CHAPTER TWO

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CHAPTER TWO

CONSTITUTIONAL PROVISIONS FOR BACKWARD CLASSES

(1) BASIC APPROACH OF THE CONSTITUTION:

The inception of the Indian Constitution on January 26, 1950, was a great event not only in the political history of India but also in the history of Human Rights. The Constitution has opened up new vistas of growth through an array of rights and privileges to the citizens in general and Backward classes in particular. The object of the Constitution finds expression in the Preamble which proclaims in unequivocal terms:

'We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;'

Justice, Liberty, Equality and Fraternity, time and again proclaimed as the inalienable rights of man are guaranteed by the Constitution. But an exploration of the constitutional meaning and significance of these terms constitutes the crux
The term justice is currently used in two senses: as representing, on the one hand, the faithful realisation of existing law as against any arbitrary infraction of it; and as representing, on the other, the ideal element in all law — the 'idea' which the law tends to subserve.1

'Liberty may be defined as affirmation by an individual or group of his or its own essence.'2 Liberty means therefore freedom, the negation of licence. Art. 19 deals elaborately with the freedoms granted by the Constitution. Liberty sounds very significant in the sense, that after centuries of foreign domination in the country, citizens cherish the idea of liberty. But mere cherishing of liberty would be meaningless if it does not cater to the full fledged development of the individual and the nation. As Nehru remarked: 'Civil liberty is not merely for us an airy doctrine or a pious wish, but something which we consider essential for the orderly development and progress of a nation'.3

Similarly, 'Equality' the keynote of democratic institutions is assured under Art. 14 of the Constitution.


Equality does not mean the levelling down of people, but only an equal treatment of citizens in the enjoyment of rights.

'Fraternity' postulates human values by respecting the dignity of human personality. Art. 17 of the Constitution which refers to the abolition of Untouchability, is an illustration to the advocacy of the concept of fraternity.

Thus, the Preamble clearly illustrates that the Constitution has realised the importance of Justice, Liberty, Equality and Fraternity for the success of Democracy. It gives accent to Justice in social, economic and political sphere. Social justice demands the eradication of social inequities based on caste, colour, race, creed, etc. Economic justice rules out distinction from man to man from the point of view of economic values. Every man is regarded according to his labour. Political justice refers to the absence of arbitrary treatment of citizens in the political sphere - the right to exercise franchise and enter legislatures without any distinctions. The Constitution makers have realised, that political freedom alone would be futile in the absence of social and economic justice and so they have guaranteed justice in all the three spheres. This idea of guaranteeing justice in the triple field was mooted in pre-Independent India. Rabindranath Tagore very lucidly brought out the significance of creating such justice for:

..... whatever weakness we cherish in our society will become the source of danger in politics. The same
inertia which leads us to our idolatry of dead forms in social institutions will create in our politics prison-houses with immovable walls. The narrowness of sympathy which makes it possible for us to impose upon a considerable portion of humanity the galling yoke of inferiority, will assert itself in our politics in creating the tyranny of injustice.4

The Constitution of India has conferred on the citizens the right of 'Adult Suffrage'. Art. 326 says

The elections to the House of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Franchise prior to Independence was very much restricted. One of the recommendations of the 'Constitutional proposals of the Sapru Committee' was, the introduction of adult franchise for seats other than those reserved for special communities. The question of introducing adult franchise was examined first by the Lothian Committee in 1932. The impediments to the introduction of adult suffrage according to the Franchise Committee were: '...... the huge numbers involved -

4. Rabindranath Tagore, Nationalism, 1920, P. 123.
numbers which are far larger than have ever been made the foundation for a democratically governed state in history - and the fact that only 8 per cent of these are literate (men literates 13.9 per cent; women literates 2.1 per cent). Illiteracy was stressed as an impediment to the intelligent exercise of knowledge in casting votes. Besides, lack of facilities in the villages to enlighten the illiterate masses regarding public questions was another drawback in the introduction of adult franchise.

But, the Constitution of Independent India took a bold step in introducing adult suffrage, in spite of the prevalence of an overwhelming population ignorant of the three R's. The principle of popular sovereignty has not only been enshrined in the Constitution as an ideal but practised as a basic reality. If the Preamble begins with a ringing note of popular sovereignty, Art. 326 proceeds with an enhancement of the worth and value of individual personality. Every individual is made to realise his importance in the country's national life through the exercise of franchise, irrespective of educational qualifications or social status. Citizens are placed on a footing of equality, called upon to join hands to make the venture of democracy a success in India. The intro-

duction of adult franchise undoubtedly roused the curiosity of the world and planted doubts in many nations, as to the success of adult franchise in a country like India with huge illiterate population. But, the three General Elections of the country have left no scope for any such fears. The Report of the First General Elections observed:

However backward and ignorant the common man in an 'undeveloped' country may be, he possesses in his own way enough common sense to know what is good for him. Given a simple enough system of ballot which he understands, he can be trusted to cast his vote intelligently in accordance with his own free will in favour of the representative of his choice.⁶

But, the two essential requisites for the smooth running of the system as recommended by the Report were:

(1) the conduct of Elections must be strictly non-partisan or under neutral control, and

(2) the Executive Government must sincerely desire free and fair Elections and actively work for the same'.⁷

Speaking about adult suffrage, A.L. Mudaliar remarked in the Madras Legislative Council on August 9, 1950, that:

Adult Suffrage is a unique experiment in this country. No civilized country in the world has given adult suffrage to voters, 80 per cent of whom are illiterate ..... the point I want to emphasise is that ..... you must be vigilant so that the avalanche of adult suffrage may not land you in a morass. For

⁷ Ibid.
the sake of keeping abreast of the times and showing to the world on paper how enlightened we are, the Constituent Assembly rushed to the conclusion that adult suffrage was a good thing. It is very necessary to take steps to see that this adult suffrage does not prove to be like the 'churning of the ocean' which resulted in producing not nectar but something else. 8

It was Nehru who strongly advocated adult suffrage for he always felt that the widest possible franchise was an essential requisite for the realisation of 'Fullest Democracy'. He ruled out the fears that illiterate masses are not capable of casting their votes intelligently and vice versa.

Whatever the impediments in the introduction of adult suffrage and drawbacks in the smooth running of the system, it has come to stay in Independent India. The Constitution by conferring adult franchise on citizens has not only postulated the equality of man and restored the dignity of human personality, but has also offered opportunities to the citizens for the development of their stature.

Part III of the Constitution deals with a series of Fundamental Rights guaranteed to the citizens. The first and foremost of these is - 'Equality before law'. Art. 14 states: 'The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'.

This doctrine of natural equality first found its expression in the Declaration of Rights of Man, 1789, proclaimed by the National Assembly of France. It stated: 'Men are born, and always continue free and equal in respect of their rights'. The same ideal was echoed in the American Declaration of Independence, which proclaimed: 'We hold these truths to be self-evident, that all men are created equal .....' It got a further backing in the Declaration of Human Rights wherein Art. 7 states: 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination'.

Equality guaranteed in Art. 14 of the Constitution is an extension of the principle ensured in the Preamble. The two phrases in the article - 'equality before the law' and 'equal protection of the laws', may be better described as a harmonious fusion of the American Constitutional safeguard and the English law.

To interpret the meaning of these two phrases, 'Equality before the law' means, that the state should not differentiate between the citizens either in the promulgation or application of law. In short it means justice. It is the negation of differential treatment, impartiality at the altar.
of justice. The principle of equality before the law has been beautifully explained by Sir Ivor Jennings as: 'Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike.' Similarly, 'equal protection of the laws' means that equal treatment should be meted out in like circumstances irrespective of any considerations whatever. The law of the land should be the same to the highest and the lowest.

Interesting interpretations of Art. 14 have been given by judges in a series of cases where the said equality clause is presumed to be violated and the citizens are deprived of the fundamental right to equality.

The interpretation of Art. 14 given by Mahajan, J. in the State of West Bengal Vs Anwar Ali reads:

Equality of right is a principle of Republicanism and Art. 14 enunciates this equality principle in the administration of justice. In its application to legal proceedings the article measures to every one the same rules of evidence and modes of procedure. In other words, the same rule must exist for all in similar circumstances. This principle, however, does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance in the same position.


In Kathi Raning Rawat Vs the State of Saurashtra, the concept of equality has been further interpreted by B.K. Mukherjea, J. that:

Equality prescribed by the constitution would not be violated if the statute operates equally on all persons who are included in the group, and the classification is not arbitrary or capricious, but bears a reasonable relation to the objective which the legislation has in view.12

The meaning and scope of Art. 14 has been best brought out by Pasal Ali, J. in dealing with the case of the State of Bombay and Another Vs F.R.Ealeara. The principles summarised by him laid by the court in the case of Chiranjit Lal Chowdhury Vs the Union of India and others were:

(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstance in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle (of equality) does not take away from the state the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis.

Judicial pronouncements from time to time have thrown sufficient light on the meaning of the 'equality clause' of Art. 14. The judicial interpretation of the said clause seems to be largely influenced by the American interpretation of the 'equal protection' clause in the Fourteenth Amendment. The equal protection clause as interpreted by Justice Van Devanter reads:

(1) The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of Police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

(2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

(3) When the classification in such a law is called in question if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

(4) One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. 14

But, Art.14 differs from the 'equal protection clause' in the Fourteenth Amendment to the Constitution of the United States, in scope. The scope of Art.14 is much wider, in so far as it refers to both resident aliens and citizens alike. The term 'State' in Art.14 refers to the conduct of 'the Government and Parliament of India and the Government and Legislature of each of the States and all local or other authorities within the territory of India under the control of the Government of India'. (Art.12). On the contrary, the 'equal protection clause' refers only to the conduct of the constituent states of the American Union.

