Conception of Compensatory Discrimination

Since all homo sapiens is creation of the same God, equality among them is not only an ideal but also the natural fate of the human race. However, the malady is that the creation of God forgot the real message of the Supreme Being – God created man in his own image and created woman out of him as his good companion and best partner. However, the human race forgot the message of God to live with love, affection, and virtues with a sense of brotherhood and sisterhood with the sensibility of otherness. It created its own image of superiority and inferiority, which gave birth to acute discrimination. In this background, non-discriminatory measures to curb the direct or indirect discrimination become meaningless, as they act as perturb of the existing discrimination. In addition, therefore, compensatory discrimination is preferred as a tool of ensuring the equalization justice.

The history of discrimination has more or less similar trends of psychological domination by some group of persons over the other constructing racial images encouraging hierarchical social order. The outcome being that some become privileged on the basis the accident of birth and relegated others to disadvantaged position. The disadvantaged position of such unfortunate people causes perpetuation of formal as well as material subordination. They are deprived of social and political equality with the fortunate privileged people on the one hand and economic subordination on the other. In some countries victim of societal hierarchical structure may be few (minority) like USA but in other they may be many (majority). It is thought that racism in U.S.A. and casteism in India are not aberrant but rather natural to the socio economic life and they have become ingrained feature of the life. It is also viewed that how white elites in America or caste superiority evaded elites in India tolerate and encourage advancement of disadvantaged people in their respective country is not above board, they do so when they also promote their self-interest.
Compensatory discrimination is no more a mere measure of benign treatment of unfortunate people relegated to subordination. It has social as well a national purpose as the interests of the society at large would be better to served by promoting the advancement of the weaker elements in the society or as helping them is now an effective way of attacking a national problem and therefore, in elevating the depressed classes we are but elevating ourselves. **Justification for the course of study on Compensatory Discrimination.**

In view of the world –wide awakening towards the problem of undeserved persecution of ill –fated **have nots** in twentieth century and more particularly after the bad experience of the two World Wars every society has to evolve, adopt and encourage some positive steps to ameliorate the condition of the condemned lot. The problem of discrimination in India has been and still persisting is **sui-generis** 'having no parallel in the world history. Therefore, it provides special justification for compensatory discrimination –allowing discrimination on exactly on the same grounds on which discrimination are prohibited by the Constitution. As American Constitution has been said to be both colour blind and colour conscious, our Constitution too is both caste blind and caste conscious. The Constitution itself permits discrimination on prohibited ground of caste and sex with a view to prevent the discrimination being perpetuated, to undo the effects of past discrimination, and to secure against the future unequal treatment in any walk of life.

In addition, this is the Justification for study course on compensatory discrimination. Human experience, scientific temper, and rational results have disapproved earlier nations of inequality that women are not the intellectual peers of men or black or dalits are inherently lazy, unintelligent, and lascivious and so on. Since they have been discriminated and persecuted on wrong and ill-founded notions, they have to be compensated for past wrong done to them and ensured of no further discrimination Bodenheimer rightly views the issue of unwanted degradation. The victim of such degradation also have desire to be free from domination by others. He observes, “the struggle for emancipation of classes, races and the female sex, which occupies a prominent place in legal history, is evidence of this psychological fact” Compensatory Discrimination not only compensates the
degraded classes by creating an atmosphere to assert their status, personality and independence on equal footing with others, it also widens the freedom of such classes to have their own choices like others.

Paul W. Taylor very succinctly and forcefully justifies compensatory discrimination measures.

“When an injustice has been committed to a group compensation or reparation must be made to that group. Group rights to compensation are not rights against wrong doers but against society as a whole. The obligation to offer such benefits to the group as a whole is an obligation that falls on society in general, not on any particular person. For it is society that through its established social practice brought upon itself the obligation”

**Meaning of Compensatory Discrimination**

Compensatory discrimination is term coined for the policy or programs that give preference to a group or group of people with a stated goal of countering and compensating the past or ongoing atrocities, excesses, injustice, or discrimination of any sort against them. This measure has been adopted for uplifting the weaker sections of a society by several countries including India, USA, Brazil, Belgium, and even China. In USA, it is called as Affirmative Action. A direct application of compensatory discrimination can be seen in reservation of seats in educational institutions, reservation of vacancies in public services, and preference to such groups in Government contracts.

India’s reservation policy, formulated in rigid, hierarchical society as put lined above has been called “Compensatory Discrimination”.  

