

Appendix: I

RECOMMENDATIONS OF THE MANDAL COMMISSION

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

RESERVATIONS

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

All the above arguments are based on fairly sound reasoning. But these are also arguments advanced by the ruling elite which is keen on preserving its privileges. Therefore, like all such reasoning, it is based on partisan approach. By the same token, while illuminating some immediate areas of concern it tends to ignore much larger issues of national importance,

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

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

Apprehensions regarding drop in the quality of Government services owing to large scale induction of SC, ST, and OBC candidates against reserved posts may be justified up to a point. But it is possible to maintain that all candidates selected on merit turn out to be honest, efficient, and

working and dedicated? At present, top echelons of all the Government services are manned predominantly by open competition candidates and if the performance of our bureaucracy is any indication, it has not exactly covered itself with glory. Of course, this does not imply that candidates selected against reserved posts will do better. Chances are that owing to their social and on the other hand, they will have the great advantage of possessing first hand knowledge of the sufferings and problems of the backward sections of society. This is not a small asset for field workers and policy makers even at the highest at the highest level.

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

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

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

Quantum and Scheme of Reservations

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

As stated in the last Chapter (para 12.22), the population of OBCs, both Hindu and non-Hindu, is around 52% of the total population of India. Accordingly, 52% of all posts under the Central Government should be reserved for them. But this provision may go against the law laid down in a number of Supreme Court judgements wherein it has been held that the total quantum of reservation under Articles 15(4) and 16(4) of the Constitution should be below 50%. In view of this, the proposed reservation for OBCs would have to be pegged at a figure which when added to 22.5% for SCs and STs, remains below 50%. In view of this legal constraint, the Commission is obliged to recommend a reservation of 27% only, even though their population is almost twice this figure

States which have already introduced reservations for OBCs exceeding 27% will remain unaffected by this recommendation. With the above general recommendation regarding the quantum of reservation, the Commission proposes the following over-all scheme of reservation for OBCs.

- (1). Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 21%.
- (2). The above reservation should also be made applicable to promotion quota at all levels.
- (3). Reserved quota remaining unfilled should be carried forward for a period of three years and dereserved thereafter.
- (4). Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner.
- (5). A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of SC and ST candidates.

The above scheme of reservation in its toto should also be made applicable to all recruitment to public sector undertakings both under the Central and State governments, as also to nationalized banks. All private sector banks which have received financial assistance from the Government in one form or the other should also be obliged to recruit personnel on the aforesaid basis.

All universities and affiliated colleges should also be covered by the above scheme of reservation. To give proper effect to these recommendations, it is imperative that adequate statutory provisions are made by the Government to amend the existing enactments, rules, procedures, etc to the extent they are not in consonance with the same.

Educational Concessions

Our educational system is elitist in character, results in a high degree of wastage and is least suited to the requirements of an over-populated and developing country. It is a legacy of the British rule which was severely criticized during the Independence struggle and yet, it has not undergone any structural changes. Though it is least suited to the needs of backward classes, yet, they are forced to run the rat-race with others as no options are available to them. As "educational reform" was not within the terms of reference of this Commission, we are also forced to tread the beaten and suggest only the palliative measure within the existing framework.

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

It is well known that most backward class children are irregular and indifferent students and their drop-out rate is *very* high. There are two main reasons for this. First, these children are brought up in the climate of extreme social and cultural deprivation and, consequently, a proper motivation for schooling is generally lacking. Secondly, most of these children come from very poor homes and their parents are forced to press them into doing small chores from a very young age.

Upgrading the cultural environment is a very slow process. Transferring these children to an artificially upgraded environment is beyond the present resources of the country. In view of this it is recommended that this problem may be tackled on a limited and selective basis on two fronts.

First, an intensive and time-bound program for adult education should be launched in selected pockets with high concentration of OBC population. This is a basic motivational approach, as only property motivated parents will take serious interest in educating their children. Secondly, residential schools should be set up in these areas for backward class students to provide a climate specially conducive to serious studies. All facilities in these schools including board and lodging will have to be provided free of cost to attract students from poor and backward homes, separate government hostels for OBC students with the above facilities will be another step in the right direction.