In spite of these precise interpretations, the concept of equality remains largely a controversy. In practical administration it calls for clarification at every step. For instance, the introduction of prohibition in certain States of India, to the exclusion of others would definitely sound a

discrimination on the part of the Government. Here comes the need for the clarification of the 'equality clause'. By equality is meant, that any classification made for administrative convenience should be objective and rational. Inequalities being inherent abstract or mathematical equality constitutes only on ideal. In other words as Venkatarama Ayyar, J, had remarked: 'What Art.14 prohibits is the unequal treatment of persons similarly situated'. The concept of equality is made a specific constitutional guarantee for the purpose of creating men equal even though they are born unequal.

Equality is further guaranteed in Art.15

(1) The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Art.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.

Clause (4) has been incorporated by the Constitution (First Amendment) Act. 1951. The keynote of this clause is to ensure the reservation of seats for Backward classes in educational institutions. Without the incorporation of this clause, reservations under Clause (1) of Art.15, would be a contradiction in terms.

In this connection we may raise the objection, 'Does not the Constitution guarantee rights on the one hand and snatch away from the other'? Cl.(1) of Art.15 proclaims that no discrimination should be done on grounds only of religion, race, caste, sex, place of birth or any of them and the subsequent Cl.(4) declares, that 'nothing shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes'. Is not reservation of seats for Backward classes an indirect discrimination? Besides, the term 'Backward classes' has not been precisely defined. It has been left so vague and obscure leaving sufficient room for exercising discretionary powers by the States in the matter of classifying communities as Backward or Forward for purposes of granting special privileges. The writ petitions which pile up in High Courts, specially in Mysore.
State clearly demonstrate the difficulties caused by the failure of defining the term 'Backward classes' precisely. The scope of Art. 15, originally supposed to be much wider than Art. 14, seems to be restricted by the incorporation of Cl.(4) by the Constitution (First Amendment) Act, 1951.

But, a deeper study of the Constitution justifies the incorporation of Cl.(4) in Art. 15. It is in keeping with the Resolution of the Constituent Assembly which reads: 'wherein, adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes'; 16 It is quite appropriate that the Backward classes should look to the Constitution for special favours to redress the wrongs done in the past by creating social disabilities. It is equally justifiable that the Constitution should make any special provision to safeguard the interests of Backward classes. This special situation was explained by Smt. Dakshayani Velayudhan as:

Neither Lord Pethie - Lawrence, the Secretary of State for India, nor even the Prime Minister, Mr. Attlee, nor even the Leader of the opposition, Mr. Churchill, is going to improve the condition of the Harijans. What we want is the removal, immediate removal of our social disabilities. Only an Independent socialist Indian Republic can give freedom and equality of status to the Harijan. Our freedom can be obtained only from Indians and not from the British Government. 17

17. Ibid. P. 147.
Rightly so, free India alone was to provide safeguards for the advancement of Backward classes.

Explaining the scope of Cl.(4) of Art.15, V.G. Ramachandran observed:

Since political power is apt to be misused, a safeguard in the limitation in Art.15(4) is to include the word, 'reasonable' before the words 'special provision'. The word 'reasonable' will indeed provide judicial review in cases of abuse of this power of classification. It may be that if a classification is proved to be unreasonable and malafide and it is shown to the Court that it does not help the really backward classes but some others who are made to parade as backward, then the Court may be justified in treating such classification as ultra vires of Art.15, particularly when the real object of discrimination against other citizens is apparent. But to enable the Court to effectively go into the matter the word 'reasonable' is necessary before the words 'special provision'.

Art.16 provides:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(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 of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the Services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Clause (3) of the aforesaid article, restricts the principle of equality of opportunity to all citizens in the matter of employment by making some exception to the privileges guaranteed under clauses (1) and (2) respectively. As regards employment under the Union, the qualification of residence is not necessary. But however, the Union Parliament is competent to make the qualification of residence a necessity in particular classes of employment under a State. This exception, it is argued, is devised for the purpose of maintaining the efficiency of the service. But even here, it is gratifying to note, that the power to legislate on this matter is vested in the Union Parliament and the States are powerless to enjoy discretionary powers.

Defending the limitation of clause (3), Dr. Ambedkar observed:

You cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to case,
apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary.\textsuperscript{19}

Clause (4) favours the policy of making reservation for certain sections of society who are backward. It appears that the absence of a definition of the term 'backward' may lead to bitterness and misuse of the provision to obtain preferential treatment. Further, the expression 'Backward classes' referring to 'the Scheduled castes' and 'Scheduled Tribes' is used in Article 335. But a different expression is used in the present clause which would lead to a different legal interpretation. It was observed by Dr. Ambedkar in the Constituent Assembly, that, if the State included a very large number of classes within the reservation permitted by this clause, an individual who is aggrieved may go to the court for a declaration that the reservation is ultra vires. In such cases, the court would be slow to interfere with the decision of the State, unless it is an abuse of the power or a fraud on the Constitution. The Court would not, ordinarily, substitute its own view for that of the Legislature as to whether a class is 'backward' or not.

Article 17 gets the special distinction in the Constitution for materialising Gandhiji's dream of doing away with Untouchability. It proclaims: "'Untouchability' is

\textsuperscript{19} Constituent Assembly Debates, Op. Cit., P. 700.
abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law."

In accordance with this provision of the Constitution, " 'The Untouchability (Offences) Act, 1955' " came into force on June 1, 1955. The keynote of this Act is, it provides penalties for preventing a person on the ground of untouchability from entering a place of public worship, offering prayers therein, or taking water from a sacred tank, well or spring. Penalties are also provided for enforcing all kinds of social disabilities, such as, denying access to any shop, public restaurant, public hospital or educational institution, hotel or any place of public entertainment, the use of any road, river, well, tank, water tap, bathing ghat, cremation ground, sanitary convenience, dharmashala, sarai, or musafirkhana, utensils kept in such institutions and hotels and restaurants. The Act also prescribes penalties for enforcing occupational, professional or trade disabilities, in the matter of enjoyment of any benefit under a charitable trust, in the construction or occupation of any residential premises in any locality or the observance of any social or religious usage or ceremony.20

Article 17 is unique in the sense, that it has given a death blow to the century old practice of Untouchability. It

reflects the spirit of the Constitution - the determination to restore the dignity of the individual and assure fraternity. Untouchability is not only prohibited but it is made punishable by law. The Parliament has assumed the power to legislate on this matter uniformly in all the States.

The principle of equality is further elaborated in Art. 18 thus:

1) 'No title, not being a military or academic distinction, shall be conferred by the State.

2) No citizen of India shall accept any title from any foreign State.

3) No person who is not a citizen of India, shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State'.

This Article by abolishing all titles which create superficial distinctions in society ensures the principle of equality in the Indian Constitution.

Art. 19(1) guarantees some of the Fundamental Rights essential for the restoration of the dignity of individual personality. It reads:

'All citizens shall have the right -

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(g) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India;
(f) to acquire, hold and dispose of property; and
(g) to practise any profession, or to carry on any occupation, trade or business.

The fundamental rights guaranteed under Art. 19 are civil rights subject to the power of the State to restrict them. The State is authorised to impose restraints on the exercise of these rights, mainly to promote public welfare by discouraging the conflicting interests of the individual and society.

Art. 21 provides: 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

The right to freedom of Religion is enshrined in Article 25 thus:

1) 'Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

2) Nothing in this article shall affect the operation of any existing law or prevent the state from making any law -

(a) regulating or restricting any economic, financial political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus'.


Explanation I - the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 29(1) confers on the citizens, cultural and educational rights. It reads:

1) "Any section of the citizens residing in the territory of India or any part thereof of having a distinct language, script or culture of its own shall have the right to conserve the same.

2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Clause (2) of this Article came in for criticism, when the Madras Government order refused admission of a candidate to Medical College solely on the ground, that the candidate belonged to Brahmin Community. According to Madras G.O., out of every 14 seats, 6 were to be filled by non-Brahmin Hindus, 2 by Harijans, 1 by Anglo-Indians and Indian Christians and 1 Muslims. The Supreme Court however invalidated the Madras G.O. as it was a violation of Article 29(2).

In the above mentioned case, the Madras High Court held that the Madras G.O. which distributed seats in State educational institutions according to communities in certain proportions was void on the ground of Arts. 15(1) and 29(2). The Supreme Court upheld this decision on the ground of contradiction of Art 29(2) while no decision was considered necessary in regard to Article 15(1).

The result was, Article 29(2) was amended by the Constitution (First Amendment) Act, 1951. The amendment laid down, that 'Nothing in clause (2) of Article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled castes and the Scheduled Tribes'. Accordingly, the State is now empowered to reserve seats in State Colleges, for any socially and educationally backward classes of citizens or for the Scheduled castes and Scheduled Tribes. This amendment has validated the authority of States to make reservations for Backward classes. The incorporation of clause (4) in Article 15, brings Articles 16(4), 46 & 340 in line to make constitutional, the reservation of seats for Backward classes in educational institutions and create special privileges for their advancement.

