CHAPTER – V

CONSTITUTIONAL PROVISIONS AND JUDICIAL TREND

In the realm, the constitutionalisation and legislation is likely to produce a gradual emergence of a new social formation. History provides despite the great diversity of its people, their cultural, ethnic, racial, and religious origins, and their many diverse prejudices that have from time to time ruffled the socio-political fabric in the various sections of the country. And history as a record of the past provides the court with a reservoir of social wisdom and political insight. It informs the court of the aims and objectives of the Constitution and its many general clauses. It points out evils against which the great Constitutional clauses are designed as remedies. Therefore the Constitutional provisions, as the remedies for the upliftment of the downtrodden and such other poor citizens are provided under the Articles like 14, 15(4), 16(4), 17, 19, 23, 24, 25, 29(1), 29(2), 30(1), 30(2),

The system of reservation during post-independence period has proved that the Commissions appointed by the various states could not avoid the concept of "caste" while identifying and fixing the criterion while identifying the beneficiaries. The "caste" is an unavoidable phenomenon in the socio-political life of every citizen. No high or low caste citizens shall cross the caste barriers. Very few know the evolution and the meaning and the purpose of the caste in social life. The citizens are egoistic and conservative in caste identity. Hence even when every one knows that caste egoism has been the cause for total disintegration of the nation, they cannot go without it. And it is doubtful if anyone knows the real concept of caste. The common citizen or even the so-called highly educated ones also are not in a position to ward it off and cast off the caste and lead the social life because they have felt it as one of the social necessities to go together for alienations in social life. The lack of scientific education in connection with caste and its growth with positive and negative values in social mobilisation is
the first cause of backwardness. And that totally accounts for the persistence of ignorance prevailing in the society and has blocked the developmental motives in the minds of the citizens. The lack of scientific education as has been stressed earlier has caused such social backwardness and the social backwardness together with ignorance has caused economic backwardness. And economic incapability, i.e., the economic backwardness has led to the general backwardness conversely. But the fact is that the educational backwardness is the first and foremost cause for overall backwardness. Therefore the interlink of the education, with lesser social mobility and economic viabilities as such, are the basic fields every Government has to take into consideration in political society which is governed by the caste politics always.

"How long reservation"? is the crucial question that stands before the rich as well as the poor people. The politicians want to perpetuate the begging and ailing condition of the beneficiaries indirectly so that, the politicians would be the prestigious and dignified 'givers or donors', and as a matter of reverence the expectants who are legally called beneficiaries surrender their liberties and suffer in the long-run and they have fully forgotten that they have their
personal honour, dignity, self-respect and prestige as such in life though they are the only and major political force in the society with ballot papers in their hands. The rich people too are wise to maintain their mercantile force intact for dominance. The rich ones hold sway over the monetary institutions through trade and commerce. And all the times the politicians sit at the feet of the business community for electioneering funds and in turn these politicians would act at the pleasure of the merchantile community and the feudals complement it.

The communal award of the Second Round Table Conference in England ended in the "Poona Pact" which had to recognise and assure the untouchables and the tribal people for their political participation in the society through reservation of proportionate seats from among them to the provincial and parliamentary elections and that is continued after political independence under the "Special Provisions for certain classes of people in the Constitution of India in part XVI" after 26th January 1950, by periodical extension of 'reservation-period' from time to time and hence the reservation of seats in the Parliament and State Assemblies to the scheduled castes and scheduled tribes for political participation. If the Communal
Award would not have been given with such benefits to the untouchables and tribals under the banner of "Depressed Classes" of people, the political reservation to the untouchables and tribals would not have been seen or given after independence easily. By the by, the Other Backward Class of citizens who aspire for the benefits in the way the untouchables and the tribals get is made available to them also in all the fields other than political representation. One day or the other the scheduled castes and scheduled tribes citizens have to go without reservation in both the fields, namely, political, educational and in the state or central services. But how long do these benefits are tenable in maintainability from the view point of natural justice? Of course the high caste population is so cruel that it may cause to legislate a law overnight to the effect that it would freeze out the political reservation and continue the social, educational, civil service reservation benefits to the untouchables and tribals and that shall be the crucial point when the eyes of every untouchable and tribal would open itself. And hoping that or by miscalculation of the silently beating pulses of the scheduled castes and scheduled tribes, the politicians, if legislate any law to remove political reservations under the plea of secularism, so called equality and rights, it is sure that these scheduled castes and scheduled tribes would
gang up against the Government. And the reason as to why,
at present scheduled castes and tribes who are silent on the
agitations demanding reservation benefits by the Other Backward
Classes of citizens who are from the segment of touchable
high caste population is that, the benefits what they get are
assured by the Union Government as well as State Government
under Article 15(4), 16(4) and under part XVI under the
"special provisions". Whereas the Other Backward Classes also
get the benefits under Article 15(4) and 16(4) fixed by the
State Government only from time to time in the field of services
under the State Government and for admissions in the educational
institutions are constitutionally safeguarded. That is the
and tribes
scheduled castes/are the beneficiaries in the Union and State
Government services whereas the Other Backward Classes of citizens
are assured of services under the State Government only.