A beginning on both these fronts will have to be made on a limited scale and selective basis. But the scope of these activities should be expanded as fast as the resources permit. Adult education program and residential schools started on a selective basis will operate as growing-points of consciousness for the entire community and their multiplier effect is bound to be substantial. Whereas several states have extended a number of ad hoc concessions to backward class students, few serious attempts have been made to integrate these facilities into a comprehensive scheme for a qualitative upgradation of educational environment available to OBC students.

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

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

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

Financial Assistance

Vocational communities following hereditary occupations have suffered heavily as result of industrialization. Mechanical production and introduction of synthetic materials has robbed the

village potter, oil-crusher, black smith, carpenter, etc. of their traditional means of livelihood and the pauperization of these classes is a well known phenomenon in the countryside.

It has, therefore, become very necessary that suitable institutional finance and technical assistance is made available to such members of village vocational communities who want to set up small scale industries on their own. Similar assistance should be provided to those promising OBC candidates who have obtained special vocational training.

Of course, most State Governments have created various financial and technical agencies for the promotion of small and medium scale industries. But it is well known that only the more influential members of the community are able to derive benefits from these agencies. In view of this it is very essential that separate financial institutions for providing financial and technical assistance are established for the backward classes. Some state Governments like Karnataka and Andhra Pradesh have already set up separate financial corporations, etc. for OBCs.

Cooperative societies of occupational groups will also help a lot. But due care should be taken that all the office-bearers and members of such societies belong to the concerned hereditary occupational groups and outsiders are not allowed to exploit them by infiltrating into such cooperatives.

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

Structural Changes

Reservations in government employment institutions, as also all possible financial assistance will remain mere palliatives unless the problem of backwardness is tackled at its root. Bulk of the small land-holders, tenants, agricultural labor, impoverished village artisans, unskilled workers, etc. belong to Scheduled Castes, Scheduled Tribes and Other Backward Classes. "Apart from social traditions, the dominance by the top peasantry is exercised through recourse to informal bondage which arises mainly through money-lending, leasing out of small bits of land and providing house sites and dwelling space to poor peasants. As most of the functionaries of government are drawn from the top peasantry remain firm. This also tilts socio-political balance in favor of the top peasantry and helps it in having its dominance over others". (Pradhan M Prasad. "Rising Middle Peasantry in North India", *Economic and Political Weekly*. Annual Number, 1980)

The net outcome of the above situation is that notwithstanding their numerical preponderance, backward classes continue to remain in mental and material bondage of the higher castes and rich peasantry. Consequently, despite constituting nearly 3/4 of the country's population Scheduled Castes, Scheduled Tribes, and Other Backward Classes have been able to acquire a very limited political clout, even though adult franchise was introduced more than three decades back. Through their literal monopoly of means of production the higher castes are able to manipulate and coerce the backward classes into acting against their own interests. In view of this, until the stranglehold of the existing production relations is broken through radical land reforms, the object dependence of under-privileged classes on the dominant higher castes will continue indefinite. In fact there is already a sizeable volume of legislation on the statute books to abolish zamindari, place ceilings on the landholdings and distribute land to the landless. But in actual practice, its implementation has been halting, half-hearted and superficial. The States like Karnataka, Kerala

and West Bengal which have gone about the job more earnestly have not only succeeded in materially helping the backward classes, but also reaped rich political dividends into the bargain.

It is the Commission's firm conviction that a radical transformation of the existing production relations is the most important single step that can be taken for the welfare and upliftment of all backward classes. Even if this is not possible in the industrial sector for various reasons, in the agricultural sector a change of this nature is both feasible and overdue.

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

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

Miscellaneous

- (1) . Certain sections of some occupational communities like fishermen, Banjaras, Bansforas, Khatwes, etc, still suffer from the stigma of untouchability in some parts of the country, They have been listed as OBCs by the Commission, but their inclusion in the lists of Scheduled Castes, Scheduled Tribes may be considered by the Government.
- (2) Backward Classes Development Corporation should be set up both at the Central and State levels to implement various socio-educational and economic measures for their advancement.
- (3). A separate Ministry/Department for OBCs at the Center and the States should be created to safeguard their interests.
- (4) With a view to giving better representation to certain very backward sections of OBCs like the *Gaddis* in Himacal Pradesh, Neo-Buddhists in Maharashtra, Fishermen in the coastal areas, Gujjars in J&K, it is recommended that areas of their concentration may be carved out into separate constituencies at the time of delimitation.