It seeks to ‘include and recompense both for historic deprivations and affect present handicaps’. A part of the social justice policy, reservations is often considered a moral obligation that certain classes owe to the others who have been systematically denied access to resources. However, reservations are (and should be) but only one element in this complex justice to the socially disadvantaged:

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others include reserving seats in the legislature for the Scheduled Castes and Scheduled Tribes, providing backward classes with certain beneficial schemes—such as Scholarships, health care and other poverty alleviation and development measures, and making both Constitutional and Statutory provisions.¹

**Aims of the Compensatory Discrimination**

For a society as a whole to grow, it is necessary that every section of the society take part in the development of the society. At the same time, every section should also receive the benefits of the growth. A society can never grow if several sections of the society are repressed or exploited. Every section of the society should get a sense of hope that they have a better future ahead. Further, it is also true that historically several sections of our society have been discriminated against and there exists a narrow-mindedness against them in the socially uplifted sections. To bring such downtrodden sections of the society at the same, same, or comparable level, the society as a whole must take special efforts and measures, which is exactly what the purpose of compensatory discrimination is.

**Objectives of the Compensatory Discrimination**

1. To develop a positive attitude of students towards the policy and advance of compensatory discrimination.

2. To sensitize students towards the problem of the disadvantaged sections of the society by appreciation of reason based sensitivity having enduring effect in preference to emotion, which is not rational and is flitting.

3. To sensitize students about the element of empathy owning the position of disadvantaged groups looking into the whole matter for improvement and distinguishing it from sympathy involving a sense of charity.

4. To acquaint students with the different like measures intending to help the disadvantaged sections of the people, that is to say, benign discrimination, positive discrimination, protective discrimination,

¹ These would include Art., 17, which prohibits untouchability, read along with the SC/ST (Prevention of Atrocities) Act, 1986 and the protection of Civil Rights Act, 1964, the Bonded Labour (Prohibition and Regulation) Act, etc.
affirmative action, reverse discrimination and provide awareness as to the compensatory discrimination as means of ensuring equalization justice.

5. To apprise the students of the compensatory discrimination measure including reservation in U.S.A. U.K. Australia and New Zealand with a view to provide comparative trend regarding the issue ending discrimination.

6. To enable the students to view the rationality, desirability and efficacy of measures intending to help disadvantaged people and also think over the measures of helping them should we give them fish to eat or fisher rod them - should we give them fish to eat or fisher rod, the former will help them only for a day and latter will help them feeding for the whole life.

7. To apprise the students of the visionary mission of the framers of the Constitution and their success or failure in implementation of compensatory discrimination policy along with evaluating its impact on the lives of disadvantaged people - has policy made them independent and self-reliant or has it developed more dependency.

8. To apprise the students of different measures meant for betterment, upliftment, and ensuring good social life to the disadvantaged people especially, SCs, STs, OBCs and Women.

1. Age Relaxation to different types of beneficiaries.

2. Relaxation of Qualifications and/or Minimum number of marks/Grades

3. Fee concession for examinations/selections.

4. Fare concessions for attending competitive examinations.

5. Pre-job and post job schemes of training.

6. Housing and Loan scheme for SCs, STs and OBCs

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**Targeted Groups for the Compensatory Discrimination**

As noted before, compensatory discrimination has been adopted in several countries in the world. In US and South Africa, the embattled Groups are blacks and other ethnic minorities, while in India the targeted groups are based on castes and sex.

In India, Untouchables have been historically oppressed. Position of women also has only been marginally better than untouchables. Oppressed of untouchables and women even had religious sanction as is evidenced in the harsh treatment meted out to them in Manu Smriti. Therefore, it is for these people that compensatory Discrimination is employed.

**Logic behind Compensatory Discrimination**

It is often said that meritocracy alone should be the factor in determining social progress of a country. However, there are several problems with meritocracy as mentioned below:

A. It does not take account the social capital already accumulated by the classes who have historically been socially powerful. How can a person whose family has been suppressed since thousands of years or from generation to generation complete with a person who always had the best of the resources available to his disposal?

B. The measurement of merit itself may be biased because of past prejudices.

C. Acquisition of merit such as good education and past experience itself is difficult for such sections because of discriminatory practices of the past.

