Indian society is composed of intersecting and overlapping groups and subgroups based on religion, sect, vocation, wealth, language, location and political affiliation. However, one of the most distinctive and powerful features of the Indian society is its division into castes especially of its majority section. Membership in the caste group is confirmed by birth and is unalterable except, when it is lost, if expelled by the group. Member of the each caste, residing in specific areas, have common customs and more or less a similar style of life with a characteristic diet, dress and religious observances. There is a variation in kind and number of castes but due to hierarchical stratification the highest and lowest castes are easily identifiable. Brahmins are considered to be the highest while sudras the lowest. Sudras were considered clearly inferior to the other three castes and were constrained to perform only menial jobs, forbidden to study the vedas, exception a lot, and enjoined to be deferential and subservient to the other castes. In recent time untouchables have been identified as unclean sudras in some parts of India, elsewhere they are regarded outside the four castes. Hence untouchables are referred to as outcastes. But they are form the castes which have the lowest ritualistic standing and often economically the most depressed class.¹

The Indian Nation Congress, till the framing of the Constitution, never mustered a firm stand over the issue of the removal of untouchability. If the brief history of the Indian National Congress with its controversy over social reform is closely studied, an impression is formed that it had taken favourable decision on the social uplift of the untouchables in its initial phase only. To be specific, the Indian National Congress in its annual session at Calcutta in 1917 passed a resolution to that effect. The focus of the resolution was on the bringing of social justice to the depressed classes and removing their disabilities forced by retrograde customs. An apprehension was also entertained of the hardships of the depressed classes. Natesan moved that resolution and Bhulabhai Desai and Rama Iyer supported it. When Annie Besant was the President by 1922, the Congress Movement came under
Gandhi's leadership. He gave it a new life by highlighting the plight of the depressed classes. The Bardoli programme of the Congress provides testimony to it. Apart from lip service nothing substantial was done to improve the lot of depressed classes. To add fuel to the fire, the Congress entrusted the task of eradicating untouchability to the Hindu Mahasabha in May 1923. The problems of the untouchables assumed significance from the First Round Table Conference (1930). Two representatives of the untouchables were invited to the Conference, thus recognising the fact that the interests of the untouchables were different from those of the caste Hindus. The Conference appointed a committee on Minorities under the chairmanship of Ramsay MacDonald, the then British Prime Minister. In fact it was not for the first time that the problems and difficulties of the depressed classes were put before the British Government. Earlier the Montague-Chelmsford Report made certain recommendations for safeguarding their special interests. But the recommendations were pedantic and superficial.

With independence, the Congress took seriously the problem of scheduled castes and scheduled tribes more for political reasons than anything else. The Congress considered these depressed as potential vote banks. The Congress instead of reforming the caste-ridden society politicalised the institution of caste. Caste became the criterion for the distribution of party tickets and assignment of constituencies. This made the upper castes more caste conscious.

The framers of the Indian Constitution, in their wisdom incorporated various provisions (Articles 330 to 342) concerning scheduled castes, scheduled tribes, Anglo-Indian community, backward classes granting special privileges. Article 341 empowers president to notify, territory wise, "castes, races or tribes or parts of our groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled castes". Article 330 provides reservation of seats for scheduled castes in the House of People and Article 332 in the State Legislatures. Article 334 lays down the specific
period for which the reservation are to be continued. The period was kept on increasing as the Congress and other political parties developed vested interest in the sustenance of reservations.\(^6\)

The Constitution also provide for reserved seats, both in Parliament and state legislatures for the scheduled castes. This led to competition among political parties to hobnob with the sharing political power with others. In India, every political party considers scheduled for political gains. Despite the political and electoral importance of the scheduled castes, they could not make much headway. Lack of leadership among these castes, catering to their requirements (the readers are concerned more with their own welfare) also responded their progress. These leaders behave more like caste Hindus in their own community. So, the community is deprived of the benefits of the leadership of elite amongst themselves.\(^7\)

The policy of reservation pursued by the state to bring about social transformation of the scheduled castes is also known as "Protective discrimination". For various socio-cultural reasons, the Scheduled Castes popularly called (Harijans) could not even think of occupational mobility which could give them a better status in society.\(^8\)

Article 15(1) states that, the state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them', also provides in clause (4) 'Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes and tribes. This policy of reservation has come in for severe criticism by foreign observers like Ivor Jennings and others for different reasons.\(^9\) To understand the rationale of this provision, it is necessary to make an assessment of the circumstances leading to its inclusion.

The problem of the untouchables is the problem of minorities even though they are a part of the Hindu religion. As Nehru has rightly observed, 'the communal problem as it was called, was one of adjusting the claims of the
minorities and giving them sufficient protection from majority action. Minorities in India... are not racial or national minorities as in Europe; they are religious minorities... Religion transcends the racial differences, which fade into one another and are often hard to distinguish. With the advent of the British rule, especially during its last phase, things began to change and this change had certain amount of impact on the mobility of the scheduled castes, generally called the depressed classes then. The British government did undertake certain protective discrimination measures in favour of the depressed classes. The Government of India had realized that the depressed classes were denied opportunities and appointments because of their relatively less education. The government issued instruction that whenever duly qualified candidates belonging to this group are available for jobs, they should not be denied reasonable amount of opportunities to enter government services just because they could not compete with the caste Hindus and get through in the open competition. This was a landmark in the history of reservations. In 1942, the entire position of representation of the depressed classes in government services was reviewed. It was observed that there was little improvement in their representation in Government services. Therefore in 1943 the Government of India resolved to provide for reservation of 8.5% of positions to the depressed classes. It was also decided to increase the quota when qualified candidates were available in larger number. It was also felt that the percentage of reservation should be related to the population of these people. By way of further concessions to attract more applications, the age limit was relaxed by three years in relation to other candidates belonging to upper caste. In 1946, the percentage of reservation was increased to 12.5% and in August 1947 it was 16.75%.