Central Assistance

At present, no Central Assistance is available to any State government for implementing any welfare measures for Other Backward Classes. The 18 States and Union Territories which have undertaken such measures have to provide funds from their own resources. During the commission's tour, practically every State Government pointed out that unless the Center is prepared to liberally finance all special schemes for the upliftment of OBCs, it will be beyond the available resources of the States to undertake any worthwhile program for the benefit of Other Backward Classes

The Commission fully shares the views of the State governments in this matter and strongly recommends that all development programs specially designed for Other Backward classes should be financed by the Central Government in the same manner and to the same extent as done in the case of Scheduled Castes and Schedules Tribes.

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

Appendix: II

"No. 36012/31/90-Estt. (SCT)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Dept. of Personnel & Training)
OFFICE MEMORANDUM
New Delhi, the 13th August, 1990

Subject: *Recommendation of the Second Backward Classes Commission (Mandal Report) —Reservation of Socially and Educationally Backward Classes in Services under the Government of India.*

In a multiple undulating society like ours, early achievement of the objective of social justice as enshrined in the Constitution is a must. The second Backward Classes Commission called the Mandal Commission was established by the then Government with this purpose in view. which submitted its report to the Government of India on 31.12.1980.

2. Government have carefully considered the report and the recommendations of the Commission in the present context responding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their Public Undertakings. Accordingly orders are issued as follows:

- (i) 27 percent of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.
- (ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately
- (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27 percent
- (iv) The SEBC would comprise in the first phase the castes and communities which are common to both, the list in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately
- (v) The aforesaid reservation shall take effect from 7. 8.1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.

Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and Ministry of Finance respectively.

Sd-
(Smt Krishna Singh)
Joint Secretary to the Govt of India"

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AMENDED MEMORANDUM:

"No. 36012/31790-Estt. (SCT)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Dept. Of Personnel & Training)

OFFICE MEMORANDUM
New Delhi, the 25th September, 1991

Subject: *Recommendation of the Second Backward Classes Commission (Mandal Report) -Reservation of Socially and Educationally Backward Classes in Services under the Government of India.*

The undersigned is directed to invite the attention to O.M. of even number dated the 13th August 1990, on the above sections of the SEBCs to receive the benefits of reservation on a preferential basis and to provide reservation for other economically backward sections of the people not covered by any of the existing schemes of reservation, Government have decided to amend the said Memorandum with immediate effect as follows:

2.
 - (i) Within the 27 percent of the vacancies in civil posts and services under the Government of India reserved for SEBCs, preference shall be given to candidates belonging to the poorer sections of the SEBCs. In case sufficient number of such candidates are not available, unfilled vacancies shall be filled by the other SEBC candidates.
 - (ii) 10 percent of the vacancies in civil posts and services under the Government of India shall be reserved for other economically backward sections of the people who are not covered by any of the existing schemes of reservation.
 - (iii) The criteria for determining the poorer sections of the SEBCs or the other economically backward sections of the people who are not covered by any of the existing schemes of reservations are being issued separately.

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

Sd/-
(A.K. Harit)
Dy. Secretary of the Govt. of India

Appendix: III

**Basis of Identification of SEBCs/OBCs in the States Covered by
O.M. of August 13,1990.**

S.No.	Name of the States	Whether State's list is based on Report of Commission/Committee	Status
1.	2.	3.	4.
1.	Andhra Pradesh	Reports of the Commission headed by Shri K.M. Anantharaman and Shri. Muralidhara Rao (June 1970 and August 1982 respectively).	State's G.O. based on the report of the Anantharaman Commission was upheld by the Supreme Court in <i>Balram Case</i> . The modified list of OBCs based on the report of Muralidhara Rao Commission was upheld by the A.P. High Court but the increased quantum of reservation from 25% to 44% was struck down (Judgement of 5.9.1986)
2	Bihar	Commission set up in 1971 under the Chairmanship of Shri Mungeri Lal.	Not challenged
3	Gujarat	Commission headed by Shri. A.R. Bakshi, Retd. High Court Judge (Report of February 1976).	
4,	Goa	No ommission/Comminee State Government have notified 4 communities as OBC on their own	The list was challenged in the High Court in 1986 for quashing the G O and instead declare all the 19 communities recommended by the Mandal Commission as OBCs The High Court rejected the petitioner's claim on March 10, 1988. The matter is now before the Supreme Court through SLP No 9813 of 1988
5.	Han ana	Committees of 1951 and 1965, (In 1990 Gurnam Singh Commission was also set up and its report accepted by State Government).	