The welfare objective of the Constitution finds expression in Art. 38, which comes under the category of
'Directive principles of State Policy', enshrined in Part IV of the Constitution. It says: '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 the national life'.

Further, the Constitution of India has made education a special responsibility of the Union and State Governments. Art. 45 states: 'The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years'.

Article 46 provides:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

In this Article, the term 'weaker sections' is used unlike other Articles, wherein we come across the term 'Backward classes'. But as usual none of these terms have been precisely defined as a result of which, there is lot of confusion in the Constitutional interpretation of these terms in specific cases. Now, the question may be raised - 'after all Article 46 constitutes only a Directive Principle unenforceable by the Judiciary, and what is the significance of incorporating this Article to
confer special privileges to the Backward classes? Directive principles are nothing more than mere directions to the States, to undertake particular line of action for the benefit of weaker sections of society. They serve nothing more than a pointer to the humanitarian ideal of the Constitution. The Supreme Court of India has made clear, how ineffective Directive Principles are, by invalidating the Madras G.O. in the famous case, State of Madras Vs Champakam Dorairajan.

In the above mentioned case, Article 46 was referred in defence of Madras G.O. But, the Supreme Court held, that no directive contained in Part IV of the Constitution could override any of the Fundamental Rights contained in Part III of the Constitution. This fact was stressed by Dr. Ambedkar when he interpreted:

"Directive Principles are nothing but obligations imposed by the Constitution upon the various Governments in the country, though if the Governments failed to carry them out, no one could ask for specific performance."

Further,

"the State could only discharge them through legislation. It implied that the State in regard to these matters, had the implied power to make a law."

The Constitution of India thus reflects a social philosophy with 'Justice' as the guiding principle. 'The

22. Ibid.
23. The Hindu, May 19, 1951.
Preamble', 'Fundamental Rights' and 'Directive Principles' point towards the establishment of a 'Just Society', upholding the concepts of liberty, equality and fraternity and safeguarding the unity of the country. Myron Weiner has aptly remarked:

The Indian Constitution is more than a set of rules guiding behaviour; it is a kind of charter for her westernised leadership; a set of goals and expectations. It is almost as if the whole of this lengthy Constitution were a body of directives.24

When we consider the composition of India's population with a preponderance of underprivileged classes of various categories - 'The Scheduled Castes', 'The Scheduled Tribes', 'Other Backward Classes' and 'Denotified Communities', the Constitutional emphasis on 'Justice, implying social, economic and political interests of the people would be greatly appreciated. The Constitution of India forges a changed sense of unity, unity based on the egalitarian principle of justice. This unity is very significant in the sense, that our society was hitherto based on caste - the authoritarian and undemocratic principle.

(2) SPECIAL PROVISIONS:

Part XVI of the Constitution deals with the special provisions relating to Backward classes.

Art. 330 states:

1) Seats shall be reserved in the House of the People for:

(a) the Scheduled Castes;
(b) the Scheduled Tribes except the Scheduled tribal areas of Assam; and
(c) 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 (1) shall 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).

Article 332 states:

1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribe, except the Scheduled Tribes in the Tribal areas 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 of 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.
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 except in the case of the constituency comprising the cantonment and municipality of Shilong.

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 except from the constituency comprising the cantonment and municipality of Shilong.

The number of reservations in single member constituencies for Scheduled Tribes in the States where the concentration of Scheduled Tribes was practically small, two member constituencies were formed, one seat being reserved for the Scheduled Tribes. Thus the Scheduled Tribes were given adequate representation in Parliament and State Legislatures in the First General Elections. Out of a total reservation of 477 seats, in Legislative Assemblies for Scheduled Castes, 475 were reserved in two-member constituencies. Out of a total of 192 seats reserved for the Scheduled Tribes in Legislative Assemblies, 83 were reserved in single-member constituencies, and the remaining one in the Nasik-Igatpuri three member constituencies.

But two-member constituencies are abolished today, with the passing of 'The Two member constituencies (Abolition)
Members of the Scheduled Castes and Tribes generally favour small single-member constituencies which involve less expenditure and trouble. Double-member constituencies are inconvenient and cumbersome from the administrative point of view also. Hence, the act is amended to divide every two-member Parliamentary and Assembly constituency into two single-member constituencies, of which one should be reserved for the Scheduled Castes as the case may be, for the Scheduled Tribes.25

According to 1961 Census, the Delimitation Commission has redetermined the elective seats allotted to all the States (excluding Jammu and Kashmir and Nagaland) in the Lok Sabha. The total number of seats allotted to these States has now been determined as 490 as against 481. In addition, 27 seats have been allotted to Jammu and Kashmir, Nagaland, North East Frontier Agency and the various Union Territories. The number of seats to be reserved for Scheduled Castes and the Scheduled Tribes in the Union Territories, has not yet been determined. For the Lok Sabha, Jammu and Kashmir are allotted 6 seats, North East Frontier Agency, 1, and 18 for the Union Territories. Out of this 18, 2 seats are reserved for the Scheduled Castes and 2 for the Scheduled Tribes.

Seats allotted to Scheduled Castes and Scheduled Tribes in the Lok Sabha according to 1961 Census are 75 and 33

25. The Gazette of India (Extra), Part II - Section 1, No. 7, dated March 10, 1961 / Phalguna 18, 1882.
respectively. Their representation in Vidhana Sabhas are 471 and 227.

The Territorial Councils have been replaced by Legislative Assemblies in the Union Territories. The representation of Scheduled Castes and Scheduled Tribes to these Assemblies were 41 for Himachal Pradesh, 32 for Manipur and 32 for Tripura up to 1961-63.

Art. 334 reads:

Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to -

a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; shall cease to have effect on the expiration of a period of (twenty years) from the commencement of this Constitution;

Provided that nothing in this article shall effect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

It was first started that reservations would cease after the expiration of 10 years from the commencement of the Constitution, viz., 1960. However, the time limit fixed for the reservation of seats in the House of the People and Legislative Assemblies has been extended for 10 more years by an amendment of the Constitution - 'The Constitution (Eighth Amendment)


Article 335 ensures:

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 appointments to Services and Posts in connection with the affairs of the Union or of a State.

The Constitution of India has struck a balance in this article by giving a fair share in the administration of the country to the Scheduled Castes and Scheduled Tribes on the one hand, and at the same time insisting on the efficiency and integrity of the Services while making appointments.

Article 339 ensures:

1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian Community.

In compliance with this article, the commissioner
for Scheduled Castes and Scheduled Tribes was appointed by the President on November 18, 1950. He is entrusted with the task of investigating and evaluating the progress made, as well as the measures needed to better the position of the Scheduled Castes and Scheduled Tribes. The Ministry of Home Affairs of the Government of India, is in charge of the overall responsibility of executing the safeguards provided in the Constitution.

Article 339 reads:

1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas, and the welfare of the Scheduled Tribes in the States.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

2) The Executive Power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Accordingly 'the Scheduled Areas and Scheduled Tribes Commission' was appointed on April 28, 1960, to investigate and report on the problems of the Scheduled Tribes. The Report was submitted in October, 1961.

Art. 340 provides for the appointment of a commission to investigate the problem of Backward classes. It says:
1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the condition of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Likewise, the President under Article 340 of the Constitution appointed 'the Backward classes Commission', on January 29, 1953, with the following terms of reference:

a) to determine the criteria to be adopted in considering whether any sections of the people in the territory of India (in addition to the Scheduled Castes and Scheduled Tribes specified by notifications issued under Articles 341 and 342 of the Constitution) should be treated as socially and educationally backward classes; and in accordance with such criteria, prepare a list of such classes setting out also their approximate numbers and their territorial distribution;

b) to investigate the conditions of all such socially and educationally backward classes and the difficulties under which they labour.27

The Commission was thus entrusted with the difficult task of finding out the criteria for determining backwardness. As regards the classification of Scheduled Castes and Scheduled Tribes the Commission found it easy, because, there is a well defined test of 'Untouchability' in the former and 'Tribal Organisation' in the latter respectively. However, the report of the Commission was not unanimous. The list of Backward classes prepared by the Commission included, as many as 2399 communities, out of which 913 alone accounted for an estimated population of 11.51 crores. Though the report of the Commission was rather disappointing, in so far as no solution was discovered for the problem of Backward classes, yet, it served a very useful purpose by demonstrating the general backwardness of the country through facts and figures recorded in their report, 1955.

Article 341 provides

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

2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.
In compliance with this Article, the Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Castes) (Part C States) Order, 1951, the Scheduled Castes lists (Modification) Order, 1956, the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956, and the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1956, were passed, specifying the lists of Scheduled Castes throughout India, for purposes of conferring special concessions envisaged in the Constitution.

Article 342 states:

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

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

Accordingly, the Constitution (Scheduled Tribes) Order came into force in 1950. But it was subjected to bitter criticism. It was remarked that the list of Scheduled Tribes was not prepared on scientific lines, but was rather haphazard and vague. The attention of the Government was focussed to the Census Reports of 1941 and 1951 which recorded a remarkable
reduction in tribal population. The critics argued, that a general increase in total population of the country should coincide with a corresponding increase in population of all categories. Hence, there was no reason for the decrease in tribal population. They argued that the decrease in tribal population was chiefly due to the negligence on the part of the Government.