In the same way, on supposing that the scheduled castes and
scheduled tribes forgo the benefits voluntarily, the high caste,
touchable people shall have no face or place to finger out and
ask for benefits if the untouchables and tribals discard the present
benefits available under Article 15(4), and 16(4) even when their
overall condition at present is critical. The population of
scheduled castes and scheduled tribes, constitutes about 22.8%
of the total population of the State of Karnataka and hence they constitute a big block for the political purposes and they always vote on the direction of feudals even when they avail of the benefits of secret ballot at the polling booths. The crux of the jealousy between the touchable high caste people and the untouchable and tribals is that the participation in politics has always been a traditional and customary matter; and the sole and personal affair of the high caste touchable Hindus who do not have any political reservation assured in the constitution. And the general conditions of the high caste touchables is falling day-to-day and nearing the fallen economic conditions of the untouchables. Hence they cannot tolerate the political benefits being enjoyed by scheduled castes and scheduled tribes only. Further the social and political hatred is an additional dose on the earlier harassment on the scheduled castes and tribes community by the high caste Hindus.

After independence, the issue coming to the educational aspects of the concept of reservation the Commissions appointed so far by the State of Karnataka have erred in defining the concept of the term education in its totality. Nagangouda Commission in the year 1960 went to the extent of saying that the "secondary school leaving certificate course", 
that is the matriculation examination be taken as the marginal education and it was fixed as the standard criteria to identify and classify the beneficiaries to have been said to be educated. But the caste superiority or inferiority complexes are followed even among highly educated people, and they are grown up in the guiding force of casteism, religious egoism, regionalism and linguistic fanaticism, etc. The present system of education also is not an education in its real sense of the term. It does not enable one in understanding the general average socio-religious or moral values in life. It has helped very little in the positivist thinking. The present set up of education has been of a nature of monotonous type up to graduation. The present education and graduation have lost their prestige and standard, and the universities and the examining boards are giving certificates but not toning up the moral standards to the students in life. This is the root cause of misconception about the realities in life. So long as moral values are not integrated into academic instruction, the academic degrees hold no value in the social context. When the moral education leads the academic education the sense of mental growth, realisation and perfection as such would penetrate inside the mind and hearts of the students. But this would require the civic sense in the parents to stimulate it with a moral touch which is rarely found
in most of the families. Education which does not provide maturity of mind to the student population, the practice of exploitation, subordination and domination would continue in society in all walks of life. Naturally graduation should have been taken as the average of the state education as a line below which would be taken as the beneficiaries and above which would be taken as forward for identification and classification as beneficiaries.

Hence with the sole motive of making the opportunities available in the society, which is founded on the caste hierarchic gradation, there are the constitutional provisions, in all walks of life to its maximum for the growth and accomplishment of personality in the political society. The basic objectives like justice: social, economic and political; and equality of status and of opportunity are guaranteed in the Constitution in the very preamble. The Constitution provides not only the political democracy but also social democracy, and to uphold that, the constitutional experts have taken much of the pains. In this direction B.R.Ambedkar says, "... it means a way of life which recognises liberty, equality and fraternity which are not treated as separate items in a trinity. They form a unity of trinity in the sense that, to divorce one from the other is to defeat the
very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor liberty and equality be divorced from fraternity. And with this intention the constitutional experts coined the preamble to go for restoration of new Constitution if anarchy is found in society everywhere and if the constitutional machinery fails in the country, it will increase the gulf between the rich and the deprived citizens of India to uphold democracy. Hence the preamble to the Constitution reads thus: "We the people of India having solemnly resolved to constitute India into a sovereign socialistic secular 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 opportunity, and to promote among them all. Fraternity assuring the dignity of the individual and the unity and integrity of the Nation."