D. People tend to hire people who are from the similar background, which puts the weaker classes at a disadvantage.

The only solution to this problem is helping them to reach a stage where they can complete with everybody on an equal footing.
Compensatory Discrimination and Equality

Before we talk about equality with respect to Compensatory Discrimination. We must first understand the concept of equality. If two people are founded guilty of murder and one of them is a child. Should the law treat equally and award the same punishment? While working at a construction site, should women be required to lift the load of same weight as men? The answer for both is resounding no. A Child is not mentally capable of distinguishing between right and wrong. A woman is physically not applied in unequal circumstances. Indian Constitution adopts this idea about equality. Like should laws cannot be applied in unequal circumstances. The principle was adopted by the US Supreme Court in the case of “Lindsley vs. Natural Carbonic Gas Co. in 1911 as the meaning of Equal Protection of Law.

Extent ending the same principle, it is not hard to understand that the certain classes of the society are measurably weaker that other in terms social upliftment. Subjecting them to the same standards of meritocracy would amount to injustice. Therefore, I believe that compensatory Discrimination is no against equality. It is, in fact, just another facet of equality. In the case of N M Thomas vs. State of Kerala, SC has held that art 16(4), which the prime source of compensatory discrimination is not an exception to art. 16(1) but only an instant of classification. It further held that reservation could do even without art. 16(4) and under art. 14 that reasonable classification. In the case of Indira Sawhney vs. union of India, the Supreme Court has upheld the view given in NM Thomas case. Thus, such provisions do not; go against the principles of equality.¹

What is discrimination?

Discrimination (often followed by between ) Make or see a distinction; differentiate ( e.g. cannot see right from wrong); make a distinction especially unjustified and on the basis of race, age, sex, etc.; select for unfavorable treatment; make or see or constitute a difference in or between many things, discrimination

one person from another; observe distinction carefully; have a good judgement, discern.

**Discriminating:** Able to discern, especially distinctions; having good test.

Discrimination: Unfavourable treatment based on prejudices, especially regarding race, age or sex, etc.; good taste or judgement in artistic matter; the power to discriminating or observing difference; a distinction made in mind or action. Discrimination is defined as different and selective application (or disregard) to rights, laws, or organisational policies to potential or actual employees.

**Non-discrimination:** Not to discriminate (against) only on grounds of religion, race, caste, or sex.

Positive Discrimination: Carrying out corrective, ameliorative measures and strategies (Policies, programmes, Laws, Rules) for removing the cumulative disadvantaged groups of population and bringing them at par with the rest of the population.

Compensatory Discrimination: Preferential treatment to safeguard the interests of historically disadvantage sections of the society.

Protective Discrimination: It denotes the idea that the object of special or preferential treatment is not so much to give any special privileges as to extend protection to those who have been exploited due to centuries of oppression and ill-treatment and but for the special treatment are vulnerable to exploitation.

Reserve Discrimination: It connotes the idea of discrimination in favour of those until recently had been the victim of discrimination and involves discrimination against those who had not suffered discrimination so far. In other words, it is a situation created by preferential treatment, which results into denial of employment opportunity of a qualified applicant of a non-proffered group.

Reserve discrimination is preferential treatment of individuals or groups who had previously been discriminated against because of their race, national origin, sex, age, religion, or handicap, to the exclusion of other individual or groups in order to rectify an inherent inequality of opportunity experienced by those groups. Its overall goal is to incorporate the socially and economically
disadvantaged group into the mainstream of political, social, and economic institutions.

**Reservation:** it is one of the mechanisms of protective discrimination as a social policy of the state enshrined in the constitution to ensure the participation of the traditionally neglected section of the society. It involves fixation of quotas in the legislative bodies, in educational institutions and in the public employment. ¹

**Affirmative Action:** it is a policy or programme whose stated goal is redress past or present discrimination through active measures to ensure equal opportunity, generally concerning education, employment or seats in parliament and Government.

**An Inspiration of the Compensatory Discrimination**

There is a proverb that is “let the splendid thoughts come to us from every corner of this existing world”. Shahu Chhatrapati Maharajah produced a noble thought, really, it was very exceptional. He was the first designer of the Compensatory Discrimination in favour of exploited class, such as Scheduled Class and Scheduled Tribes.

Shahu is known to have done a lot for the enlistment of the poor and the down trodden. He tried his level best to make education and jobs available to all those living in his domain. He also passed laws to allow the training of non-Brahmin men as temple priests.

Shahu Chhatrapthy was the Maharajah or the king of the Indian princely state of Kolhapur. Also known by the name of Rajarshi Shahu, he was known to be a great social reformer of his time. Shahu Chhatrapthy was born on 26th June in the year 1874 as Yeshwantrao Ghatge. He was eldest son of Appasaheb Ghatge, who was the head of Kagal and his wife Radhabai, who was the daughter of the Raja of Madhol that is in today’s Karnataka state. Read on the biography of Shahu Chhatrapati.