Whatever the controversy, a memorandum was submitted to the President by Dr. H.M. Zunnu and 15 other members of Parliament on December 17, 1950. The points dealt with in the Memorandum were:

Firstly, no adequate reasons were furnished by the Government for the reduction of 33 per cent of the total tribal population, if the general trend of increase of the Indian population as given in the Census of 1951 was taken into consideration. Secondly, it is impossible to agree that as compared to the figures of 1941, the strength of tribal population could be reduced by 63 lakhs in 1950, unless this was calculated in an arbitrary manner. For instance, in the figures given by the Government, the tribal population in Madhya Pradesh has been reduced from 44.4 lakhs to 24.59 lakhs, i.e. by nearly 50 per cent. In the same manner, the tribal population of Rajasthan has been reduced from 15.51 lakhs to 4.47 lakhs or nearly 75 per cent. Similarly, the tribal population in Assam, Bihar, Orissa, Hyderabad, West Bengal has been considerably reduced.

In addition to the aforesaid order, the Constitution (Scheduled Tribes) (Part C States) Order 1951, the Scheduled Tribes Lists (Modification) Order, 1956, and the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959, were passed.
Constitutional safeguards for minorities were heralded during the British regime. The Act of 1919, marks a landmark in the Constitutional history of India. This Act gave weightage to the representation of minority communities not only in Provincial Legislature, but also provided adequate safeguards in Public Service, by reserving certain percentage of posts by district recruitment to the Indian Civil Service. Reservation of posts for minority communities was thus made intravires of the Constitution. The object behind these reservations was, the British Government wanted to pacify different sections of minorities in India, chiefly to consolidate their position.

The Montagu-Chelmsford Report (Act of 1919) fully studied the problem of Communal electorates granted to minorities and realised its shortcomings. But, they were forced to favour this measure of Communal electorates because, the Muslims were already accorded the privilege of separate electorates by the Act of 1909. Besides, the famous 'Lucknow Pact' concluded between the Congress and the Muslims League had secured some communal amity in the same direction. In compliance with the policy pursued by the British Government prior to 1919, the Montagu-Chelmsford Report favoured political safeguard to Sikhs, Muslims, Depressed Classes and
and other minorities.

The following Table illustrates the communal composition of Provincial Legislative Councils together with population and voting ratios of the minority communities:

<table>
<thead>
<tr>
<th>Province</th>
<th>Percentage of communal seats</th>
<th>Percentage of Total seats</th>
<th>Population Ratio Per cent</th>
<th>Voting Ratio per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madras</td>
<td>79.0</td>
<td>73.3</td>
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</tr>
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<td>Central Provinces (including Berar)</td>
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<td>78.0</td>
<td>95.4</td>
<td>91.6</td>
</tr>
<tr>
<td>Assam</td>
<td>63.6</td>
<td>47.1</td>
<td>65.9</td>
<td>69.8</td>
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**SIKHS**

<table>
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<tr>
<th>Province</th>
<th>Percentage of communal seats</th>
<th>Percentage of Total seats</th>
<th>Population Ratio Per cent</th>
<th>Voting Ratio per cent</th>
</tr>
</thead>
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<tr>
<td>Madras</td>
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<td>Bombay</td>
<td>-</td>
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<tr>
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<th></th>
<th>INDIAN CHRISTIANS</th>
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<td>INDIAN CHRISTIANS</td>
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<td>43.7</td>
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<tr>
<td>Bihar &amp; Orissa</td>
<td>25.3</td>
<td>18.5</td>
<td>10.9</td>
<td>10.9</td>
</tr>
<tr>
<td>Central Provinces (including Berar)</td>
<td>13.2</td>
<td>9.6</td>
<td>4.4</td>
<td>8.4</td>
</tr>
<tr>
<td>Assam</td>
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<td>30.2</td>
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</tr>
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<td>5.3</td>
<td>3.2</td>
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<tr>
<td>Bombay</td>
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<td>1.5</td>
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<td>Central Provinces (including Berar)</td>
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<td>0.3</td>
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<td>Assam</td>
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<td>Nil</td>
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**Note:** The table represents the percentage distribution of Muslims and Indian Christians across different provinces.
**ANGLO INDIANS**

<table>
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<tr>
<th>Province</th>
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</tr>
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<td>Europeans</td>
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**EUROPEANS**

<table>
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<tr>
<th>Province</th>
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<th>1920</th>
<th>1921</th>
</tr>
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<tr>
<td>Madras</td>
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<td>9.8</td>
<td>0.02</td>
</tr>
<tr>
<td>Bombay</td>
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<td>0.2</td>
</tr>
<tr>
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<td>0.05</td>
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<td>0.05</td>
</tr>
<tr>
<td>Punjab</td>
<td>1.5</td>
<td>14.9</td>
<td>0.1</td>
</tr>
<tr>
<td>Bihar &amp; Orissa</td>
<td>1.4</td>
<td>18.4</td>
<td>0.02</td>
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</tr>
<tr>
<td>Europeans</td>
<td>1.9</td>
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</table>

Assam: Nil

Thus, Communal electorates become a regular feature of the Constitutional problem in India ever since the Act of 1919. The Communal electorates controversy figured very prominently in the various sessions of the Round Table.
Conference between 1929-32. 'The Minorities sub-Committee of the Round Table Conference', 1930, unanimously proposed, that the new Constitution to be envisaged for India should contain provisions to assure minority communities that their interests would not be prejudiced. It was agreed by all, that unless the minority groups are satisfied, Constitutional problem in India would not be solved. But unfortunately the two sessions of the Round Table Conference ended in failure, as they could not reach any agreement on communal deadlock - the problem of percentage of representation in Legislature. It was during this time, the policy of separate electorates as a solution to communal deadlock was suggested.

Speaking at a meeting of the Minorities Committee on November 13, 1931, Gandhiji commented on the proposed policy of separate electorates as:

'It will create a division in Hinduism which I cannot possibly look forward to, with any satisfaction whatsoever. I do not mind Untouchables, if they so desire, being converted to Islam or Christianity. I should tolerate that, but I cannot possibly tolerate what is in store for Hinduism if there are two divisions set forth in the villages.'

The failure of the second session of the Round Table Conference to reach any agreement on communal deadlock, prompted Mr. Ramsay Mac Donald, the then Prime Minister, to

30. Ibid. P. 259.
announce the British Government's Provisional Scheme of Minority representation the famous 'Communal Award' on August 16, 1932. He remarked: 'we never wished to intervene in the communal controversies of India. We made that abundantly clear during both the sessions of the Round Table Conference, when we strove hard to get Indians to settle this matter between themselves'.

Under 'Communal Award', Depressed Classes, the so-called 'Scheduled Castes' of today, were considered as a minority community and were given thereby the benefit of separate electorates. The circumstances which contributed to the introduction of separate electorates were clearly explained by Mr. Ramsay Mac Donald that:

For many years past, separate electorates, namely the grouping of particular categories of voters in territorial constituencies by themselves has been regarded by minority communities as an essential protection for their rights. In each of the recent stages of Constitutional development, separate electorates have consequently found a place. However much Government may have preferred a uniform system of Joint electorates, they found it impossible to abolish the safeguards to which minorities still attach vital importance.

But, 'Communal Award' raised lot of heat dust in the Indian political circles. Dr. Ambedkar, the leader of

31. Ibid. P. 259.
32. Ibid. P. 260.
the 'Depressed Classes', felt that 'Communal Award' by creating separate electorates would help the Untouchables to improve their status in society, by means of fair representation in Legislatures. He opined, that Untouchables forsaken by Hindu orthodoxy could take refuge only under the British protection of separate electorates. In his frenzy, he overlooked the shortcomings of separate electorates and the havoc it would cause to Hindu society rather rather India's political future. Separate electorates meant not only the division of Hindu Society but also estrangement between different sections of society. As a protest to this measure, Gandhiji, who was then serving a term of imprisonment at Yeravada jail, undertook a 'fast unto death'. The result was, Dr. Ambedkar was forced to fall in line with Gandhiji's way of thinking of abolishing separate electorates for Depressed Classes. This understanding between the two great leaders culminated in the 'Poona Pact', which came into effect on September 25, 1932. Instead of separate electorates, the Depressed Classes gained the advantage of increased number of reserved seats in the Legislature by virtue of the 'Poona Pact'. Besides, 'Poona Pact' formed the basis of representation in the Act of 1935, as far as the Depressed Classes were concerned.

The text of the Poona Pact was: 

1. There shall be seats reserved for the Depressed classes out of the general electorate seats in the Provincial Legislatures as follows:

i) Madras 30
ii) Bombay with Sind 15
iii) Punjab 8
iv) Bihar & Orissa 18
v) Central Provinces 20
vi) Assam 7
vii) Bengal 30
viii) United Provinces 20

Total: 148

These figures are based on the total strength of the Provincial Councils announced in the Prime Minister's (Mr. Ramsay Mac Donald) decision.

2. Election to these seats shall be by Joint Electorates, Subject, however, to the following procedure:

All the members of the Depressed Classes, registered in the general electoral roll in a constituency, will form an Electoral College, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single vote: the four getting the highest number of votes in such Primary election, shall be candidates for election by the General Electorate.

3. Representation of the Depressed Classes in the Central Legislature shall likewise be on the principle of Joint Electorates and reserved seats by the method of Primary election in the manner provided for in clause (2) above, for their representation in the Provincial Legislatures.

4. In the Central Legislature, eighteen per cent of the seats allotted to the General Electorate for British India in the said Legislature shall be reserved for the Depressed Classes.