The position in Karnataka (Princely State of Mysore) was not favourable to the scheduled castes till the early period of this century. They did not have any definite guarantees of jobs in government services. The Backward classes also suffered likewise in general. There was Brahmin domination in the
state services. This ultimately led to group prejudices as the non Brahmins were sore over the discrimination. In 1917 some of the Vokkaliga and Lingayat leaders net the Maharaja and presented a memorandum to him. The Maharaja sympathised with them and appointed a committee under the leadership of the British Jurist, Sir Leslie Miller. This is popularly known as Miller Committee, which submitted a report in 1919. It recommended in a span of seven years, half of the jobs of higher status and two-thirds of lower status should be filled by taking the backward classes which term included all the castes except the Brahmins. The only point of importance for us at this stage is to know whether the depressed classes were benefited. The available literature proves they did not. These people had developed a fear that the Miller Committee Report would not help them in any measure, though for all purposes of social movement they formed a part of the non-Brahmins.\(^{12}\)

The rationale for safeguards for the scheduled castes and scheduled tribes is to bring their at par with other communities and over they reacted that stage, the distinctions will disappeared. There are three distinct kinds of minorities recognised for the purpose of providing protection. "They are the religious, the linguistic and the scheduled castes and Tribes. If the problem of religious minorities is one of the political rights; the problem of linguistic minorities is one of conservation of language, and right to education and employment; and the problem of the scheduled castes is one of social and economic rights, while that of the Tribes is of conserving their culture, laws and tribal property. The problems of each one of these minority groups are appreciated fully, and accordingly they are given certain safeguards. Under Articles 14, 15 and 16 of the Constitution.\(^{13}\)

In view of the changed circumstances and the adoption of universal adult suffrage, the problem of safeguards had to be approached de novo. Ambedkar realised this and abandoned the stand he had taken earlier. The Advisory Committee recommended that the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.\(^{14}\)
The scheme of political safeguards that emerged from the Advisory Committee and finally incorporated in Part XVI of the Constitution (Articles 330 to 342) as special provisions heralded a new era in the political and Constitutional life of the country. It abolished the separate electorates, reservation of seats in the legislature on the basis of religion and other safeguards, except the concessions given to scheduled caste and tribes. It achieved the objectives of preserving the secular character of our polity, and also enabled the scheduled castes and tribes, whose claim for such a special treatment is incontrovertible, to receive special protection for a specific period of time which was fixed as ten years from the date of the promulgation of the Constitution.

The Constitution of India authorises special preferential treatment not only for scheduled castes and tribes, but for "other socially and educationally backward classes". They are communities other than the untouchables, or the scheduled castes and tribes. Significantly enough the Constitution speaks of 'classes' and not castes but these backward classes are by and large identified on a caste basis, which has been strongly contested. The Government of India has repeatedly suggested that it was better to apply economic tests than to go by caste. It is possible that the caste criterion would retard 'social cohesion' and 'emotional integration' by fostering divisive tendencies'. Caste criterion goes against the secular spirit of the Constitution. Each state is given the freedom to prepare its own list of 'other backward classes' and most states have adopted the communal criterion, except perhaps in the state of Jammu and Kashmir and partially the state of Kerala.

After the commencement of the Constitution, the Constitution (Scheduled Caste) Order, 1950 (in exercise of powers conferred by clauses (15) of respective Articles 341 and 342) on 10th August, 1950, the Constitution (Scheduled Tribes) Order, 1950 on 6th September, 1950 and the Constitution (Scheduled Castes) (Union Territories) Order, 1951 on 20th Sept. 1951 were issued by the President annexing Schedules incorporating castes or
as the case might be, tribes or tribal community for respective states and respective Union Territories or parts thereof. The words "Union Territories" were added by the scheduled castes and scheduled tribes lists (Modification) Order 1956.

The Supreme Court in *Bhaiya Lal V. Hari Kishan Singh* made observed that under Article 341 the President might well come to the conclusion that not the whole caste, race or tribe but parts of or groups within should only be specified and thus the same caste has been included in same districts of the same State and excluded in other districts. It is not necessary here to incorporate as to why two schedules are as scheduled castes and the other as scheduled tribes were made. Again in *Kishorilal's* case the Supreme Court referring to the Tenth Report of the Commissioner for schedule castes and schedule tribe, laid emphasis on socio-economic conditions in classifying a particular caste as scheduled caste or scheduled tribe.

The expression 'backward classes' is not defined anywhere in the Indian Constitution. The scheduled caste and scheduled tribes are no doubt backward classes. The Indian Constitution clearly shows that there are other backward classes besides the schedule castes and schedule tribes. The Constitution recognizes three categories of backward classes, namely, (i) scheduled castes, (ii) scheduled tribes, and (iii) other backward classes. The other backward classes, are those which are not as backward as the schedule castes and schedule tribes, but who are backward as compared to the other advanced sections of the society. Sub-clauses (24) and (25) of Article 366 define scheduled castes and scheduled tribes respectively but there is no clause defining socially and educationally backward classes of citizens. The Constitution used different terminology for the other backward classes. For example, Articles 15(4) and 340 use the words 'socially and educationally backward classes; Article 16(4) speaks of just 'backward classes', and Article 46 is concerned with the 'weaker sections of people. Even now, the term 'backward classes' is differently defined in the reports of the different backward
classes commissions and the judgements of various High Courts and the Supreme Court of India.\textsuperscript{18}

The Constitution of India made certain provisions for the welfare of deprived social section is known as affirmative action, reservation policy and positive discrimination. The aims and objectives of the Constitution, the general agreement and the compromises arrived at in the Constituent Assembly are reflected in the various Articles and provisions relating to backward classes, e.g., the Preamble, Articles 38 and 46 of the Directive Principles of the State Policy, Articles 14, 15 and 16 of the Fundamental Rights and Articles 338 and 340 of the Constitution of India. The Preamble of the Constitution express the determination and aspirations of the people of India in following terms.