6.	Himachal Pradesh	Based on the list of OBCs declared by the erstwhile State of Punjab for the areas merged in the State of Himachal Pradesh in November 1966. The list is now extended to the entire State.	Not challenged.
7.	Karnataka	Commission headed by Shri L.G. Havanuri (Report of Nov. 1975)	The Karnataka High Court struck down the inclusion of certain communities in the list of SEBCs. The matter was then taken to the Supreme Court in <i>Vasanth Kumar Case</i> , (High Court judgment was prior to Mandal Report).
8.	Kerala	(i) Commission headed by Shri G. Kumara Pillai set up in 1964. (ii) Commission headed by Shri N.P. Damodaran set up in 1967.	The Kerala Government vide communication dt. 8.2.1991 has intimated that the list of OBCs has not been challenged.
9.	Madhya Pradesh	Mahajan Commission (report of Dec. 1983) (When Mandal was working, no State list)	List stayed by M.P, High Court.
10	Maharashtra	Committee headed by Shri B.D. Deshmukh (Report on January 1964)	Not Challenged.
11	Punjab	Committee Set up in 1951 at 1965. The latter Committee was headed by Shri Brish Bhan	Not Challenged
12	Tamil Nadu	(i) Commission headed by Shri A.N. Sattanathan set up in 1969. (ii) Commission headed by Shri J.A. Ambasankar (report of February 1985).	The revised list prepared by the Ambasankar Commission has been challenged in the Supreme Court vide W.P. No. 1 of 1987 which is pending. Status report not received from State Government.
13	Uttar Pradesh	Commission headed by Shri Chhedi Lal Sathi (Report of 1977)	Status report not received from State Government.

Appendix: IV

Report of the Expert Committee on Creamy Layer

No.1201 1/16/93-BCC(C) Government of India
Ministry of Welfare

Resolution

The Supreme Court, in its Majority Judgement in Writ Petition (Civil) No.930 of 1990, Indra Sawhney and others etc. Vs. Union of India and Others etc., delivered on 16th November, 1992 has, inter alia, directed that "within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes' and further that the implementation of the impugned O.M. dated 13th August, 1990 shall be subject to exclusion of such socially advanced persons".

Having regard to the fact that a lot of specialized inputs would be needed to determine the bases viz. socio-economic criteria for identification of the 'creamy layer', it has been decided to set up an Expert Committee consisting of:

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| 1. Justice Ram Nandan Prasad (Retd.) High Court Patna | Chairman |
| 2. Shri M.L. Sahare (Social Scientist) Former
Chairman, U.P.S.C. | Member |
| 3. Shri P.S. Krishnan, Former Secretary'
(Welfare) Govt. of India | Member |
| 4. Shri. R.J.Majithia, former Chairman Revenue
Board, Government of Rajasthan | Member- Secretary |

to make recommendations to the Government of India, in regard to the said socio-economic criteria. The committee will also give recommendations on such other matters relating to the implementation of the judgement of the Supreme Court, as the Government of India may consider necessary.

The Headquarters of the Committee will be located at Delhi.

The committee will devise its own procedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the Committee. It is hoped that the State-governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Committee.

The committee shall submit its Report on the socio-economic criteria for exclusion of the 'creamy layer' from Other Backward Classes latest by 10th March, 1993.

Sd-
(MS Pandit)
Jt-Secy. (M & B C)

Report of the Expert Committee for specifying the criteria for identification of socially advanced persons among the socially and educationally backward classes.

The 9-Member Constitution Bench of the Supreme Court delivered its historic judgment in the Reservation case relating to SEBCs (Indra Sawhney and Others vs. the Union of India and others) on 16th November, 1992.