The very preamble gives the depth of consideration in the life of mankind to all the citizens of India and it was not
necessary to express the provisions separately either to the scheduled castes, scheduled tribes and Other Backward Classes of citizens. But the real behaviour of human being is that the Indians, more specially the Hindus are quite an orthodox and ritualistic people. Hence due to the uncertainties of human tendencies in social relations B.R.Ambedkar had to make an express mention of the constitutional provisions separately for their legislation, implementation and execution. Pandit Jawaharlal Nehru who moved the historic resolution on the aims and objectives of the Constitution in the Constituent Assembly was adopted on 22nd January 1947, and in a part of this resolution an assurance is given that "adequate safeguards" would be provided to the "depressed and backward classes". The resolution stated that "this Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance, a Constitution." Therein are guaranteed and secured to all the people of India, justice: social economic and political, equality of status and opportunity before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality and wherein adequate safeguards are provided for minorities, backward and tribal areas, and depressed and Other Backward Classes of citizens.
And this shows that other than those of scheduled castes and scheduled tribes there is a segment of population which lies below the poverty line because of various reasons like, educational backwardness, economic backwardness and social practice of enclosed endogamy in society; and shrewd politics of non-cooperation among individuals and of immoral politics and that the other backward classes of citizens as such emerged in the society as a liability on the society as a whole which no citizen can avoid as a matter of his duties against their fundamental rights towards their fellow citizens.

Therefore every government is forced constitutionally to formulate and legislate the laws under the Directive Principles of State Policy in Part IV of the Constitution of India for the welfare of the poor people. The fundamental rights, in conflict with the Directive Principles of State Policy do weigh more heavy but the importance of the Directive Principles of State Policy cannot be fully ignored as they (Directive Principles) indicate the way in which the state should legislate for achieving socio-economic, political and natural justice for its people as a matter of equal protection of laws and equality before laws.

The "equal protection of laws and equality before the law" as a phraseology has been borrowed from the 14th Amendment to
the American Constitution in 1968 which runs thus: "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, by which equal protection of laws means subjection to equal laws, applying alike to all in the same situation". Equality of law was defined by Field J. as follows in Barbier v/s Connolly, 113 U.S. 27, "the 14th Amendment in declaring that no state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of laws .... and that in administration of criminal justice no different or higher punishment should be imposed upon one, than such as is prescribed to all for like offences."

The provisions enshrined in the Constitution of India by the constitutional experts, when we go through its precisely expressed words, from Article to Article, in detail, one would be in a position to know the position of citizens' liberty, and degree of freedom available in the Indian society which is startified on the ground of castes and sub-castes with different religious denominations with Hindu religious majority which has
made the Constitutional experts define each concept in articles widely for the realisation of social justice to the backward classes of citizens because the Indian's mind is such that those who have realised the divine force threaten the divine itself and those who have not realised the divinity worship it by becoming a slave of it till death.

Though the fundamental rights are found to be conflicting with each other, there are reasonable restrictions found to be imposed wherever necessary and thus the liberty and equality are upheld by the provisions of the Constitution in the judiciary. The constitutional remedies also mention at both the Union and the State Governments in the Supreme Court and the High Courts are quite precise for the redressal of the fundamental rights wherever infringed.

The practice of untouchability is constitutionally abolished and the practice of it is declared to be an offence punishable under law but the practice of untouchability is found to be practised vigorously in rural areas and coldly in urban areas in social practices in all walks of life even today.

However, it has been a great contribution to the Indian jurisprudential chapters wherein the social justice, as an
ideal with the 'welfare state' motive has been made a law which never was before for the 'depressed class' of people. In theory it has been a divine and heavenly abode to the poor and nobles. Therefore, Granville Austin has rightly said, "The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement. Yet, despite the permeation of the entire Constitution by the aim of national renaissance the core of commitment to the social revolution lies in parts III and IV, in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution."¹

The Fundamental Rights which are guaranteed under Part-III of the Constitution are to guarantee the equality as well before the law without any discrimination on the ground of race, religion, caste, creed and sex. But as a matter of fact, the Indian society is heterogeneously stratified and there is a graded inequality existing in all walks of life on account of social, religious, and political disabilities imposed by the high caste

¹ Granville Austin: The Indian Constitution, Corner Stone of a Nation, Oxford University Press, Bombay, 1972, p.50.
people on the scheduled castes and scheduled tribes. And with an intention to remove this disability, the fundamental rights are expressly enshrined in the Constitution for securing social, economic and political equality as a matter of duty of the State towards its citizens. The practice of untouchability is a basic and foremost cause of the backwardness and this "touch me not" practice in the society is the low treatment imposed on some sections of people among Hindus which has made them fully disabled in social life. And after gaining political independence the constitutional provisions mainly aim at the ailing conditions of such disabled and depressed classes of people and for that purpose Article 17 is incorporated which abolishes the practice of untouchability and forbidden by law as an offence punishable under criminal laws. But the social practices are so rigorous that the practice of untouchability is still persisting in society and the low caste people still cling to their superstitious behaviour in the society continuously.

The Directive Principles of State Policy are meant to advise the State to take special care to promote educational and


economic interest of the weaker sections of the people and in particular, of the scheduled castes and the scheduled tribes under Article 46 of the Constitution and it is the landmark in the social codes of the country in the legislative practice after thousands of years.