5. The system of Primary Election to a panel of candidates for Election to the Central and Provincial
Legislatures, as herein before mentioned, shall come
to an end after the first ten years, unless terminated
sooner by mutual agreement under the provision of
clause (6) below.

6. The system of representation of the Depressed
Classes by reserved seats in the provincial and Central
Legislatures as provided for in clause (1) and (4) shall
continue until determined by mutual agreement between
the communities concerned in the settlement.

7. Franchise for the Central and Provincial
Legislatures for the Depressed Classes shall be as
indicated in the Lothian Committee Report.

8. There shall be no disabilities attaching to
anyone on the ground of his being a member of the
Depressed Classes in regard to any elections to Local
Bodies or appointment to the Public Services. Every
endeavour shall be made to secure fair representation
of the Depressed Classes in these respects, subject to
such educational qualifications as may be laid down
for appointment to the Public Service.

9. In every Province, out of the educational grant,
an adequate sum shall be ear-marked for providing
educational facilities to the members of the Depressed
Classes.

Poona Pact was however welcomed with mixed feelings.

Dr. Ambedkar was none too happy about the proposals. He
commented on the Poona Pact:

If the Poona Pact increased the fixed quota of
seats, it also took away the right to the double vote
given to them. This increase by the 'Communal Award'
in seats can never be deemed to be a compensation for
the loss of double vote. The second vote given by the
'Communal Award' was a priceless privilege. Its value
as a political weapon was beyond reckoning. 34

34. B.R. Ambedkar, 'What Congress and Gandhi have done
to the Untouchables' P. 90.
He made it very clear that Poona Pact was accepted only because of Gandhiji's 'Coercive fast' and not that it could secure for Depressed Classes a better representation in the Legislature.

The next phase in the history of minority representation was the Act of 1935. There was no major change in the communal reservation policy for minorities, in allocating seats to the Federal Legislature in 1935.

The Act of 1935 carried forward the principle of communal reservation much farther, than that envisaged in the Act of 1919. The only change was, separate electorates for Depressed Classes was withdrawn in consonance with the terms of the Poona Pact, while it continued for other communal minorities. Under this act, Hindus who formed more than 70 per cent of the population were given only 105 general seats in the Federal Assembly, which included 19 seats reserved for Depressed Classes. On the contrary, Muslims, Sikhs, Europeans, Indian Christians, and Anglo-Indians, who formed less than 30 per cent, were given almost equal number of seats. Communal minorities were thus given greater political safeguards.

The Constituent Assembly of India following the footsteps of earlier Acts, accepted the proposal to guarantee certain political safeguards to minorities. 'The Advisory Committee on Minorities', 1947, recommended certain percentage
of reservation in Legislatures to minorities. Minorities were accordingly grouped into three categories on population basis.

Group A - Population less than \( \frac{1}{2} \) per cent in the Indian Dominion, omitting States.

1) Anglo Indians
   2) Parsees
   3) Plains’ tribesmen in Assam.

Group B - Population not more than \( 1\frac{1}{2} \) per cent.

4) Indian Christians
   5) Sikhs.

Group C - Population exceeding \( 1\frac{1}{2} \) per cent.

6) Muslims
   7) Scheduled Castes.

 Parsees and Anglo-Indians were not given any reservation of seats in Legislatures. It was assured, that if these minorities failed to secure adequate representation, their claim for reservation would be considered by the Government. However, Indian Christians, Muslims and Scheduled Castes, were given reservation of seats in the Central and Provincial Legislatures on the basis of their population.

The recommendations made by the Report of the Advisory Committee on Minorities, Fundamental Rights etc., 1947, as
regards the political safeguards to minorities were as follows:

i) That all elections to the Central and Provincial Legislatures will be held on the basis of Joint electorates with reservation of seats for certain specified minorities on their population ratio. This reservation shall be for a period of ten years at the end of which the position is to be reconsidered. There shall be no weightage. But members of the minority communities for whom seats are reserved shall have the right to contest general seats;

ii) That there shall be no statutory reservation of seats for the minorities in cabinets, but a convention on the lines of Paragraph VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935, shall be provided in a Schedule to the Constitution;

iii) That in the All-India and Provincial Services, the claims of minorities shall be kept in view in making appointments to these services consistently with consideration of efficiency of administration; and

iv) That to ensure protection of minority rights an officer shall be appointed by the President at the Centre and the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards.

But, the partition problem created some difficulties particularly in East Punjab and West Bengal. A special sub-committee with Sardar Vallabhbhai Patel, as Chairman, was appointed by the Advisory Committee on Minorities, Fundamental Rights, etc., in 1948. The most important problem dealt by

this special sub-committee was, the problem of the Sikhs.

The demands made by the Sikhs were:

i) that the Sikhs should have the right to elect representatives to the Legislature through a purely communal electorate;

ii) that in the Provincial Legislature of East Punjab, 50 per cent of the seats and in the Central Legislature 5 per cent should be reserved for the Sikhs;

iii) that seats should be reserved for them in the U.P., and Delhi;

iv) that Scheduled Caste Sikhs should have the same privileges as other Scheduled Castes; and

v) that there should be a statutory reservation of a certain proportion of places in the Army. 36

But it was felt, that though Sikhs constituted a minority on the basis of their population ratio, yet they were not subjected to any social disabilities like the Scheduled Castes. Moreover, the demands made by the Shromani Akali Dal, on behalf of Sikhs was anathema to the successful working of democracy. It meant a revival of communalism which was dangerous to national solidarity. Hence, the demands of the Sikhs were turned down without any consideration. The special sub-committee explained very clearly the reason for not conceding the demands that:

"We feel convinced that to accede to the demands

36. Ibid, Para 3, P. 314."
of the Shromani Akali Dal will lead, by an inevitable extension of similar privileges to other communities, to a disrupting of the whole conception of the Secular State which is to be the basis of our new Constitution'.

Commenting on the policy of Communal reservation,

Mehru observed:

Reason No.1 was that we feel that we could not remove that without the goodwill of minorities concerned. It was far them to take the lead or to say that they did not want it. For a majority to force that down their throats would not be fair to the various assurances that we had given in the past, and otherwise, too, it did not look the right thing to do. Secondly, because in our heart of hearts we were not sure about ourselves nor about our own people as to how they would function when all these reservations were removed, we agreed to that reservation, but always there was this doubt in our minds, namely, whether we had not shown weakness in dealing with a thing that was wrong.

The report of the Advisory Committee on Minorities, Fundamental Rights, etc., came up for consideration, on December 30, 1948. Some of the members of the Committee were of the opinion, that since the position had greatly changed after 1947, that is, after the recommendations made by the Advisory Committee, it was of utmost importance to discontinue reservations on religious grounds for Muslims, Christians, Sikhs, etc. Reservations on religious grounds was dangerous.

37. Ibid, Para 6, P. 315.
38. Ibid. P. 329.
as that would gradually lead to separatism in the body politic.

Incidentally, Dr. Mukerjee moved a motion in the Constituent Assembly in May, 1949, for the dropping of the clause on communal reservation of seats in the Legislature on population basis. The Sikhs voluntarily agreed to the dropping of reservation benefits. But, Muniswamy Pillai, moved an amendment in favour of continuing the reservation benefits to Scheduled Castes for a period of 10 years. The Advisory Committee, unanimously agreed to accept Muniswamy Pillai's amendment and thereby discontinued reservation policy for other minorities altogether. Accordingly, on May 11, 1949, the Advisory Committee, with one-dissenting voice, passed the said resolution as amended by Muniswamy Pillai, in the following form :- 'That the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished'.

The object behind the Government Reservation policy was lucidly explained by Sardar Vallabhbhai Patel as :

Even if today any concession is made it is with the sole object of easing the suspicions of even the smallest group in this House, because I think that a

discontented minority is a burden and a danger and that we must not do anything to injure the feelings of any minority so long as it is not unreasonable.40

To trace a few important phases, minority representation under the Act of 1919, resulted in the creation of communal electorates. Act of 1919 favoured communal electorates because, the Muslims who were offered the privilege of separate electorates as far back as 1909, had to be appeased by offering similar political safeguards. Moreover, 'Lucknow Pact' concluded between the Congress and the Muslims League had secured some communal amity which had to be kept up.

Likewise, the Simon Commission appointed in 1927, to go through the Constitutional Reforms in India, suggested the continuation of the policy of communal electorates advocated by the Act of 1919.

But, Nehru Committee in 1928, exhibited a departure from the British Policy of separate electorates for minorities. For the first time in the Constitutional history of India, this committee advocated the introduction of Joint Mixed electorates both for the House of Representatives and the Provincial Legislature. In Central Legislature, Muslims who formed the minority community in certain specific provinces were to be given reservation of seats in accordance with population ratio. In North West Frontier Province reservation benefits were

40. Ibid, P. 352.
proposed to be given to non-Muslims.

The next stage in the evolution of minority representation was the Round Table Conference, between 1929-32. The problem of communal representation figured very prominently in the two sessions of the Round Table Conference. But, the failure of the Conference to reach any agreement on the subject of communal representation prompted Mr. Ramsay Mac Donald, to announce the Government Policy of 'Communal Award', which meant separate electorates for minorities. Dr. Ambedkar welcomed the proposal of 'Communal Award', as it meant special safeguards to Depressed Classes. But such a measure spelt danger to Hinduism and National solidarity, as it was likely to estrange relationship between sections of Hindus instead of reconciling their differences. Hence, Gandhiji undertook 'fast unto death' and averted the danger of separate electorates. As a result of Gandhiji's fast, separate electorates were abolished for Depressed Classes and Joint electorates were substituted by the 'Poona Pact', in 1932.