When Shahu Chhatrapati was a child, Anandbai, who was the widow of Maharajah Shivaji IV of Kolhapur in the year 1884, adopted him. The following

¹ S.N. AMBEDKAR, pg. 23-24, First publication 2008, Publishers ABD PUBLISHERS, B-46, Natraj Nagar, Imliwala Phatak, Jaipur-302 005 (Rajasthan) INDIA.
generations saw many marriages taking place between the members of these two families. This caused Shahu’s family to remain closely associated with the ruling dynasty of Kolhapur. This also helped in securing Shahu Chhatrapati’s place on the throne despite his not being male –line member of the Bhonsle dynasty.

Another important point came in the life history of Shahu Chhatrapati in 1891, when he married Laxmibai, the daughter of a Maratha noble from Baroda. Moreover, together they gave birth to four children Shahu is also known to have done a lot for the enlistment of the poor and down trodden. Shahu Chhatrapati tried his level best to make education and jobs available to all those in his domain.

He not only made acquiring education less expensive, but also gave free education to all and got may hostels built within the precincts of kolhapur. By promising proper employment to the students, Shahu Chhatrapati devised one of the earliest affirmative programmes. In addition, many of these plans were executed in the year 1902. Among other changes made by Shahu Chhatrapati for social reform was training the non-Brahmin men as temple priests.

This particular modification went against the social norms, as it is still reserve for only those belonging from the Brahmin sects to become priests in India. For this Shahu even faced solid opposition from many, but remained steadfast. However, this reform too was vanished once Shahu passed away. To honour Shahu’s contribution to the society, the Indian postal department issued a stamp dedicated to him.

An Ideology conceived by him, was a righteous and marvellous thing. I would like to salute, the King Chhatrapati Shahu Maharajah. When reservation was provided by him to the Scheduled Castes and Scheduled Tribes then it was shake-up and aggressive by the upper class people in his domain. In that situation, Shahu Maharajah has shown a practical example to the aggressive upper class people. The king Shahu had carried them at a place, where some horses were in that place and king was ordered the servants lay down the fodder on the floor in a particular place. After that, some horses came very speedily to that place of the fodder, where it was laid down and started eating of the said fodder. Nevertheless, some horses unable to reach that place because of their weakness. At that, time king said them poor horses require the protection. Other it is very difficult for their
survival. Moreover, he said that it is necessity to protect the horses. In that way, the king showed them an incident to understand the concept of reservation.  

**A.M. HONORE**

A.M. Honore gives an account of justification for discrimination allowing preferential treatment and summarises the principles of justice as follows:

1. The Principle of Social Justice requires that all men should have a claim to an equal share in all those advantages which are commonly desired and which conduce to human well being.

2. This Principle is not identical with the demand for equal treatment for all men; it rather requires preferential treatment for the underprivileged, who lack advantages possessed by others.

3. The Principle of allocation according to need is subordinate aspect of social justice.

4. The Principle of conformity to rule is also a subordinate aspect of social justice. This principle is designed to secure to all men two advantages: that their reasonable exceptions will be fulfilled and their dignity respected.

5. Discriminations are justified only (a) to give effect to the principle stated in two above: (b) on the basis of the conduct, actual, potential, or choice of the person to be subjected to discrimination; (c) so far the justice of transaction and special relations requires.

6. It is arguable that given the rough equality of human beings, the equal claim principle is the only principle likely in the long run to lead to social stability.

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First, each person to have an equal right to the most extensive total system of basic liberties compatible with a similar system of liberty for all; second, social and economic in equalities are to be arranged so that they are both (a) to the greatest benefits of the least advantaged, consistent with the just saving principles, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.

Between these two principles, the first had absolute priority over the second and between the two parts of the second principle, second part had absolute priority over the first part and that was the reason why that preferential statement might not be of much help to the cases of reverse discrimination.

Compensatory discrimination policies entail systematic departures from norms of equality (such as merit, even-handedness and indifference to aseptic characteristics). These departures are justified in several ways; First, preferential treatment may be viewed as needed assurance of personal fairness, a guarantee against the persistence of discrimination in subtle and indirect forms. Second, such policies are justified in terms of beneficial results that they will presumably promote: integration, use of neglected talent, more-equitable distribution, etc.