The extent of reservation and criterias for identifying the Other Backward Class of citizens has been a difficult task and the resources left within the form of benefits for distribution also are limited. There are more contenders and less benefits in the existing conditions since independence. No permanent solution is arrived at either by the centre or by the State Government so far. However, the distribution of the benefits, by the Government by legislating and giving them without heeding the court decisions on temporary basis since independence, is in vogue.

Shri L.G.Havnoor, the Chairman of the Commission for Backward Classes in services to backward classes said, "We do not feel that the efficiency of the services would be materially affected. We should remember that in a welfare state, the so called efficiency in services is not the only end in view though its importance cannot be minimised, the general efficiency of the
state as a whole has to be measured by the social and educational standard of all classes, and by a proper and equitable distribution of offices among all communities in the state."\(^1\)

L.G. Havnoor further says, "It cannot be denied that there are many aspects which constitute the real merit or the real efficiency of the officers, and those aspects are sympathy and compassion for the weaker sections of the society, honesty of purpose, integrity, energy, etc."\(^2\)

Hence reasonable restriction was imposable on the meritorious students, to make opportunity available to the students or candidates who fulfil the minimum of the educational standard prescribed to make equality prevail in social practice actually, by making the meritorious candidates compete within the quota reserved for the open competition.

Therefore, there must be some justifiable brake on meritorious and high caste candidates to achieve the social

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2. Ibid.
balance in equality in the interest of the social whole for justice for its prevalence in the society so that the Backward Classes of people would not feel that they are left away or discriminated in the opportunities.

In an ordinary course of affairs no citizen wants to forgo some of his liberties for the well-being of the incapable or disabled and for that reason it has been the liability of the government to take care of the disabled or deprived ones with the sole motive of maintaining the principle of equality and social justice.

As a matter of fact, every petitioner is an aspirant for the benefits and when he finds that he has not been considered for the aspired seat or post, he resorts to constitutional remedies under the fundamental rights and under Article 226 before the High Court and under Article 32, before the Supreme Court for redressal, and the majority of suits filed have been heard in favour of the applicants.

Therefore every committee or commission while identifying the beneficiaries for the distribution of benefits have followed some principles and criteria taking
into consideration the fundamental rights guaranteed under Article 16(4) of the Constitution to classify some section of people and under Article 15(4) for the purposes of making any provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes, and under Article 16(4) for the purpose of making any provisions for the reservation of Roster for appointments in favour of any backward classes of citizens, which in the opinion of the state, is not adequately represented in the services under the state and for this purpose are taken the social and educational conditions as the requisite criteria for enlistment of those aspirant citizens for the reservation benefits.

And hence even before the Constitution came into force there were reservations but the pre-independence judiciary did not interfere into the religious or social aspects of India as a matter of British policy then, and those Government orders were not challenged by the aspirants.

It was first, in the then Madras State, the present State of Tamil Nadu, the Communal Government Order did prevail in operation successfully till the Constitution came into force in the year 1950, and the same order did hold the "goodness" in law even after 1950 in practice under constitutional shelter.
It was only when the Constitution came into force and Article 16(1) and Article 29 were challenged by Smt. Champakam Dorairaju from Tamil Nadu State, the Supreme Court held the operation of the communal Government Order as illegal and struck down even when the reservations for the Brahmins was available to the extent of 2 seats in every 12 in all walks of appointments, and seats in the professional colleges; and this setting aside of the Communal Government Order by the Supreme Court, had made the then Parliamentarians and the Parliament to amend the Constitution of India to the Article 15 and subsequently clause (4) was added to it as mentioned, and by the by, the Article 29 also was amended by including clause (2) to it to make the express mention of it to the citizens, of the provisions and released the judiciary further free to interpret the law of the land in its own accord and thus validated the challenged communal Government Order in Madras State.

Thus, though the fundamental rights under Articles 15, 16 and 29(2) are abridged; it was said by the Parliamentarians and the Parliament together that in the larger interests of the

1. Supra, (the first amendment to the Constitution of India).
society and social justice, it is equitable principle followed and not that all but a few seats and posts are reserved but not to be less than the proportion to that community's total population and that too on the ground of their educational and social backwardness taken together as the main criteria and the remaining seats and posts left to open competition. And thus it is said that the fundamental rights, under Article 15, 16, and 29 are not absolute but they are subject to the claims of members of the backward classes.\(^1\)

But what is the yardstick to measure the economic backwardness and the educational backwardness and social backwardness as such? This has been interpreted differently by different commissions and committees who have functioned under political assurances and pressures than free and natural examination during the course of their investigation methods. And hence every commission has been the product of the ruling political party.