With the ushering in of the Poona Pact, the idea of separate electorates cherished by Depressed Classes and conferred by the British Government was out dated. The era of Joint electorates with reservation of seats for Depressed Classes became the order of the day.

However, the policy of communal reservation was
pursued by the British Government even much later. The Act of 1935 gave greater political safeguards to communal minorities, particularly political Muslims, Sikhs, Anglo-Indians and Europeans, at the expense of the Hindu population including the Depressed Classes, who formed three fourths of the total population.

The departure of the British from the Indian political scene since 1935, marked a setback in the policy of communal representation. The Constituent Assembly of India, though favoured the validity of communal representation in the initial stages, realised in course of time the drawbacks of the system. Very wisely indeed in the year 1949, The Advisory Committee on Minorities, Fundamental Rights etc., appointed by the Constituent Assembly passed the resolution to discontinue communal reservation of seats in the Legislature with the exception of the Scheduled Castes. Since 1949, reservation of seats in the Legislature on communal basis was given up once for all, as communalism was sure to harbour ill feelings among different communities undermining the National solidarity and integration.

The Constitution of Independent India heralded on January 26, 1950, though makes provision for reservation of seats in the House of the People and the Legislatures, to the Scheduled Castes, and Scheduled Tribes, it is gratifying to note that a time limit has been placed for the discontinuation of
reservation benefits. By the Constitution (Eighth Amendment) Act, 1959, reservation would cease to have effect on expiration of a period of twenty years from the commencement of this Constitution, viz., 1970.

(a) RESERVATION IN LEGISLATURES AND PARLIAMENT:

Articles 330 and 332 make provision for the reservation of seats in the Lok Sabha and Legislative Assemblies in States, for the Scheduled Castes and Scheduled Tribes. The number of seats reserved for the Scheduled Castes and Scheduled Tribes in Lok Sabha were 75 and 33 respectively, out of the total of 500 seats, according to 1961 Census. As regards Legislative Assemblies, 470 and 221 are reserved for the Scheduled Castes and Scheduled Tribes respectively. These classes have shown commendable improvement in their representation in political institutions of the country, in so far as a good number of persons belonging to these classes have been elected to the Legislative Assemblies and Lok Sabha, against unreserved seats during the last General Elections.

Table II shows the number of the Scheduled Castes and Scheduled Tribes members elected against unreserved seats in the State Legislative Assemblies:

### TABLE II

<table>
<thead>
<tr>
<th>Name of the State</th>
<th>LEGISLATIVE ASSEMBLY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scheduled Castes</td>
</tr>
<tr>
<td></td>
<td>Scheduled Tribes</td>
</tr>
<tr>
<td>1. Andhra Pradesh</td>
<td>-</td>
</tr>
<tr>
<td>2. Assam</td>
<td>-</td>
</tr>
<tr>
<td>3. Bihar</td>
<td>-</td>
</tr>
<tr>
<td>4. Kerala</td>
<td>1</td>
</tr>
<tr>
<td>5. Madhya Pradesh</td>
<td>-</td>
</tr>
<tr>
<td>6. Madras</td>
<td>1</td>
</tr>
<tr>
<td>7. Maharashtra</td>
<td>-</td>
</tr>
<tr>
<td>8. Mysore</td>
<td>-</td>
</tr>
<tr>
<td>9. Orissa</td>
<td>1</td>
</tr>
<tr>
<td>10. Punjab</td>
<td>1</td>
</tr>
<tr>
<td>11. Uttar Pradesh</td>
<td>4</td>
</tr>
<tr>
<td>12. West Bengal</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12</strong></td>
</tr>
<tr>
<td></td>
<td><strong>9</strong></td>
</tr>
</tbody>
</table>

The representation of the Scheduled Castes and Scheduled Tribes, in the Territorial Councils is given in Table III. 42

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42. Ibid, Para 19.8, P. 76.
### TABLE III

<table>
<thead>
<tr>
<th>Name of the Union Territory</th>
<th>Total number of members</th>
<th>No. of Scheduled Caste Members</th>
<th>No. of Scheduled Tribe Members</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Elected against reserved seats</td>
<td>Elected against unreserved seats</td>
</tr>
<tr>
<td>1. Himachal Pradesh</td>
<td>41</td>
<td>12</td>
<td>+</td>
</tr>
<tr>
<td>2. Manipur</td>
<td>32*</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>3. Tripura</td>
<td>32*</td>
<td>-</td>
<td>2</td>
</tr>
</tbody>
</table>

* Including 2 nominated members.

+ Nominations yet to be made.
Commenting on the representation secured by the Scheduled Castes and Scheduled Tribes in the Legislatures, the Commissioner for Scheduled Castes and Scheduled Tribes, 1961-62, has observed:

If in course of time, a sufficiently large number of Scheduled Caste/Scheduled Tribe persons get elected to the Lok Sabha and the Vidhana Sabhas from general constituencies, there will be no need for continuing the reservation of seats for them and the Constitutional provisions in this regard can be allowed to lapse. To bring about such a situation, it is necessary that all the political parties in the country should consider this problem very carefully and endeavour to set up as many suitable Scheduled Caste/Scheduled Tribe persons, as possible, from their parties for the general seats in Lok Sabha and the Vidhana Sabhas.43

The number of the Scheduled Caste persons appointed as Ministers, Deputy Ministers and Parliamentary Secretaries in the Union Cabinet, has gone up from 3 in 1960-61 to 5 in 1961-62. As regards the Scheduled Tribe persons, the number increased from 1 to 2. In the States, the number of the Scheduled Caste Ministers, Deputy Ministers and Parliamentary Secretaries increased from 26 in 1960-61 to 28, after the last General Election, in 1961-62. While, the number of the Scheduled Tribe Ministers, Deputy Ministers and Parliamentary Secretaries decreased from 15 to 11.44

The greatest landmark in the history of the Union Public Service Commission is, a woman member belonging to the Scheduled Tribe has been appointed as a member of the Union Public Service Commission. This honour goes to Mv. Vomilly Khongman, Chairman of the Assam Public Service Commission and a former member of Parliament.

The Scheduled Castes and Scheduled Tribes have also been given representation in Local bodies - Gram Panchayats, Panchayat Samities and Zila Parishads. There is a proposal to absorb them in Nyaya Panchayats, the Judicial bodies in village administration. It is felt that the representation of these classes in local bodies would foster friendly relation and gradually undermine social barriers.

(b) RESERVATION IN SERVICES:

In pursuance of the provisions contained in Articles 16(4) and 335, the Government of India have made reservations for the Scheduled Castes and Scheduled Tribes in services, since January 26, 1950.

The rules governing the reservations are:-

a) **Scheduled Castes** - 12½ per cent of vacancies filled by direct recruitment on all-India basis by open competition i.e. through the Union Public Service Commission or by means of Open Competitive tests held by any other authority.
iv) The Constitution (Dadra and Nagar Haveli) Scheduled Castes, Order, 1962;

The relaxations allowed are:

1) **Age limit** - The maximum age-limit prescribed for appointment to a service or post is increased by 5 years in the case of candidates belonging to Scheduled Castes and Scheduled Tribes.

2) **Standards of Suitability.**
   a) **Direct recruitment by Examination.**

   If, according to their normal positions in the competition or selection, candidates belonging to Scheduled Castes or Scheduled Tribes obtain less vacancies than the number reserved for them, candidates of such castes or tribes who have secured lower positions but who have qualified at such examination may be selected by the appointing authority at his discretion to make up the deficiency.

   b) **Direct recruitment otherwise than by Examination.**

   The appointing authorities are authorised to select candidates from the Scheduled Castes and Scheduled Tribes of a lower standard than that of others, provided they
in filling up the vacancies was, if sufficient number of candidates belonging to Scheduled Castes were not available for vacancies reserved for them, the unfilled vacancies were treated as reserved for the Scheduled Tribes and vice versa, subject to future adjustments. But now, the rules stand revised on the recommendations of the Scheduled Areas and Scheduled Tribes Commission. The recommendations were:

1) At the moment, if a vacancy reserved for a Scheduled Tribe is not filled owing to the non-availability of a suitable candidate, the vacancy is kept open for a period for which the vacancy may be kept open, if the State Government can get a candidate who is near enough the prescribed qualification, he may be given coaching for a time, reexamined and recruited if he is found to have made satisfactory progress.45

1i) The existing orders of the Union Government which permit the appointment of Scheduled Caste candidates in the vacancies reserved for Scheduled Tribes, where suitable qualified Scheduled Tribe candidates are not available, should, in our opinion, be rescinded. The presence of such a permissive order makes for the complacency. The recruiting authorities should make all possible efforts to find the Scheduled Tribe candidates.46

At this juncture, reference must be made to 'CARRY FORWARD RULE' pursued by the Government of India as a new policy of reservation.

The Government of India has revised the 'carry forward rule' in respect of vacancies in Central Services reserved for Scheduled Castes and Scheduled Tribes.

It has now been decided, that if sufficient number of suitable candidates eligible for reserved vacancies is not available on any occasion of recruitment, such vacancies would not be treated and filled as unreserved vacancies but shall be carried forward for subsequent occasions of recruitment.