The Supreme Court while upholding my majority the basic principle of reservation for the SEBCs have at the same time, directed that the socially advanced persons of the SEBCs category ought not to be given the benefit of reservation. In order to carry out this directive and specifying and determining as to who from amongst the SEBCs would be liable to be excluded from the benefit of reservation, the Government has appointed the Expert Committee on 22nd February, 1993.

The Supreme Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their social and educational backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although in actual life it mostly happens that economic backwardness is a natural consequence of the social and educational backwardness. It logically follows, therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basics again would be the social and educational factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgement, it has been observed that only when a person's social and educational advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "creamy layer" category. Hence while determining the criteria of exclusion we have kept in mind the guiding principle laid down by the Hon'ble Court. However, if economic betterment flows from social and educational advancement, then this also has to be taken note of.

Before specification of the actual determinants is taken up, it will be useful, may necessary, to indicate and explain what exactly the term "Creamy Layer" or the Rule of Exclusion in actual application would imply. When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade profession of high status, as categorized by us below, he, at that stage is normally no longer in need of reservation for himself. For example, if a person gets appointed as a Class I Officer either on open competition basis or reservation basis, the question of excluding him on the ground that he forms part of the "Creamy Layer" does not at all arise. But since he himself has come into the socially advanced category he will be in a position to provide the means, the equipment and the opportunities which are necessary for the uplift of his offspring. In the present social set-up, when the joint family system, particularly among the upper strata of society, has been breaking up, we are regarding the family to constitute husband, wife and children and on that basis applying the exclusion principle. In other words, even if a person, say Mr. "X", has become a Class I Officer, this will not deprive his brother and sister of the benefit of reservation on the basis that Mr. "X" has become a Class I Officer. The question as to whether the brother or sister or Mr. "X" will or will not get the benefit of reservation shall depend upon the status of their parents.

Sow we proceed to indicate and define the criteria for application of the Rule of Exclusion. The rise in social and educational status may result from different kinds of positions and placements in life and we shall deal with them one by one as noted below. To the categories listed below, the Rule of Exclusion will apply unless exceptions are specifically indicated.

1.CONSTITUTIONAL POSTS

President, Vice-president, Judges of the Supreme Court and High Courts, Chairman. Members of the Union Public Service Commission and State Public Service Commissions, Chief Election Commissioner, Comptroller and Auditor General of India and persons holding Constitutional positions of like nature.

The Constitutional posts of Governor, Minister, and Membership of Legislatures, are, in the very nature of things, temporary and often transitory. Further, in most cases such persons would be cohered in one or the other categories, which have been enumerated in this report. Hence such persons have not been separately categorized.

II. SERVICE CATEGORY

A. Group A / Class I Officers of the All-India, Central and State Services (Direct Recruits)

If either of the spouses is a Class 1 Officer rule of exclusion will apply. Where both spouses are Class I Officers and one of them dies the situation remains unchanged and the rule of exclusion will apply. However, if both of them die then obviously, the offspring are not only left to suffer mental agony and hardships in different ways but they are also denied the benefits and status resulting from the posts of their parents, and due to this disadvantage thrust upon them, the children shall not be denied the benefits of reservation, i.e., the rule of exclusion will not apply to them. It may be noted that if permanent incapacitation occurs which results in putting an officer out of service, then it shall be treated as equivalent to death so far as the application of rule of exclusion to the offspring is concerned. Hereafter, wherever death has been mentioned it shall include permanent incapacitation of the only spouse who is in this category of service, or of both spouses who are in this category of service, an exception has to be recorded. If before the unfortunate event of death of either of or both such spouses occurs, either of the spouses has had the benefit of employment in any international organization like the UN, IMF, World bank etc., for a period of not less than five years then exclusion from the benefit of reservation will continue to apply to the offspring.

It sometimes may happen that a lady who has got married to a Class I Officer may herself like to apply for a job. If she belongs to SEBC category, she will not be disentitled by the rule of exclusion. The reason for saying so is that originally having been a member of SEBC. she carries with her the attributes of backwardness even after she is married to a Class 1 Officer and thought she may economically be in a better position, the initial attributes of social backwardness continue to linger on and will not get shaken off during the short period (in view of the age limit) which will be available to her for getting into any service employment. Therefore, we consider that such a person, more so because she is a lady (which in our society may be generally regarded as a weaker class) should not be denied the benefit of reservation. Therefore, to such a lady rule of exclusion will not apply.