The Government of Karnataka Order in the year 1959 which included a majority of castes and communities excepting Baniyas, Kayasthas (Kshatriyas) and Brahmins was challenged in Mysore Court in "Ramakrishna Singh" case\(^2\) but the Government Order did

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2. A.I.R., 1960, Mysore, 338 (Ramakrishna Singh V/s State of Mysore).
incorporate all other castes and communities of Hindus and all the Muslims and the Christians except Brahmins, Baniyas and Kayasthas (Kshatriyas) as the backward class of citizens and they were classified into 14 different groups for benefits under Article 15(4) as a matter of policy review; and the Government of Karnataka defended its action in it in which it had imposed the prohibition on the fundamental rights for the first time to mete out the objectives of the policy of the emancipation of the poor strata of the population. However the High Court declared that the Order of 1959 was a fraud on the part of the Government of Karnataka in declaring 95% of its population as backward. But the Court did not express the extent to which the fundamental rights were to be abridged for the benefits to the backward class of citizens to achieve the objectives to be materialised for the well-being of the people under Article 15(4) of the Constitution.

And as an effect of this striking down of the Government Orders by the High Court the Government appointed the Mysore Backward Classes Committee under the Chairmanship of Nagan Gowda in January 1960, to investigate and identify the castes and communities in Karnataka for their classification as the beneficiaries. This committee submitted its interim report in
February 1960 in which it recommended for 22% of the seats in educational institutions for the backward classes with 15% for the scheduled castes and 3% for the scheduled tribes. This also was challenged in the Mysore High Court in Partha's case.  

The Government Order under the Nagan Gowda Committee had stated that the seats unfilled by candidates belonging to the scheduled castes and scheduled tribes should go to the candidates of Other Backward Class of citizens. The final report of Nagan Gowda Committee was submitted in 1961 treating 90% of the population as backward and 50% of the seats or posts were reserved for the Other Backward Classes of citizens as a matter of recommendation. But orders were issued to the tune of only thirty in favour of the Other Backward Class of citizens. However the Report of 1961 was modified by 1962 Orders by the Government of Karnataka and the percentage was again raised to 50%. Again in due course of time in the same year that is in 1961 itself, the Government of Karnataka (then Mysore) increased the reservation of seats to 68% in the educational institutions. And this was challenged in Balaji's case. It was contended, that the

principle adopted was unintelligible and irrational and so it was inconsistent and outside the provision or scope of Article 15(4). It was also contended that the extent of reservation was unreasonable and extravagant, and held that any caste or community that qualifies or intends to be included in the list of beneficiaries must and should be the same as the scheduled castes and the scheduled tribes for its inclusion or acceptance as the Other Backward Class of citizens and also that the expression "socially and educationally backward class of citizens" was to be quite comparable with the backwardness of the scheduled castes and the scheduled tribes for consideration of them for the benefits from the Government.

The Supreme Court held that on the sole basis of 'Caste', the social backwardness of castes and communities cannot be determined. Further while determining the educational backwardness of castes and communities, the High Court did not approve taking of the last three standards in the High Schools and it held that the student average of caste or a community should be well below the state average. Further it was held that the extent of reservation in any way should not be more than 50% for the Other Backward Classes of citizens.

But after Balaji's case, the Government of Karnataka again issued an order as a temporary measure taking a family as a unit for purposes of Article 15(4) with the family's economic condition and occupation of the managers of the family. A family of actual cultivators, or artisans or a petty businessman or individual's inferior services engaged in occupations involving manual labour with less than 1200/- rupees income per annum were considered to be backward classes on the basis that it was a well known fact that they were backward generally but this order also was challenged in the High Court of Mysore in "Vishwanath case".  

By the by it cannot be ignored that a class of citizens should be backward socially and educationally and the said class of citizens is not adequately represented in the services, under the state. And in the same way it cannot be overlooked that "a caste is also a class of citizens" and if "that caste as a whole is socially and educationally backward" reservation can be made on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4)."  


But it is not out of way to refer to the behaviour and the trend of the judiciary in the context of the State of the Jammu and Kashmir in which the Supreme Court said, "the members of an entire caste or a community may in the social, economic and educational scale of rules at a given time be backward and may on that count be treated as a backward class, but that is not because they are members of a caste or community but because they form a class." Hence the Jammu and Kashmir State Government Order reserving about 90% of the posts in favour of Muslims constituting about 70%, and the Hindus and the Sikhs constituting more than 25% was struck down not on the ground that the Government treated such a large population as backward nor on the ground that it made unreasonable and extravagant reservation of 90% of the posts, but on the ground that the scheme amounted to "distribution of posts community-wise".

Further it is observed from the decision in Mysore State the present Karnataka High Court, wherein the Court observed, "at this stage we are constrained to observe from the facts

revealed in the several cases for medical college admissions that came before us for decision that the special reservation made for the socially and educationally backward classes under the Government Order of 1963 has given wide scope for its abuse, in that, the advantage of reservations has been taken away by candidates whose claims do not appear to be bonafide, to the detriment of genuine backward class candidates."