"....Justice, social Economic and Political, liberty of thought, expression, belief, faith and worship :

Equality of status and of opportunity; and to promote fraternity among them all assuring the dignity of the individual and the unity and integrity of the Nation.

The two objectives; justice-social, economic and political; and equality of status and opportunity of the Preamble are specially relevant and related to the advancement of the weaker sections and backward classes. The Constitution of India promises not only political democracy, but also social democracy as explained by Ambedkar in his speech in the Constituent Assembly; " It means a way of life which recognizes liberty equality and fraternity which are not treated as separate items in a trinity. They farm a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy from liberty. Nor can liberty and equality be divorced from fraternity”. The Constitution of India contains a number of provisions which deal with compensatory preference for the backward classes. The most important among them are Articles 15(4) and 16(4). Articles 46, 335, 338, 340, 341, 342, 366(24) and 366(25).\textsuperscript{19}
The preamble to the Constitution of India expresses the solemn resolve to secure to all Indian citizens equality of status and opportunity..." The chapter on Fundamental Rights, guarantees the citizens many rights which ensure equality of opportunity and status. Here we are specifically concerned with those articles of the constitution which embody the principles of nondiscrimination in general and public employment in particular. Article 15(1) of the Constitution states that ..."the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Under 'Cultural and Educational Rights' Article 29(2) states that "no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of the state funds on grounds only of religion, race, caste, language or any of them." However, Article 15(4) gives special powers to the state by stipulating that "nothing in this Article or clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes or citizens or the scheduled castes and the scheduled tribes". These general principles are then applied to more specific areas; like public employment, Article 16(1) states that "there shall be equality of opportunity for all citizens in matters relating to employment or appointments to any office under the state". This is a positive guarantee against discrimination in regard to public employment. It has been stated negatively in Article 16(2), no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against, in respect any employment or office under the state.20

Article 16(4) also provides an exception to the general principle of non-discrimination in matters relating to employment or appointment to any office under the state embodied in Article 16(2). It states; "nothing in this Article shall prevent the State from making any backward class of citizens which, in the opinion of the state is not adequately represented in the services under the state." Article 335 of the constitution is another exception to Article
16(2). It reads: "the claims of the members of the scheduled castes and scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointment to services and posts in connection with the affairs of the Union or of a State. The relationship between these provisions remains somewhat obscure. Article 335 is confined to scheduled caste and scheduled tribes, while Article 16(4) extends to all 'backwards classes'. Article 335 seems to include any method of preference while Article 16(4) is confined to reservation. Finally Article 320(4) provided that nothing in clause (3) shall require a public service commissions to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respect the manner in which effect may be given to the provisions of Article 335."^21

Article 16(4) is confined specifically to public services, while Article 15(4) applies to the state in all of its dealings. Thus the area of employment, offices, and appointments under the state is controlled by Article 16 alone and preference within this area must be within the scope of Article 16(4). This includes judicial offices as well as administrative posts, but not elective offices. The legal opinion is that the constitutional provisions for reservations were not applicable in the sense that public sector enterprises were not constitutionally obliged to have a policy of reservation.

Article 16(4) covers not only preferences in initial recruitment into government services, but also preferences in promotions within the service. After some hesitation in case of Rangachari Vs. The General Manager Southern Railway^22 the Supreme Court reluctantly held that the "post" referred to in Article 16(4) included promotions as well as initial appointments, but indicated that the preference permissible under Article16(4) would not extend to other aspects of employment covered by Articles 16(1) and (2) e.g., salary, increment, pension, retirement age. Such matters are absolutely protected by the doctrine of equality of opportunity and... do not form part of the subject matter of Article 16(4). While the dissenting judges argued that the reservation
was limited to securing adequacy of quantitative representation of the favoured
group, the majority held that reservation could legitimately be used to secure
representation in the posts of higher grades. In the appeal of Rangachari\textsuperscript{23}, the
Court had pointed to the language of Article 335, requiring the State to take
into account the efficiency of the services in making provisions for scheduled
castes and tribes, and declared the necessity of striking a reasonable balance
between the claims of these classes and efficiency of the services. In Bolaji\textsuperscript{24},
the court emphasized that the public interest in the efficiency of government
services set limits to reservation in promotions, putting outside the scope of
Article 16(4) any unreasonable, excessive, or extravagant reservation," for that
would, by eliminating general competition in a large field and by creating
widespread dissatisfaction among the employees, affecting efficiency. Thus the
Court gave notice that it would carefully scrutinize the reasonableness of
reservations in the area of promotions.\textsuperscript{25}

The wording any provision in Article 16(4) and 'any special
provision' in Article 15(4) gives the state a decisive way in prescribing the
method of operation of schemes for preference. Governmental agencies have
utilized a wide variety of devices for the purpose of conferring advantage on
backward groups. Reservations involve not merely reserved seats but also such
preferential rules of recruitment as waiving of age requirements, reduction in
fees, educational qualifications (prescribing lower minimum of qualifying
marks) and special assistance and training in preparation for competitive
examinations.