B. Group B / Class II - Central Services and State Services (Direct Recruitment)

If both spouses are Class II Officers then rule of exclusion will apply to their offspring. If only one of the spouses is a Class II officer it will not apply, but if a male officer from Class II category gets into Class I category at the age of forty or earlier, then the rule of exclusion will apply to his offspring. Where both spouses are Class II Officers and one of them dies, it is better to let the children have the benefit of reservation which means rule of exclusion will not apply, however, if either of the spouses has had the benefit of employment in an international organization, as indicated above, for a period of not less than five years, then even in the event of death the application of the rule of exclusion will not be taken away. But if by great misfortune both the spouses die, then the rule of exclusion will not apply to the offspring even if one of the spouses has had the benefit of employment in an international organization.

Where the husband is a Class 1 Officer (Direct Recruit or pre-forty promoted) and the wife is a Class II Officer and the husband dies, the rule of exclusion will not apply. Also when the wife is a Class 1 Officer (i.e. Direct Recruit or pre-forty promoted) and the husband is a Class II Officer and the wife dies the rule of exclusion will not apply but if the husband dies the rule of exclusion will apply on the principle that one of the parents, namely, the mother continues, to be a Class I Officer.

C. Employment in Public Sector Undertaking etc.

The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply, mutatis mutandis, to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance

organizations, universities, etc., and also to equivalent or comparable posts and positions under private employment.

The evaluation of the posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of persons under this category, it is made clear that so long as the evaluation process is not completed and made operative, the income/wealth test under Item VI will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation, and if any exclusion is to be made it shall be on the basis of the criterion under Item VI.

III. ARMED FORCES INCLUDING PARA MILITARY FORCES

(this will not include persons holding civil posts)

The exclusion rule will apply at the level of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces. If the wife of an Armed Forces Officer is herself in the Armed Forces (i.e., the category under consideration) the rule of the exclusion will apply only when she herself has reached the rank of Colonel; the service ranks below Colonel of husband and wife shall not be clubbed together. Even if the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion, unless she falls in the service category under Item No. II in which case the criteria and conditions enumerated therein will apply to her independently. In making these recommendations, we have borne in mind the peculiar nature of the service and hardships faced by the members of the Armed Forces and the Para Military Forces. It has also to be remembered that there is no reservation in recruitment to the Armed Forces, which means that a person at the stage of recruitment in these services is denied the benefit of reservation even though he may otherwise be entitled to it.

IV. PROFESSIONAL CLASS AND THOSE ENGAGED CM TRADE, BUSINESS AND INDUSTRY.

This will include persons not in service employment either Government or private, but those who are engaged in professions as a doctor, lawyer, chartered account, income-tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sport professional, media professional, or any other vocations of like status. All these persons for the purpose of determining whether they will fall in the disentanglement category or not will be governed by the income/wealth criterion as noted in Item No. VI. Likewise, persons engaged in trade, business and industry will be governed by the income/wealth criterion.

In a situation where the husband is in some profession and the wife is in a Class II or lower grade employment, the income/wealth test will apply only on the basis of the husband's income; in other words, the wife's employment will not be taken into account. If the wife is in any profession and the husband is in employment in a Class II or a lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the husband's income will not be clubbed with it. The rationale is to avoid discouragement of women entering service or professions in a gender-discriminating society such as ours.

V. PROPERTY OWNERS: A *Agricultural Land Holdings*

It may not only be difficult but hazardous to prescribe any criteria on the basis of income from agricultural land holdings. So we proceed to indicate the criteria on the basis of the extent of land holding.

If a person belongs to a family (father, mother and minor children) which owns only irrigated land, and the extent of irrigated land is equal to or more than 65 percent of the statutory ceiling area, then the disentanglement will occur. It generally happens that a person holds different

types of irrigated land. In such a situation, the different types of lands should, on the basis of the conversion formula existing, be brought into a single type of irrigated land as a common denominator and on the basis of such denominator, the above cut-off point of 65 percent will have to be determined.