As different people have different opinions on the concept of "backward classes", the different courts have held differently on the issues of backwardness and criteria while giving their judgement. And it is rightly said by L.G.Havnoor, the Chairman of the Karnataka Backward Classes Commission, that "... the cause of our commission is likely to suffer from the handicap that, although we are all certain that we are fighting to secure social justice to the backward classes, many of our people are not clear in their mind about the exact nature of the classes for the removal of whose backwardness the founding fathers of our Constitution provided for making of special provision." The meaning of the expression backward classes

found in Article 15(4), Article 29(2) read with Article 15(4), Article 16(4), Article 338 and Article 340, law best be arrived at, to trace out the meaning of the expression class through the doctrine of EJUSDEM GENERIS, or which is sometimes called the rule of NOSCUNTUR A SOCIIS, the rule of context."

In the course of the judicial pronouncement of various judgements it is found that the judiciary is not definite about the relevancy of facts to be taken into consideration while determining the criteria for backwardness. The phenomenon of 'caste' is the product of the Hindu religion. Other religions' social status, educational standard, mental perfection of knowledge, economic viabilities for execution of the orders passed or laws legislated in the developmental processes of the so-called backward classes; and political set-up under which the society with "De facto" and "De jure" affairs existing are very complicated issues. These require the expertise from different faculties of social sciences and scientists like, economists, psychologists, sociologists, political philosophers, historians, educational experts, scientists and technologists etc. etc. in giving their opinions on such issues are to be consulted while giving judgement. As such, to decide the issues and the facts of the social and educational advancement and backwardness only judges
cannot decide the multifariously linked social intricate problems and pronounce judgement for its upholding in the society for there appears to be no limitation on the power of judiciary constitutionally.

Further the judges are appointed by the President of India and their appointment also is not free from bias. It is more the political motivation which chooses the President to act on behalf of the ruling party on whose votes he is elected.

The concept of adequacy is of course dealt with by Supreme Court in Balaji's case which said that "the adequacy or representation means representation of that community." And further the Supreme Court in Balaji's case said that the educational level of a caste or a community should be less than 50% of the state average and Article 16(4) says that there shall be adequate representation to every Backward Class of citizens in state services. Of course if there are some castes and communities which are quite minorities from times immemorial in the Hindu religious fold itself. But if they are not backward educationally but they are socially backward, they

cannot claim the benefits under Article 15(4) and 16(4) because it is not sufficient that only social backwardness is/sufficient criteria to confer the benefits on that community, or it is also not sufficient that only educational backwardness is sufficient criteria but that, that "socially backward" community must also be "educationally backward" and that the extent of reservation should not be more than 50% under Article 15(4) and Article 16(4).\(^1\) The opportunities of benefits and services are there in the state government and the commissions appointed by the state governments for the purpose of appointments to the posts for the backward classes of citizens for its state government services, is extended to the municipal corporations and the Mandal Panchayats also. But these commissions appointed by the state government cannot have for the posts in central services, as the central government, has not implemented any of the Commissions' Report for the advancement of the Other Backward Classes of Citizens for the purposes of Article 15(4) and Article 16(4), read with Article 338 for the representation to the posts in (union) central government services. For the advancement of the backward classes of the citizen even when two Commissions were appointed by the President

\(^1\) Ibid.
of India under Article 340, namely, Kaka Kalelkar Commission in the year 1952 and B.P. Mandal Commission in the year 1978, after independence no citizen could move the court for that purpose. This shows the standard of legal awareness of the general public which is far away behind than what it actually should have been in the country. The central government imposed the responsibility of identifying the Other Backward Class of citizens on the shoulders of the states to draw the list of such Backward Classes of citizens for the purpose of Article 15(4) and Article 16(4). It shifted its personal responsibility of identifying the Other Backward Classes of Citizens for the purpose of appointments to the posts under Article 15(4) and 16(4) for the central government services. And for the advancement of the backward classes for educational purposes of seats in professional colleges under the central government in administration under Article 15(4) with binding the judicial pronouncement of the extent of reservation to be not more than 50% in any case for the purpose of Article 15(4) and Article 16(4).

Again when the burden of proof of facts is on the persons who challenge the constitutional validity of the Government Orders relating to their backwardness, the common men who are looking at the Government for help are not capable to
find remedies early from the courts. Hence delay in justice to the citizens who approach courts for that purpose, and such delay in justice has caused unrecoverable heavy damages to the applicants in the administration of justice.