It can be asked whether such practices are covered by the
authorization of Article 16(4) that the State can make "any provision for the
reservation' of government posts. It has been argued that fixing a lower
minimum level of successful marks in a competitive examination is outside the
power of the state, since it is not "reservation in any sense of the term under
Article 16(4)". However, such devices would appear to be included within the
constitutional authorization. While Article 16(4) confines the state to the
methods of "reservations", it is clear that Article 16(4) empowers the state to determine the precise method to be adopted in effectuating the reservation.\textsuperscript{26}

The framers of the Constitution were conscious of the backwardness of a large section of the population. It was clear that because of their backwardness they are not in a position to compete with the advanced sections who had all the advantages of so called affluence and better education. The fact that the doors of competition were open to them would have been a poor consolation to the members of the backward classes because the chances of their success in the competition were far too remote on account of the inherent handicaps and disadvantages. The result would have been that, leaving aside some exceptional cases, the members of the backward classes would have hardly got any representation in jobs requiring educational background. It would have, thus, resulted in virtually keeping out those who were already repressed. The framers of the Constitution being conscious of the above disadvantage from which the backward classes suffered enjoined upon the state in Article 46 to promote the educational and economic interests of the weaker sections of the people, in particular, of the scheduled caste and Scheduled Tribes and also protect them from social injustice and all forms of exploitation.\textsuperscript{27}

The condition precedent to the exercise of the powers conferred by Article 16(4) is that the State ought to be satisfied that any backward class of citizens is not adequately represented in its services. This precedent condition may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of the representation.\textsuperscript{28}

**Directive Principles of State Policy**

The Directive Principles of State Policy enshrined in the Articles 38 and 46 of the Indian Constitution enjoin upon the state to strive to promote the welfare of the people in general and weaker sections, including the backward classes, in particular. Article 38 of the Constitution declares that:
1. The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.

2. The state shall, in particular, strive to minimize the inequalities in income, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Thus, the Directive Principles along with the Preamble embody the socio-economic ideals which the nation had set before itself during the freedom movement. It indicates the political mind of the makers of the Constitution who visualized the creation of a new social order in India based on social, economic and political justice, eliminating the evils of the existing socio-economic system. Though the nature of the 'social order' is not defined in the Constitution, it has been interpreted to mean a 'welfare state'. As a part of this objective, the state is directed to remove the existing inequalities in income, status, facilities and opportunities among the individuals and groups in India. Further, Article 46 directs: "the state shall promote with special care the educational, and in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation".  

As can be seen, Article 46 marks it obligatory for the state to take action to ameliorate the conditions of the weaker sections including the backward classes. They are two-fold: (1) to promote with special care the educational and economic interests by taking 'positive measures'; and (ii) to prevent social injustice and all forms of exploitation by taking 'preventive measures'. The Constitution mentioned only the reservation policy. It did not fix any particular percentage of seats in professional and technical institutions and posts in government and semi-government jobs. In 1950, the Government of India reserved 12.5 per cent seats and posts for the scheduled castes and 5 per cent for the scheduled tribes in all India services to be recruited on the basis
of open competition. It also extended the age limit in their case by three years. In 1952, it raised the age limit to five years more than the maximum prescribed for others. Now, in the central and state services, seats and posts are reserved in proportion to population. In 1970, the Central Government raised the reservation for the scheduled castes to 15 percent, and for the scheduled tribes to 7.5 percent. As for reservation of jobs, the Constitution mentions no fixed period. Naturally, the state is expected to continue such preferential treatment until the schedule castes, schedule tribe and other backward classes make substantial progress educationally and economically and reach a level of equality with the rest of the Indian citizens.  

It accelerated the process of socio-economic change in India and specially improving the conditions of the weaker sections and backward classes who constitute a majority of the population. The future of national progress and achievement of an egalitarian society depends on the rapid upliftment of these backward sections of the people. The Constitution has set its goal to achieve this social justice and it can be explained in terms of rising percentage of employees in the various categories of Central Government services. These gainful employments not only improved their economic condition but also provided opportunity to get and maintain administrative power and responsibility. The positive impact of these provisions has been the educational progress and raising literacy rate of the schedule castes and schedule tribe in India. At the time of India's independence in 1947, the literacy rate among them was below one percent and in the last 47 years there has been considerable increase in their literacy rate. It is true that almost half of the world's illiterate population lives in India, but slowly it is moving towards achieving total literacy.  

The special provisions in the Constitution led to the progressive realization of the creation of a new and just social order as visualized by the Constitution. Further, in the context of economic development of the
underprivileged sections of the society, the Constitution set goals for the eradication of poverty.

The data reveal that one-third of Indian population lives in the condition of poverty. They are denied the basic needs of life such as sufficient food, clothes, house and medicine. There is no provision for social security for the poor. Now, the process of liberalization and the new economic policy have created a market friendly atmosphere. It could lead to wider disparities within Indian society. The underprivileged sections will not get benefit of the opportunities, and the competitive market system will take away special privileges provided to them. This will widen the gap between the rich and the poor.\(^3^2\)

**Roster System:**

With a view to give proper effect to the reservation prescribed, every appointing authority is expected to treat vacancies as ‘reserved’ or ‘unreserved’ according to model roster. Model roster is made by keeping hundred posts as component unit. Before 1990 there were only reservation for scheduled castes and scheduled tribes and chapter IV of Constitution and other miscellaneous provisions concerning the scheduled castes and scheduled tribes issued by Government of India on February 5\(^{th}\), 1978 provided for model rosters each of 40/100 points. Now reservation is made for other backward classes also, keeping in view 100 posts roster is prepared.\(^3^3\)

Before the roster system was introduced, there was a lot of scope for calculated mischief in practice. The concerned authorities would devise such mechanisms as would defeat the ends of justice. Therefore, the roster system was introduced. Certain broad guidelines were given by the State government to all the institutions involved in reservation policies. But, we find that in actual practice there is variation from institution to institution. The problem is not that acute so far as the Public Service Commission is concerned where a large number of positions are filled and reservation are done cadre wise. But in other organisation which recruit either limited number of persons or sometimes a
large number, the position is generally different. This is particularly so in the case of the autonomous and semi-government organisations. The roster system was introduced with a view to accommodating the traditionally deprived social groups in administration and teaching. The impact of this system on society depends on the knowledge of its very existence.