For subsequent occasions the number of normal reserved vacancies and the 'carried forward' reserved vacancies together should not exceed 45 per cent out of the total number of vacancies. If there are only two vacancies, one would be treated as reserved. But if there is only one vacancy, it will be treated as unreserved.

The allocation of the 'carried forward' vacancies within this limit among the Scheduled Caste - Scheduled Tribe candidates will be in proportion to the total 'carried forward' reserved vacancies of the two classes.

The surplus above 45 per cent will be carried forward to the subsequent occasion of recruitment, subject however, to the condition, that the particular vacancies carried forward do not become time-barred due to their becoming more than two years old.

The actual representation of the Scheduled Castes and Scheduled Tribes in the Central Government Services, in 1953, is recorded in Table IV 47.

<table>
<thead>
<tr>
<th>Category of posts</th>
<th>Scheduled Castes</th>
<th>Scheduled Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total No. of posts</td>
<td>No. of posts due</td>
</tr>
<tr>
<td>Class I</td>
<td>5751</td>
<td>958</td>
</tr>
<tr>
<td>Class II</td>
<td>5653</td>
<td>942</td>
</tr>
<tr>
<td>(Gazetted)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class II</td>
<td>3103</td>
<td>517</td>
</tr>
<tr>
<td>(non-Gazetted)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class III</td>
<td>549300</td>
<td>91550</td>
</tr>
<tr>
<td>Class IV</td>
<td>789027</td>
<td>131504</td>
</tr>
</tbody>
</table>

47. Report of the Backward Classes Commission, Vol. 1, 1956,
Para 277, P. 134.
The number of the Scheduled Castes and Scheduled Tribe employees in the Central Government services, as on the 1st January 1963, is as shown in Table V:

TABLE V

<table>
<thead>
<tr>
<th>Class of Service</th>
<th>Total no. of employees including Scheduled Castes/ Scheduled Tribes on 1-1-1963</th>
<th>Number of the Scheduled Caste employees on 1-1-1963</th>
<th>Number of the Scheduled Tribe employees on 1-1-1963</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class I</td>
<td>8632</td>
<td>113(1.30%)</td>
<td>13(0.15%)</td>
</tr>
<tr>
<td>Class II</td>
<td>14339</td>
<td>330(2.30%)</td>
<td>31(0.21%)</td>
</tr>
<tr>
<td>Class III</td>
<td>620580</td>
<td>46356(7.47%)</td>
<td>5310(0.85%)</td>
</tr>
<tr>
<td>Class IV</td>
<td>646720</td>
<td>150806(16.56%)</td>
<td>21873(3.38%)</td>
</tr>
<tr>
<td></td>
<td>(excluding sweepers)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Temporary       |                                |                 |                 |
| Class I         | 5930                           | 105(1.77%)      | 17(0.28%)       |
| Class II        | 9969                           | 322(3.23%)      | 20(0.02%)       |
| Class III       | 240625                         | 25768(9.87%)    | 3305(1.36%)     |
| Class IV        | 152250                         | 27937(18.34%)   | 6283(4.12%)     |
|                 | (excluding sweepers)           |                 |                 |

* The figures, given in the table do not include information in respect of the Ministries of Defence, Labour and Employment, Works, Housing and Rehabilitation (Dept. of Rehabilitation), Transport and Communication (Dept. of Transport) and the Dept. of Defence Production, as it has not been made available so far.

The representation of the Scheduled Castes and Scheduled Tribes in the I.A.S. cadre from 1943 to 1960, is shown in Table VI.49

<table>
<thead>
<tr>
<th>Year</th>
<th>Total no. of probationers</th>
<th>Scheduled Caste</th>
<th>Per cent</th>
<th>Scheduled Tribe</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1948</td>
<td>33</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1949</td>
<td>33</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1950</td>
<td>35</td>
<td>1</td>
<td>2.9</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1951</td>
<td>29</td>
<td>1</td>
<td>3.6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1952</td>
<td>38</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1953</td>
<td>32</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1954</td>
<td>42</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1955</td>
<td>49</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>2.0</td>
</tr>
<tr>
<td>1956</td>
<td>57</td>
<td>1</td>
<td>1.8</td>
<td>1</td>
<td>1.8</td>
</tr>
<tr>
<td>1957</td>
<td>77</td>
<td>5</td>
<td>6.5</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1958</td>
<td>64</td>
<td>2</td>
<td>3.2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1959</td>
<td>54</td>
<td>2</td>
<td>3.7</td>
<td>2</td>
<td>3.7</td>
</tr>
<tr>
<td>1960</td>
<td>72</td>
<td>1</td>
<td>1.4</td>
<td>5</td>
<td>6.9</td>
</tr>
</tbody>
</table>

Further details regarding the representation of the Scheduled Castes and the Scheduled Tribes in the I.C.S/I.A.S.,

I.P./I.P.S., I.F.S. (A) and I.F.S. (B) are recorded in Table VII:

### Table VII

<table>
<thead>
<tr>
<th>Services</th>
<th>1-1-57</th>
<th>1-1-58</th>
<th>1-1-59</th>
<th>1-1-60</th>
<th>1-1-61</th>
<th>1-1-62</th>
<th>1-1-63</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.C.S./I.A.S.</td>
<td>18</td>
<td>29</td>
<td>35</td>
<td>38</td>
<td>39</td>
<td>46</td>
<td>68</td>
</tr>
<tr>
<td>I.P./I.P.S.</td>
<td>10</td>
<td>14</td>
<td>16</td>
<td>20</td>
<td>22</td>
<td>29</td>
<td>39</td>
</tr>
<tr>
<td>I.P.S. (A)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>N.A.</td>
<td>7</td>
</tr>
<tr>
<td>I.P.S. (B)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>29</td>
<td>30</td>
<td>47</td>
<td>N.A.</td>
<td>60</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Services</th>
<th>1-1-57</th>
<th>1-1-58</th>
<th>1-1-59</th>
<th>1-1-60</th>
<th>1-1-61</th>
<th>1-1-62</th>
<th>1-1-63</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.C.S./I.A.S.</td>
<td>3</td>
<td>6</td>
<td>8</td>
<td>10</td>
<td>15</td>
<td>20</td>
<td>23</td>
</tr>
<tr>
<td>I.P./I.P.S.</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>6*</td>
<td>5†</td>
<td>6</td>
<td>11</td>
</tr>
<tr>
<td>I.P.S. (A)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>N.A.</td>
<td>3</td>
</tr>
<tr>
<td>I.P.S. (B)</td>
<td>N.A.</td>
<td>N.A.</td>
<td>6</td>
<td>7</td>
<td>8</td>
<td>N.A.</td>
<td>6</td>
</tr>
</tbody>
</table>

* One joined the Indian Frontier Service during the year 1959.
† One officer resigned from the service during the year 1960.

Table VIII records the representation of the Scheduled Castes in the Armed Forces of the country, in 1952 and 1953.


51. Social Welfare in India, 1955, Appendix II, Table A, P.466-6
<table>
<thead>
<tr>
<th>Rank</th>
<th>1952</th>
<th>1953</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Army</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Majors</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Captains</td>
<td>27</td>
<td>29</td>
</tr>
<tr>
<td>Lieutenants</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Second Lieutenants</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>J.O.0s</td>
<td>601</td>
<td>435</td>
</tr>
<tr>
<td>W.O.0s</td>
<td>3273</td>
<td>2533</td>
</tr>
<tr>
<td>Other Ranks</td>
<td>22283</td>
<td>18666</td>
</tr>
<tr>
<td>Recruits</td>
<td>3435</td>
<td>2831</td>
</tr>
<tr>
<td>Non-combatants (enrolled)</td>
<td>5616</td>
<td>7177</td>
</tr>
<tr>
<td>Non-combatants (unenrolled)</td>
<td>4530</td>
<td>-</td>
</tr>
<tr>
<td>Civilians employed in lieu of Military</td>
<td>961</td>
<td>-</td>
</tr>
<tr>
<td>Civilian Personnel</td>
<td>13279</td>
<td>-</td>
</tr>
<tr>
<td><strong>Navy</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lieutenants</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Ratings</td>
<td>-</td>
<td>260</td>
</tr>
<tr>
<td><strong>Air Force</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commissioned officers (Pilot officers)</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Flight Sergeants</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Sergeants</td>
<td>23</td>
<td>3</td>
</tr>
<tr>
<td>Corporals</td>
<td>79</td>
<td>24</td>
</tr>
<tr>
<td>Aircraftsmen</td>
<td>112</td>
<td>48</td>
</tr>
<tr>
<td>Recruits</td>
<td>-</td>
<td>19</td>
</tr>
</tbody>
</table>
Table IX indicates the position of the Scheduled Castes and Scheduled Tribes in the Armed Forces up to December 31, 1962.