Moreover, when the Government has stopped the mentioning of castes in the census operations they cannot ascertain the backward classes of citizens from the total population for distribution of benefits because every Hindu indicates his caste on his forehead. Especially whole enumeration of the scheduled castes and the scheduled tribes is going on when the caste or tribal name is not noted in the enumeration list, it amounts to the malafide on the part of the Central Government in its act of discrimination under Article 14, which the President has to specify the castes and tribes under Article 338(3) and for the purpose of Article 341 and Article 342, and thus the scheduled castes and scheduled tribes are not made known of their caste and sub-caste's numerical (demographical) strength and thus avoided the political awareness in their 'caste-affinity' for political unification and caste solidarity. And thus we find a political intent in stopping the mentioning of the names of castes and sub-castes by census operation. And it must have been the advice of high politicians to the high bureaucrats.
The power of review by the judiciary is immense when the fundamental rights are encroached upon unreasonably. The scope of judicial review is available when the extent of reservation exceeds beyond the permissible limit of 50% under Article 15(4) and Article 16(4) and when the social backwardness as a matter of fact is a wider term and quite an abstract affair which is ultimately left in the hands of the legislature and executive of the Governmental organisations. The scope of judicial review limits itself but yet, every judge is a human being first, and he too is regulated by the tendencies of caste and religion with every possibility of insincerity and malafides which cannot be discarded in the administration of justice in Hindu majority set-up of national life. And hence there are more possibilities of non-coordination which may lead to weaken the whole set-up.

Every case in microsense differs from the other for its hearing as it involves various social conditions without any uniformity in exactness. Hence every decided case has influenced the future cases as a matter of precedence which has imbalanced the balancing process of the social disparities in constitutionalisation of the equality principle in the context of problems. And we find the judges themselves many times
disagree and express dissent over the issues and therefore the effects too are invariably disagreeable in the social context.

On the extent of reservation in Balaji's case the total number of seats and posts under Article 15(4) and Article 16(4) was not to exceed 50% and Government order which reserved the seats to the extent of 68% was set aside. But in Thomas case1 quite a different stand was taken up by Justice Fazal Ali; and V.R.Krishna Iyer, the former justice saying that 50% is a rule of caution and does not exhaust all categories for there may be a state in which if 80% are backward, 80% reservation would not be bad, and the latter saying "the arithmetical limit of 50% in any one year set by some earlier ruling cannot perhaps be pressed too far."

Justice O. Chinnappa Reddy, on this issue of the extent of reservation says, "The percentage of reservation is not a matter upon which a court may pronounce with a material on hand. For a court, to say that reservation should not exceed 40%, 50% or 60% would be arbitrary and the Constitution does not permit us to be arbitrary .... He further says that, "we are prepared

1. A.I.R., 1976, Supreme Court of India, 490.
to read Balaji as arbitrary laying down 50% as the outer limit of reservation. We must repeat here, what we have said earlier, that there is no scientific statistical data or evidence of expert administrators who have made any study of the problem to support the opinion that reservation in excess of 50% may impair efficiency. It is a rule of thumb and rules of the thumb are not for judges to lay down to solve complicated sociological and administrative problems. Some times it is obliquely suggested excessive reservation is indulged in as a mere vote-catching device. Perhaps so, perhaps not. One can only say, 'out of evil comes the good' and quicker the redemption of the oppressed class so much the better for the nation. Efficiency must be a guiding factor, but not a smoke-screen. All that a court may legitimately say is that the reservation may not be excessive. It may not be so excessive as to be oppressive, it may not; be so high as to lead to a necessary presumption of unfair exclusion of every one else.¹

Therefore we find the judges themselves have different opinions on the common issues on their boards. Therefore knowing fully well of it, it was prayed by the Government of

Karnataka before the Supreme Court in K.C. Vasanthakumar V/s State of Karnataka to give the guidelines on which another commission to work on, on appointment by the Government of Karnataka in the matter of backward classes problem for their emancipation.

Commenting on the role of the judiciary in the state in the implementation of the directive principles of state policy, the Chairman of the first backward classes commission Sri L.G. Havnoor says, "judicial pronouncements on any particular issue or aspect are not uniform, definite, consistent and certain, and when one looks at the law journals every month, one is bewildered at the large number of rulings, either over-ruled or modified or explained. In some instances, executive succumbed to political or communal pressures and ignored the interests of the weaker sections. In this situation, we have got to secure the desired social and economic justice to the weaker sections." ¹

Therefore one committee was replaced by the other committee and so on and every committee's report was applied effectively even when it was challenged as it had a majority of government support.

force behind. The Hagangouda Committee went to an extent of making two groups of classes and classified some castes as "backward" and some among that caste group only as "more backward" as such, for the purpose of conferring benefits. And it was set aside by the Supreme Court as illegal. And too many rich people got the benefits of seats in the professional institutions like technical, engineering, and medical colleges by producing false income certificates from magistrates. However those who obtained the benefits in such a way were regularised, and thus the high caste touchables got the benefits under Article 16(4) and 15(4) till the Nagangouda Committee report was turned down by court as illegal and continued the benefits till the Havnoor Commission submitted its report.