If any measure of the government has to be effective and successful, the people should be familiar with the measure in actual practice. Similarly, the roster system would be successful only if people are familiar with its contents. A big majority of the respondents were found to have knowledge of the contents of the system (84%). Those who had absolutely no knowledge were a negligible percentage. Among the scheduled classes and backward castes, the number of persons with full knowledge and partial knowledge of the system is more or less identical. But in the case of the caste Hindu and Christian, a higher percentage of persons have full knowledge and in the case of the Muslims, a higher percentage has limited knowledge. The implication of this analysis is that a thorough knowledge of the contents of the roster system is not only known by only to some people in its category even the scheduled caste are based. On further enquiries it was explained by the respondents that they generally did not bother to understand the comprehensive knowledge of the system. There are three specific sources, 'Self', 'Friends' and 'Newspapers'. Self happens to be a source of knowledge for nearly 50% of the respondents, while friends constitute the second position, newspapers and other sources have the third and the fourth places.

The observations, in various judgements of the Supreme Court which considered earlier the question of reservation of scheduled caste and scheduled tribe and other backward classes, were in favour of the view that the reservation was to be made with reference to the vacancies and not to the posts. This aspect of reservation was considered to be reasonable and acceptable approach for implementation of the reservation principles both at the recruitment stage and promotion matters. The Supreme Court in the case of
Rangachari observed, ....apart from that we may point out that the Govt. resolution does not contemplate reservation of any post in the service cadre but merely provides for reservation of vacancies. Even if the government had provided for the reservation of posts for schedule castes and schedule tribe, a cent percent reservation of vacancies to be filled in a particular year or reservation of vacancies in excess of 50% would according to the decision in Balaji case not be Constitutional. This observation was followed in later cases with approval in T. Devadasan's, B.A. Tewari Vs Union of India and A.R. Choudhury Vs. Union of India.

The Supreme Court in Prem Prakash Vs. Union of India while considering the provision with regard to the Brochure observed, "the correct approach is to fix the number of vacancies available for the reserved candidates on the basis of the total number of vacancies which are intended to be filled at any particular point of time. According to para 2.1 of the Brochure, 15% of the total vacancies are required to be reserved for the scheduled caste candidates and 7.5% for the scheduled tribes candidates". The position was made very clear beyond any doubt in Chakradhar Paswan Vs. State of Bihar by the Supreme Court when it held, ".... according to the 50 point Roster, if in a particular grade a single post falls vacant it should, in the case of first vacancy be considered as unreserved i.e. general and on the second occasion when a single post again falls vacant, the same must be treated as reserved". The court held further that "in service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental Rule 9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit. The conclusion is irresistible that the posts of Director and those of the Deputy Directors constitute different cadres of the service".

The Government of India adopted initially two series of rosters viz. one of 40 appointments and the other of 100 appointments known as "40 point Roster" and "100 point Roster" respectively. The former is applicable to
appointments on an all India basis and the latter to appointment on local or regional basis. This system, devised, enabled to occupy the vacancies in a cadre by members of all communities by turn. Under this system if there is only one post in a cadre, it would be occupied by a general candidate at a time despite the first vacancy according to roster is a reserved one. The normal working of the 40 point roster would not cause any disadvantage to any community but on the other hand it ensures a sort of balancing. However, there is a possibility of dislocation by the chance factor or some strange situations arising on account of fortuitous circumstances by which the number of posts could fluctuate.  

The full Bench of the Central Administrative Tribunal in the case of V. Laxmi Narayan Vs. Union of India and Other held that, the Government's policy envisages that the reservation of posts to schedule castes and schedule tribe should be made and implemented with reference to the number of vacancies and not from available posts. A thorough study of various orders issued by the Government from time to time will reveal that though the worlds and expressions used in some of the orders viz. "the existing reservation of 12.5% of vacancies filling up by direct recruitment", "appointment to the services' reservation in recruitment to posts and services', "appointment to posts and services, etc." denote reservation of vacant posts of scheduled castes and scheduled tribes, but in the actual implementation they refer to only the appointment to vacancies. Hence, according to the Government orders, the reservation quota of appointment for schedule castes and schedule tribe should be marked out on the basis of vacancies as available from time to time and not on the basis of posts available in a particular cadre for every year. However, there is a possibility of dislocation by the chance factor or some strange situations arising on account of fortuitous circumstance by which the number of posts in a cadre becomes very much low or even high if in a cadre consisting of three posts on scheduled caste it inducted, it will look as if 33.3% of the vacancies has been filled up by the scheduled caste. If by some chance another scheduled caste is also inducted into the cadre either by way of getting
appointment on merit, transfer or promotion. It would look as if 66.66% of the vacancies have been given to the scheduled caste. If the cadre consists of only one post and the post is given to scheduled caste as per the turn on the roster it would look as if 100% of the posts have been given to the scheduled caste. Similarly, if the post is given to non-scheduled caste and non-scheduled tribe, it would look as if 100% of the cadre strength has gone to non-scheduled caste and non-scheduled tribe on the above principle. This indicates how the chance factor due to posting, promotion, death, transfer, etc. influences the communal composition in the cadre.