The rule of exclusion will not disentitle persons belonging to families owning only un-irrigated land irrespective of the area of such land. This is on account of the constraints imposed on and implicit in un-irrigated cultivation.

In the case of members of a family owning both irrigated and un-irrigated land, the exclusion rule will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominatory) is 40 per cent or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the un-irrigated portion). If this precondition of not less than 40 per cent exists, then only the area of un-irrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area so computed from unirrigated land shall be added to the actual area of irrigated land, and if after such clubbing together the total area in terms of irrigated land is 65 percent or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentanglement will occur.

On the basis of data supplied to us, we find that there is no Ceiling Law in the States of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh and Goa and in the Union Territories of Andaman Nicobar Islands, Lakshadweep, Daman Diu. Apparently this is on account of the peculiar situation prevailing in these areas including topography, climatic conditions, etc. Under the circumstances the exclusion rule on the basis of land holding will not be applicable here. However, if at a future date Ceiling Law is enacted for any of such States or Union Territories, it would then have to be considered and determined if the rule of exclusion on the basis of land holding criterion will be made applicable or not and if so, in what manner.

B. Plantations

The plantations like coffee, tea, rubber, etc., which are not regarded as agricultural holdings will come under this category. Since they are not regarded as agricultural holding, they are not covered by ceiling laws. Therefore, the criterion at "A" above cannot apply to them and there is no alternative but to apply the criterion of income wealth under Item No VI

From the data supplied to us, it appears that mango, citrus, apple plantations, etc. are regarded as agricultural holdings and they will be covered by the criterion at "A" above

C. Vacant land and/or buildings in urban areas or urban agglomeration

To identify those who come under this category the criterion of income wealth under item No. VI will apply. When we refer to a building it is made clear that the building may be used for residential, industrial or commercial purposes and the like, or two or more such purpose

VI. INCOME/WEALTH TEST

This criterion is on the basis of income or wealth. We are conscious of the fact that in the majority judgement and the judgements of Pandian and Sawant, it has been emphasized that when placing a person in the excluded category, it should be unmistakably evident that social backwardness has come to an end. Their Lordships have emphasized that unless there is social advancement to such a degree as to bring a member of the SEBC more or less at par with the members of the forward classes, he should not be denied the benefit of reservation.

Since the people of this country are engaged in innumerable types of vocations and callings, it is simply not possible to assess the degree of social backwardness or advancement by specifying each one of such vocations for callings and under these circumstances, we have to take recourse to the only discernible criterion available, namely, the criterion of income or wealth. As such, this category may be said to be the residuary category. However, while prescribing the limit for this category, it has been kept in view that improvement in economic condition is so marked as

to necessarily imply social advancement. Thus, here the rise in social status is presumption based indicating that it has followed necessarily from the economic betterment. This aspect of treating social advancement on the basis of presumption has been kept in mind in prescribing the limit of gross income.

Hence, persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. We consider a period of three consecutive years to be a reasonable period for the purpose of the application of the criteria under consideration.

In addition to the above, we have to say that the income/wealth test governs categories IV, VB and VC as stated earlier. For the remaining categories, namely, I, II, III and VA, specific criteria have been laid down; however, if in these categories, any person, who is not disentitled to the benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income - without clubbing his income from salaries or agricultural land - or his wealth is in excess of cut-off point prescribed under the income/wealth criteria.

Since the rupee value is bound to undergo change the income criterion in terms of the rupee as stated above will accordingly stand modified with change in the value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less.

Persons working as artisans or engaged in the hereditary occupations, callings etc., like potters, washermen, barbers, etc., are exempted from application of the rule of exclusion.