In the same way, to rectify the mistakes committed in Nagangouda Committee, the Government of Karnataka appointed another commission under the Chairmanship of Shri L.G. Havnoor during the Chief Minister Sri Devraj Urs rule and that the Havnoor Commission report too was challenged in the High Court of Karnataka, Bangalore. But under the political influence of the Chief Minister Devraj Urs while in power the applicant Vasant

Kumar lost the case in the High Court, but an appeal by him to the Supreme Court of India, the case was heard against the Government of Karnataka State as the Government of Karnataka's Advocate General requested the Supreme Court of India not to decide the case but to advise in the matter as to how to rectify the mistake committed by the State in identifying the Other Backward Classes of Citizens for their classification as beneficiaries. The Supreme Court of India gave the guidelines to the Government of Karnataka and upheld the contentions of the appeal of Mr. Vasant Kumar in the case.¹

And as an effect of that the Second Backward Classes Commission popularly known as "Venkatswamy Commission" was appointed to rectify the previous fault committed by the Havnoor Commission to inquire and report to the government the list of the castes and communities to be declared as Other Backward Class of Citizens under Article 15(4) and 16(4). Venkatswamy did not include the Lingayat and Vokkaliga castes which are dominant and majority community as backward class for benefits. And hence they launched a violent agitation for having them not included as beneficiaries and the Vokkaligas who also dominate as a second majority caste joined hands with Lingayats as a

political matter of survival and got the agitation launched quite successful; and thus the Lingayats and Vokkaligas too are forced to be included in the modified list in which the whole of Karnataka population except Brahmans was included as beneficiaries under different groups as A, B, C, D, and E, with all the castes and their sub-castes of synonymous castes (modified) groups. Venkatswamy/report is a typical report in the whole of India in which every caste, community and religion are completely included except the Brahmin caste as "backward" for the purposes of benefits under Article 15(4) and 16(4) and thus avoided the disputes in the State of Karnataka in the context of the reservation policy matter by the Chief Minister of Karnataka State Shri Ramakrishna Hegde under Janata Party rule with a note that it will have effect for three years from 1986 under Government of Karnataka Order No.SWL 66 DCA 86 Bangalore, dated the 13th October 1986 and said that the Karnataka State Government shall appoint another Commission to study and report to the Government in this matter. Thus the Government of Karnataka State has been dodging the problem by temporary solutions and escaping from the public responsibility continuously. But the important thing we find is that the process of the distribution of benefits is continuous and no stoppage is found at any time even when the Government Orders
were challenged and struck down by the Supreme Court in a series.

Again under Janata Party rule during the year 1978 at the Union, under the leadership of Morarji Desai the then Prime Minister of India, a Commission was appointed under the Chairmanship of B.P. Mandal to study and report on the backward classes of people for benefits on all India level but as a matter of party politics, the next elected representatives of the people in majority were from the Congress Party. Hence the Congress Party Government did not accept the Mandal Commission Report for implementation as a matter of politics. There are some groups of people who have the lowest position and conditions in their social status, educational standard and economic conditions in the caste hierarchy among Hindus, including Muslims, Christians, Parsis and such other religious minorities. There is also a majority of population who are educationally, socially and economically backward with lesser representation in the services under the Government and Semi-Government organisations. There is majority of population who are landless labourers and suffering under "silently-bonded-labour" problems. There are some social groups of people who are in the nomadic or semi-nomadic nature of life and such other bulk population who come
in the parallel conditions of the backward groups. Their population is significantly large and forms a "class" with the traditional customary practices in the society with their own taboos in food, drinks and cultural habits of separatism. These cannot be neglected or discarded from identification for their classification as "Other Backward Class" of citizens for the special treatment and practically they are lying around the "lower social status" groups of people and just near to those or untouchables and tribals in life. Inadequate representation in government services and non-participation by the untouchables and tribals in the field of trade, commerce, industry too have contributed for social and economic backwardness in the State. Thus the socio-political economy has created a big gulf between the haves and have-nots in the society as a matter of fact of vicious circles in the national economy and these two groups have been divided in the society; one the touchable haves and the second as the untouchable haves, and the third as the touchables-have-nots and the one as untouchable have-nots in Hindu religious social plane. Therefore, to the question, how long reservation? Every common citizen who has a common sense and knows that the practice of untouchability is an offence would normally feel that the untouchability in the present social concept requires to be remedied and till the practice of
untouchability is removed completely, the reservation system has to be continue because the "touch-me-not" concept is a heinous social crime during the present times.