Similarly, if in a specific cadre no scheduled castes and scheduled tribe candidate exists at a particular point of time, it would be reasonable to conclude that the Government is not providing any opportunity to the scheduled castes and scheduled tribes to enable them to capture posts in that cadre. It may so happen that scheduled castes and scheduled tribes after taking appointment in that cadre may also happen that suitable scheduled castes and scheduled tribes has not come forward to take up the appointment in the cadre. Likewise, if in any specific cadre, scheduled castes and scheduled tribes are represented sufficiently or in excess, it would be a reason to say that the Government is giving more representation to the scheduled castes and scheduled tribes in that cadre but it may so happen that non schedule castes / scheduled tribes candidates may not have come toward to take up the job in that cadre. So in computing the total number of scheduled castes and scheduled tribes candidates in a particular cadre for ensuring the reservation with the maximum percentage, care should be taken to see that the scheduled castes and scheduled tribe candidates, who got their selection and appointment to that cadre on merit by competing with members of non-scheduled caste and non-scheduled tribe candidates, are not reckoned reservation number.45

As per the Ministry of Home Affairs OM NO. 16/2/67-Estt. 601 dated 27th September 1967 the reservations do not apply to:

(i) Vacancies filled by transfer.
(ii) exempted vacancies filled by promotion
(iii) Temporary appointment of less than 45 days duration.
(iv) Purely temporary establishment such as work-charged staff (daily rated) in the construction/organisation.
(v) Posts filled by deputation unless the deputation is a process for filling up the vacancies in the transforee department.

In such cases, the roster need not be maintained.\(^\text{46}\)

**Reasons for the Support**

There are three major reasons advanced by the respondents in favour of the system. These are:

(i) expectation that the monopoly of jobs by certain groups would end,
(ii) would act as a check against groups working for exploitation, and
(iii) would permit a close vigilance over misuse. However, for these three reasons it is in respect of the first reasons that a majority has expressed its opinion (69%).

So far as different social groups are concerned, we find that all except the higher castes advanced by a majority the reason that the monopoly would end. However, among the Muslims, just a little more than half of them gave this reason, whereas among the others the percentage is 70% and above. The second reason that the roster system as a check against exploitation finds the support of the majority among the caste Hindu (44%) and about (25%) among the Muslim and Christians and much less among the Scheduled Caste and Backward castes. The third reason that it permits close vigilance draws a good support of about 22% from the caste Hindu and 20% from the Muslims. These reasons were further elaborately explained by some of the respondent in group discussion.\(^\text{47}\)

There is a strong argument that the roster system is prepared by a set of persons who are generally members of the higher caste, often known to be anti-reservation. These people, it is said manipulate the roster system in such a manner that the very purpose is defeated. Some people invite reference to the
maximum concept of superstructure. Anyway, a few case studies presented here illustrate the point.  

**Defects:**

The defects inherent in the roster system are: post-wise reservation, unrealistic qualification, negligence of representation in higher cadres. Each one of these defects is extremely important since, much agitation is noticed today. Of the three defects, post-wise reservation occupies the top place (43%).

Post-wise reservation means that when advertisement is issued, there may be a number of positions in separate disciplines or departments of varying status. Generally a post is reserved for scheduled caste candidate and such a candidate is not available for this post. The post will be readvertised three times and even if on the third occasion no scheduled caste candidate is available, the vacancy will be converted to general merit category or some other category and advertised. Normally candidates are available and the post is filled. Thus, the chances of scheduled caste candidates are ruled out. The second defect lies with unrealistic qualifications. A large number of all the groups, and a reduced number of the backward castes have furnished this defect. Unrealistic qualification means either the qualification is of a higher order or not suitable in the case of the scheduled caste candidate. For the post of Accounts Officer the Chartered Accountancy (C.A.) was prescribed by a university in the state. This high qualification had not been prescribed for the post in the earlier advertisement when the post was open to all. Why then this time higher qualification was prescribed and the post reserved for the scheduled caste. Respondents would conclude that this was another instance of calculated mischief. The third instance of such a social situation is that the post of Professor in Sanskrit was reserved for the scheduled caste candidate and advertised. Again the question is do we have scheduled caste candidates to occupy this position? A large number of respondents had no hesitation to call this "a hypocrisy of the highest order".
Some of the caste Hindu respondents presented a different dimension and its relation. The explanation is that it is in the process of application of some principle that roster system is prepared and no intention or motivation to deprive the scheduled caste candidates is seen. Some responsible caste Hindus said the issue is overblown or exaggerated. We should not take one or two instances and generalise. The answer of some of the scheduled caste respondents is that this is definitely intentional. If the intention was to help the scheduled castes, the roster system would have been suitably prepared.

Carry Forward Rule of Reservation:

The Supreme Court in *Devdasan Vs. Union of India* was called upon to pronounce the constitutionality of the 'carry forward rule' framed by the Central Government to regulate appointment of persons belonging to backward classes in public services. According to this rule if sufficient number of candidates belonging to the scheduled caste were not available for appointment during a particular year, the unfilled posts will be reserved in the next year in addition to their reserved quota of the next year. The result was to carry forward the unutilized balance, that is, unfilled vacancies in the second and third year at one time. In the above case, the Supreme Court by majority of four to one held the rule ultravires and invalid, it was also held that a proviso or an exception could not be so interpreted as to nullify or to destroy the main provision.

The observation of Khanna J., in *State of Kerala Vs N.M. Thomas*, brings out the rationale for the Constitutional provisions in relation to reservation. The Court held, ".... those sections of the population would not be in a position to compete with advanced sections of the community who had all the advantages of affluence and better education. The fact that the doors of competition were open to them would have been a poor consolation to the members of the backward classes because the chances of their success in the competition were for too remote on account of the inherent handicap and disadvantage from which they suffered. The result would have been that,
leaving aside some exceptional cases, the members of backward classes would have hardly got any representation in job requiring educational background. It would have thus resulted in virtually repressing those who were already repressed...."