The Supreme Court Judgement indicated that classifying the socially and educationally backward classes into two or more categories (backward, more backward, most backward and if necessary, further sub-categorization) is not only desirable but perhaps actually necessary. As and when such categorization is done we feel that for those who fall in the two lowest strata at the bottom, i.e., the state having the maximum backwardness, the application of the rule of exclusion may be kept in abeyance on the reasoning that the process of "Creamy Layer" formation will take more time in their case. While doing so the Government may examine its legal permissibility in terms of the Supreme Court Judgement,

We are aware of the strain imposed on candidates who seek certificates of caste, etc. The strain for them and the existing administrative machinery will be all the more where certification is required not only of caste but that the candidate is or is not affected by any of the criteria of exclusion. In order that SEBC candidates are not put to any harassment in this regard, we recommend that Government may make smooth and satisfactory arrangements for the issue of such certificates without delay and without any difficulty. Government have created a single window system for entrepreneurs applying for certificates and facilities for setting up new industries. Similarly, an appropriate single window system needs to be created at State/District level and necessary guidelines to be issued to see that correct certificates are issued promptly, and without harassment to the applicants

We are also aware of the fact that in some cases false certificates of caste are issued to candidates who do not belong to the reserved categories. In order to prevent this and to ensure that certificates of caste as well as exclusion/non-exclusion criteria are factually correct, innovative arrangements such as transparency through steps like publication in the village/mohalla/panchayat raj offices, etc , may be considered.

CONCLUSION

In specifying the determinants and prescribing the different formulations therein, we have adopted pragmatic approach and we have considered it prudent as well as desirable to err on the right side. In other words, where it appeared while defining the criteria that a more strict

formulation would have the possible effect of excluding more than it ought to, we have chosen not to adopt such a course. And for this approach of ours we find support from observations in different judgements of the Special Bench as well as from other sources.

Reservation has been adopted as a remedy for curing the historical discrimination and its continuing ill-effects in public employment. That being the object in view, the denial of reservation to any member of a socially and educationally backward class is, and has to be, treated as an exception. In identifying such an exception, i.e., applying the rule of exclusion, it has to be ensured that the ill-effects have been fully and finally eliminated and no gray zone is discernible. The nature of such an exercise itself makes the rule of caution inherent.

In the above context would it not be proper, nay desirable to let there be a acceleration and let some distance be covered before we apply the brakes?

What the Supreme Court has directed is identification of the "creamy later". This obviously means that we have not to take note of sprinklings of cream or the mere appearance of cream at the surface. Only when the "creamy layer" is substantial and stable, formed after crossing the Rubicon and social backwardness, then and then alone can it be made the basis for disentitlement. In such a situation, can it be said that adopting a rule of caution and erring on the right side is not justified? Apprehension has been expressed, and rightly, that applying the rule of exclusion on the ground of social advancement may be counter-productive, in as much as by excluding those who have become capable effacing the fierce competition for appointment in the service what will remain are those of the socially backward who are simply not equipped and ready to face the competition and this will have the effect of many of the reserved seats being left vacant. The well-known writer and columnist, Mr. S. Sahay is one among many who have expressed such an apprehension. This is what he has to say:

"... Approval in principle of the concept of backward and more backward is rational and so is the exclusion of the creamy layer. However, the consequences in the immediate future of the exclusion of the creamy layer, even though desirable and necessary, are not going to be happy... The poor remain both poor and uneducated. Count the cost of education today and realize for yourself whether the boy or girl from the chaupal has ever the chance of getting a higher appointment under the Central Government. Even now the reserved jobs for the Scheduled Castes and Tribes are not full> filled. Would the lot of the OBCs be any better, especially after excluding the cream\ layer?"

We can cite many more such quotations and also give more reasons in support of the approach which we have adopted, but in our opinion what we have said above is sufficient to highlight the point under consideration.

It is not out of place to mention that formulation of the criteria for ascertainment of the socially advanced among the SEBC (Creamy Layer) in the manner it required to be done for practical application, is unique in the sense that to our knowledge, such an exercise has been taken up in this country for the first time. Though we find that in the Report of the Third Backward Classes Commission for Karnataka, 1990, there is mention at page 174 Vol 1, of categories among socially and educationally backward classes who should not be entitled to reservation, but we have undertaken an elaborate exercise to make the formulations as far-reaching and comprehensive as possible. Of course, it may be desirable, perhaps even necessary at a future date, to give a second look to the criteria evolved by us and make suitable changes on the basis of experience of implementation and other relevant factors.

Sd.
(Ram Nandan Prasad)
Chairman and
Members
10.3. 1993

(This is an abridged version of the Committee's Report)