<table>
<thead>
<tr>
<th>Arm of Service</th>
<th>Officers/ ORs/ Ratings/ Airmen/ Civilians</th>
<th>Percentage of increase/decrease in the number of persons as on 31-12-62, as compared to the number of persons as on 31-12-1961</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army Officers</td>
<td>+6.82</td>
<td>0.00</td>
</tr>
<tr>
<td>JCOs/WOs &amp; OR Civilians*</td>
<td>+17.83</td>
<td>+11.26</td>
</tr>
<tr>
<td>Civilian Gazetted</td>
<td>+40.00</td>
<td>+100.00</td>
</tr>
<tr>
<td>Civilian non-gazetted</td>
<td>+0.68</td>
<td>9.26</td>
</tr>
<tr>
<td>Navy Officers</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Sailors</td>
<td>+36.00</td>
<td>+8.00</td>
</tr>
<tr>
<td>Civilians Gazetted</td>
<td>0.00</td>
<td>-100.00</td>
</tr>
<tr>
<td>Civilians non-gazetted</td>
<td>+29.00</td>
<td>-2.60</td>
</tr>
<tr>
<td>Air Force Commissioned officers</td>
<td>+100.00</td>
<td>+100.00</td>
</tr>
<tr>
<td>Other Commissioned Officers</td>
<td>+43.00</td>
<td>+14.00</td>
</tr>
<tr>
<td>Civilians Gazetted</td>
<td>+0.00</td>
<td>+0.00</td>
</tr>
<tr>
<td>Civilians non-gazetted</td>
<td>+18.07</td>
<td>+54.54</td>
</tr>
</tbody>
</table>

* Includes civilians of regular and non-regular establishments

* Includes HOOT.

The fact that the Government of India have given ample opportunities to the members of the Scheduled Castes and Scheduled Tribes to shoulder the country's services is crystal clear from the aforesaid tables. But, the general impression regarding the Government's reservation policy is rather disappointing. The Commissioner for Scheduled Castes and Scheduled Tribes, has made the following observation on this matter:

An assessment of the progress made during the last several years, since the Government of India announced their policy decision to reserve certain percentage of vacancies for the Scheduled Castes and the Scheduled Tribes, shows that the position as regards the actual representation of the Scheduled Castes and the Scheduled Tribes in services and posts under the various Ministries of the Government of India and their attached and subordinate offices, is not satisfactory. There is no doubt that their numbers are, generally, increasing from year to year in the Central Government Services, but the rate of progress is very slow.53

Statistical data recorded in the preceding Tables VI and VII shows that the representation of the Scheduled Castes and Scheduled Tribes in All India Services fall short of Government expectations. The average representation recorded by these two classes in Competitive examinations - I.A.S, I.P.S and I.F.S are, 2.5 and 1.1 respectively, as against 12$ and 5 per cent of the total reservation, as

The Union Public Service Commission records the poor recruitment of the Scheduled Castes and Scheduled Tribes candidates in key services for reserved posts. In the circumstances, it could be presumed, that the poor recruitment in Class I and Class II services might be due to the fact, that the Union Public Service Commission is keeping an eye on the suitability of candidates. This fact has been referred by the Constitution, in Article 335 which lays down:

the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

The fact that efficiency factor should be given preference is not disputed by any authorities concerned. But, it has been opined, that poor representation of the Scheduled Castes and Scheduled Tribes in these services are chiefly due to their bad scoring in viva voce or personality test. It has been argued, that the judgement of suitability cannot be based on the results of the personality test alone. As pointed out by the Scheduled Areas and Scheduled Tribes Commission; - Viva voce tests are conducted by persons who may not have adequate knowledge of the conditions in the tribal areas and, therefore, of the handicaps under which the tribal is working, and this is
one of the causes for deficiency in recruitment.

To improve the representation of the Scheduled Castes and Scheduled Tribes in All India Services, some measures are taken by the Government. To mention them, Pre-Examination Training Centres have been sponsored by the Government of India at the University of Allahabad and Bangalore, to provide special coaching to candidates coming from these communities. They are given free tuition, free boarding and lodging facilities. With all these facilities we hope, that the Scheduled Castes and Scheduled Tribe candidates race up to reach the mark set for them by the recruiting authorities.

Even in lower services it is felt, that the Scheduled Castes and Scheduled Tribes are not adequately represented. To overcome this shortcoming, the Government of India have issued instructions to the appointing authorities to select members of these communities, even if they possess a lower standard than others provided, they have minimum qualifications. The suggestion made by the Commissioner for Scheduled Castes and Scheduled Tribes, is:

It would be of very much help if the Ministry of Home Affairs make arrangements to scrutinise, in detail, the results of each examination and test held by appointing authorities, other than the Union Public Service Commission, with a view to discovering the possibilities of appointing even those who did not come to the expectations of the appointing authorities, by imparting them special training, if necessary. It is also desirable that the appointing authorities are not
the State Government have been asked to issue brochures regarding reservation in their services in favour of the Scheduled Castes and Scheduled Tribes. It is gratifying to note, that the Government of Rajasthan and Maharashtra have issued some instructions to the appointing authorities catering to the well being of the Scheduled Castes and Scheduled Tribes. These instructions refer mainly to the forwarding of the applications of subordinate officers of the Scheduled Castes and Scheduled Tribes by the Heads of the Departments brooking no delay, waiving of the requirements of experience in absorbing Scheduled Castes and Scheduled Tribes, granting of study leave with arrangement to pay them scholarships, to make up the general deficiency in their educational background, appointment of Backward class candidates with minimum qualifications, and non-retrrenchment of Backward class personnel.

(4) AN ANALYSIS OF CONSTITUTIONAL PROVISIONS

A survey of Constitutional Provisions for Backward classes shows, that two opposing trends are put into operation. These opposing trends are - the concepts of 'equality' and 'special preference'. Discrimination on grounds of caste, creed, sex, etc. is ruled out on the one hand, while on the other hand, special provisions have been made for Backward classes, under Articles 15(4), 16(4), 29(2), 330, 332 and 335. Special treatment for Backward classes is accorded in the triple
field - Education, Government Service and Political Representation. But political privilege by way of reservations in the Parliament and Legislatures is conferred only on the 'Scheduled Castes' and 'Scheduled Tribes'. The 'Other Backward Classes' and 'Denotified Communities' are excluded from this benefit. It is felt that historical factors have created special circumstances, hence political privilege for 'Scheduled Castes' and 'Scheduled Tribes' could not be discontinued for these sections.

But in practical application, the concepts of 'equality' and 'special treatment', have created a tense situation. The Non-Backward Classes feel discriminated by the special treatment policy. The tense situation has been clearly explained by Nehru as:

We come up against the difficulty that, on the one hand, in our Directive Principles of Policy we talk of removing inequalities, of raising the people in every way, socially, educationally and economically, of reducing the distances which separate the groups or classes of individuals from one another; on the other hand we find ourselves handicapped in this task by certain other provisions in the Constitution.55

M.N.Srinivas comments on this dilemma of the Constitution that: 'the provision of Constitutional safeguards to the backward sections of the population, especially the Scheduled

A.R. Wadia further observes:

Our Constitution aims at a casteless and classless society. But it has not seriously affected the solidity of caste except that it leaves any individual Hindu free to defy any rule of caste without any fear of legal punishment or social ostracism. 57

The tangle of equality and special treatment has been pictured by Nehru as:

We arrive at a peculiar tangle, namely, that we cannot have equality because in trying to attain equality we come up against certain principles of equality laid down in the Constitution. That is a very peculiar position. We cannot have equality because we cannot have non-discrimination, for if you are thinking of raising those who are down, you are somehow affecting the statusque, undoubtedly. You are thus said to be discriminating because you are affecting the statusque. 58

But to attain changes in the statusque, people should be prepared to forego absolute equality in the larger interests of the community, for a temporary period.

Traditional Hindu society was marked by 'social haves' and 'social havenots' by way of caste system. As a consequence of this we are faced with a dilemma today. The special provisions envisaged for Backward Classes in the Constitution, presents a tangle between 'Backward Classes' and 'Non-Backward

Classes’. But such conflicts are commonly found in all societies having class distinctions. "The encroachment of class upon class, of the unprivileged upon the privileged, is not a tale of one era only or one region of the earth."

But it could be said in favour of Constitutional Provisions for Backward classes, that they are both justifiable and inevitable. The social conditions in India are such, that they necessitate the incorporation of special treatment for Backward classes. Some sort of special assistance has to be given to those sections of society who are backward. A look into our historical past, a society based on the authoritarian principle of caste, which stood in the way of social and educational advancement of lower social orders, would justify the special treatment of these sections. Besides, the principle of equality enshrined in the Constitution cannot operate in vacuum. To create equality, special facilities for Backward classes are necessary. To transform a social order based on absolute inequality - caste system, special concessions to those sections who were the victims of absolute inequality are important. Moreover, special concessions guaranteed under Articles 330, 332 are of a temporary nature. The continuance or discontinuance thereby depends on the changed conditions of Scheduled Castes and Scheduled Tribes in political field.

59. Quoted in O’Malley, Modern India and the West, 1941. P. 183-84.
Art. 335 makes provisions for reservation in services, emphasis has been laid on 'efficiency'. Articles 15(4), 16(4) and 29(2) are not mandatory but only enabling provisions of the Constitution.

The satisfactory solution for the juxtaposition of 'equality and special preference' would be as Myron Weiner suggests:

If the Indian people are to accept democratic institutions, some of the community associations' demands must be met. It will require considerable skill to satisfy these demands without destroying the merit system. 60

To sum up 'Constitutional problems are not solved like mathematical equations, for they are part of the problems of social life which do not conform to any mathematical formulae or rigid logic. The interpretation of the Constitutional law of a people living under an old and complex civilisation like ours demands, when solving problems like the present, compromises and skilful adjustment which may not be strictly logical but which will make the Constitution workable'. 61