Again in *A.B.S.K. Sangh Railway Vs. Union of India*\(^5\), the above rule was further raised from two years to three years. This was challenged by the petitioners as unconstitutional. Rejecting the contention the Supreme Court held, "likewise, the carry forward rule being raised from 2 to 3 years also cannot be struck down. It must be realized that law is not an abstraction but an actual prescription in action. So what we have to be more careful about is to scrutinise whether the carry forward rule by being increased to 3 years is going to confer a monopoly upon the Scheduled Caste and Scheduled Tribe candidates and deprive others of their opportunity for appointment...". Furthermore, Krishna Iyer J., added the rider that the carry forward rule 'shall not result, in any given year in the selection of schedule castes and scheduled tribes candidates considerably in excess of 50%. This rider, like the rest of his judgment, is lacking in precision and will lead to further litigation. For, what does "considerably" in excess of 50% mean? Since 'considerable' means 'much', the rider means 'not much in excess of 50%? This leaves counsel free to argue, and judges free to decide, that 55, 60 or 65 or even a large percentage, is not "much in excess of 50".\(^5\)

In *A.R. Choudhury Vs. Union of India*\(^5\) that fact was that in Aug. 1966 a vacancy arose in the post of Headmistress of the Adra School. The Headmistress of the Kharagpur School was to retire in January 1969. Four names according to seniority were called for interviews on December 18, 1968. On December 25, 1970 the Calcutta High Court allowed the writ petition accepting the contention of the respondent Lila Bhattacharyya. Upon this, on November 6, 1971 the C.P.O. issued a memorandum stating that it was 'decided to hold a selection to draw up panel of two approved candidates to fill the post of Headmistress", one post being reserved for the scheduled castes against the
existing vacancy and another to cover unforeseen requirement viz. unreserved". The petitioner then filed a writ petition challenging the Memorandum and despite the order of injunction, the railway administration issued a letter on August 19, 1972 asking respondent to appear before the selection Board on August 30 and again petitioner and the other, also separately filed the writ petition and Acting in pursuance of the Home Ministry's Memorandum dated December 4, 1963 as modified from time to time, the Railway Board by its latter of January 16, 1964 prepared a new 'Model Roster' signifying the turns of reserved and unreserved vacancies. Under this Roster 12.5 percent of the vacancies were reserved for scheduled caste and 5 percent of the vacancies reserved for the scheduled tribes.

The Roster contained some important explanation: If there are only two vacancies to be filled on a particular occasion, not more than one may be treated as reserved and if there be only one vacancy, it should be treated unreserved. If on this account a reserved point is treated as unreserved, the reservation may be carried forward in the subsequent two recruitment years'. This was in terms of home ministry's instructions said above.

In order to remove a still surviving grievance of the scheduled castes and scheduled tribes that in spite of the model roster they were denied appointments whenever there was a single vacancy, such vacancies being invariably treated as unreserved irrespective of the point of roster at which they occurred the Railway Board by their circular of August 23, 1971 directed that if there was one post to be filled, selection should invariably be held for two posts i.e. one was actual and the other to cover unforeseen circumstances". It was in pursuance of these instructions that on November 6, 1971 the CPO had issued the impugned order.

The virus of rules impugned in Devadasan's case was though the unutilised reserved quota could not be carried forward for more than two years, the carry forward mechanism envisaged by the rules could almost completely swamp recruitment to open, general seats. The court tested the memorandum
by illustration by taking a hypothetical example in that if in each of the first 2 year of recruitment, the total number of seats to be filled in was 100%, 18 vacancies would have to be treated as reserved in each year. If suitable candidates were not available to fill these reserved vacancies, the reservation would have to be carried forward to the third year, but not beyond it. If the total number of seats for recruitment in the third year was 50, the backlog of 36 seats with the addition of 9 reserved seats for the current year would cover 45 out of 50 vacancies leaving only 5 vacancies for open recruitment. This virus was rectified effectively soon after the judgment in Devadasan's case by the issuance of the Memorandum of December 4, 1963 as amended on September 2, 1964. It was specifically directed by these curative prescriptions that "in any recruitment year, the number of normal reserved vacancies and the carried forward reserved vacancies together shall not exceed 45 per cent of the total number of vacancies".

The court held that the rules thus were no longer open to the objection that the reservation was excessive. As regard the model roster, the court observed that in the note appended to the roster, the words 'on a particular occasion' were substituted on September 2, 1964 by the words 'year of recruitment' thus if two vacancies occur, say, within an initial span of three year, the first vacancy has to be treated as unreserved vacancy and the second is reserved. The court held that the south-eastern Railways runs only two secondary schools for girls, one at Adra and the other at Kharagpur. In August, 66 vacancy at Adra was filled in as unreserved and the vacancy at Kharagpur occurred on 1st January 1968 on retirement so fell within two financial year hence was rightly treated as reserved.

In R.P. Dutta and others Vs Union of India54 the case was that one Shri Harecharan Singh one of the Assistant labour Commissioners who were appointed on the recommendation of U.P.S.C. was due for retirement on 5th August, 1969 and consequently the Delhi administration sent a requisition to U.P.S.C. to advertise the post for scheduled castes and only the scheduled
castes candidates were called for interview. The method of recruitment prescribed on 15th February, 1963 was by promotion 50% and 50% by direct recruitment. For eligibility of promotion, labour officer/labour officer cum Inspector of Shops and Establishments, with three years' service in the grade were eligible. In 1969 when the dispute arose, Shree R.P. Dutta, petitioner 201 and Shree B.P. Jain, the petitioner no. 3, who were officiating as Assistant labour Commissioner since 1968 and 1969 respectively pending selection according to rules, challenged the post being reserved for scheduled castes against Articles 14 and 16(1) and rule contained in the Ministry of Home Affairs dated 2nd September 1964. The question then arose before the Delhi High Court whether this vacancy should be reserved for scheduled castes or not. The court observed that Home Ministry memorandum dated 2.9.64 and the note appended with the Model roster laid down that if there be only one vacancy, it should be treated as unreserved. Relying on the decision in Arti Ray Choudhury Vs. Union of India and Others\textsuperscript{55} that if there was only one vacancy on a particular occasion, it is not to be treated as reserved on the basis of the said Memorandum, the Court held that each year of recruitment was directed to be considered separately and as there was only one vacancy in the year of recruitment i.e. 1969, it could not be treated as reserved for scheduled caste and B.P. Jain should be considered against direct recruitment for seniority.\textsuperscript{56}

In Harbans Singh Vs. Union of India\textsuperscript{57}, the Rajasthan High Court speaking on reservation observed, after the coming into force of the Constitution of India, the Government of India vide Resolution dated 14th September 1950 issued the first policy statement on the issue of better representation of scheduled castes and scheduled tribes in Government services. In the said resolution the Government had taken note of the policy of communal representation in the services before the Constitution and the constitutional ban on discrimination by way of reservation on the ground of caste in the case of scheduled castes and scheduled tribes and it was declared that pending the determination of the figures of population at the census of
1951 the Government had decided that the existing reservation of 12.5 of vacancies filled by direct recruitment in favour of scheduled castes would continue in the case of recruitment of posts and services made on an all India basis by open competition and whose recruitment was made otherwise than by open competition the reservation for scheduled castes would be 16.2/3 percent at that time. As regards the scheduled tribes it was declared that the reservation in their favour would be 5% of the vacancies filled by direct recruitment.

It was found that sufficient number of qualified candidates from among the scheduled castes and scheduled tribes were not available. The Government of India, therefore, issued supplementary instructions on 28th January 1952 whereby it was directed that if a sufficient number of candidates of the communities for whom the reservation were made were not available, the vacancies that remained unfilled would be treated as unreserved and filled by the best available candidates, but a corresponding number of vacancies would be reserved in the following year for the communities whose vacancies were thus filled up in addition to such number as would ordinarily be reserved for them under the orders contained in the resolution. This provision for carrying forward of vacancies of a particular year to the next succeeding year was further modified by office memorandum dated 7th May, 1985 of the Government of India whereby the vacancies of a particular year could be carried forward for next two succeeding year. By the circular of 20th April of the Railway Board, the carry forward Rule referred to above was extended and the vacancies could be carried forward to next three succeeding years.

By circular dated 27th April, 1959 of the Railway Board the prescribed quota of reservation was made applicable to selection posts to which promotion was made by a positive act of selection. By circular dated 20th April, 1970 of the Railway Board the reservations prescribed by the Resolution dated 13th September 1950 for scheduled castes and scheduled tribes were modified in light of the population of these communities in the 1961 census and it was decided that the reservation of scheduled castes might be raised from
12.5% to 15% and the reservation for scheduled tribes be raised from 5% to 7.5%. In order to give effect to this circular the roster was also revised by the Railway Board by its letter dated April 29, 1970. Under the revised 40 point roster posts at point No. 1, 8, 14, 22, 28 and 36 are reserved for scheduled castes candidates and posts at points No. 4, 14 and 31 are reserved for scheduled tribes candidates. By its direction dated 11th January 1973 the Railway Board decided a quota of 15% and 7.5 for scheduled castes and scheduled tribes respectively might also be provided in promotion to the categories and posts in class I, II, III and IV filled on the basis of seniority cum suitability provided the element of direct recruitment to these grades, if any, did not exceed 50%.

The validity of the circular dated 27th April, 1959 came for consideration before the Supreme Court in General Manager, Southern Railway Vs. Rangachari upholding the circular by majority of the court, Gajendra Gadkar J. as he then was, observed: "the condition precedent for the exercise of the powers conferred by Article 16(4) is that the State ought to be satisfied that any backward class of citizens is not adequately represented in its services. This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services but that they should aspire to secure adequate representation in selection posts in the services as well. In the context the expression 'adequately represented' imports consideration of "size" as well as "values", numbers as well as the nature of appointments held and so it involves not merely the numerical test but also the qualitative one. It is thus by the operation of the numerical and a qualitative test that the adequacy or otherwise of the representation of backward classes in any service has to be judged; and if that be so, it would not be reasonable to hold that the inadequacy of representation can and must be cured only by reserving a proportionately
higher percentage of selection posts should also be reserved, for reservation of such posts may make the representation of backward classes in the services adequate, the adequacy of such representation being considered qualitatively. If it is conceded that "posts" in the context refer to posts in the services and that selection posts may be reserved but should be filled only in the manner suggested by the respondents then we see no reason for holding that the reservation of selection posts cannot be implemented by promoting suitable members of backward class of citizens to such posts as the circulars intend to do".\(^59\)

It would be in the fitness of things if the periodical extension of the privileges is limited to a specified period. These extensions are in reality against these classes and would be in favour to their interest as these classes would not exert for improving their skill. It is, therefore, humbly submitted that these should not go beyond this century.
References
2. Ibid., p. 3.
4. Ibid., p. 3.
7. Ibid., p. 5.
9. Ibid., p. 10.
10. Cited in Ibid., p. 15.
11. Ibid., p. 16.
12. Ibid., p. 19.
15. Article 15(4) : Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.
17. *AIR 1965 SC 1557*.
19. Ibid., p. 78.
20. Ibid., p. 81.
21. Ibid., p. 83.
23. AIR 1962 SC 36.
27. Ibid., p. 33.
28. Ibid., p. 36.
30. Ibid., p. 87.
31. Ibid., p. 90.
32. Ibid., p. 94.
36. AIR 1962 SC 36.
37. AIR 1965 SC 179.
38. AIR 1965 SC 1436.
40. AIR 1984 SC 1831.
42. AIR 1988 SC 959.
44. Decided on February 27, 1992 reported in (1993) 24 Administrative Tribunal Case (FB) 420.
45. Ibid., p. 461.
46. Ibid., p. 465.
48. Ibid., p. 130.
49. AIR 1964 SC 179.
50. AIR 1965 SC 490.
51. AIR 1981 SC 298.
53. AIR 1974 SC 532.
54. 1967 5 LJ 16.
55. 1974(1) SCR 659.
57. 1985 (2) SCJ 423.
58. AIR 1962 SC 36.
59. AIR 1962 SC 36.