As for India, largely Brahmins and other higher castes with a literate tradition grasped new opportunities for advancement through education and government service. So those who were already supplied with other advantages tended to make use of the new opportunities afforded by the legal system. Most of the new opportunities in education and government services were grasped by those already supplied with advantages but some members of the lower castes did find new opportunities as menial government servants, in army service, and in trade and contracting (sometimes protected by their monopoly in a degraded occupation lie leather work or sweeping), The problems faced by low castes in utilising these new opportunities are exemplified in their struggle to obtain schooling.\(^1\)

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\(^1\) S.N. AMBEDKAR, Pg. 25 -26, First publication 2008, Publishers ABD PUBLISHERS, B-46, Natraj Nagar, Imliwala Phatak, Jaipur-302 005 (Rajasthan) INDIA.
Three Basic Types of Preferences

First, there are reservations, which allot or facilitate access to valued positions or resources. The most important instances of this type are reserved seats in legislatures, reservation of posts in government services, and reservation of places in academic institutions. To a lesser extent, the reservation device is also used in the distribution of land allotments, housing, and other scarce resources.

Second, there are programmes involving expenditure or provision of services, e.g., scholarships, grants, loans, land allotments, health care, legal-aid, etc., to a beneficiary group beyond comparable expenditures for others.

Third, there are special protections. These distributive schemes are accompanied by efforts to protect the backward classes from being exploited and victimised. Forced labour is prohibited debit and restricting transfers attempt to protect Scheduled Castes and Scheduled Tribes from economic oppression of their more sophisticated neighbours.

Proponents of preferential discrimination policies have suggested many ways in which they may help to bring about a more equal and or a more vital society.

Preferential discrimination policies compensate for explicit negative discrimination as well as implicit biases that would otherwise, unfairly penalise members of under-represented ethnic communities.

Preferential discrimination policies redistribute resources and opportunities from relatively well off ethnic communities to relatively poorly off communities.

Preferential discrimination policies improve the motivation of members of underrepresented ethnic communities to aspire to and work toward more desirable positions in society.

Preferential discrimination policies lead to better performance by institutions or organizations where greater diversity of personnel in key positions (resulting from greater representation of under-represented ethnic communities) contributes to productive efficiency.
Preferential discrimination policies enable members of under-represented ethnic communities to gain better access to social capital, i.e., useful contacts and networks that improve one’s career opportunities, which are currently available mainly to members of other communities.

Preferential discrimination policies serve to integrate under represented ethnic communities into societies elite, thereby fostering a more legitimate and vital democratic order.

Critics of preferential discrimination policies, on the other hand, have pointed to many reasons why such policies may prove undesirable and possibly counter-productive.

Preferential discrimination policies clash with the liberal principle of evaluating every person based on their own individual abilities rather than on ascribed group characteristics.

Preferential discrimination policies mainly benefit the best-off members of under-represented ethnic communities (creamy layer) rather than those members who most need help.

1. Preferential discrimination policies arbitrarily penalise those members of non-beneficiary communities who happen to be displaced by preferential access for members of beneficiary communities.

2. Preferential discrimination policies lead to poorer performance on the part of the beneficiaries.

3. Preferential discrimination policies lead to under-appreciation of the accomplishments of members of beneficiary communities, whose successes may be attributed to preferential discrimination policies rather than to their own abilities,

4. Preferential discrimination policies as a consequence of all of the above have a strong potential for exacerbating inter-community tensions and divisions.
**Alternatives to Ethnicity Based Preferential Selection**

One obvious set of alternatives to preferential discrimination policies based on preferential selection of members of under-represented ethnic communities consist of policies that directly protect members of such communities from negative discrimination. A second alternative set of policies consists of programmes in which resources are redistributed to members of such communities. In practice, both these types of policies often accompany policies of preferential selection.

Pursuing policies involving resource transfer instead of preferential selection in favour of under-represented ethnic communities. Such resource transfers could be directed to members of those communities in such a way as to enable them to develop the skills needed to qualify for better jobs or to acquire the capital needed to launch business enterprises, thus contributing directly to economic development as well as social upliftment. Preferential policies are problematical because among other things, they concentrate losses on those applicants, displaced by the admission of beneficiaries, and this leads not only the applicants thus displaced, but also many other rejected applicants, to attribute their rejection to the unfairness of preferential policies. A programme of developmental aid to members of under-represented communities on the other hand, involves costs that are spread much more broadly among the public and if the revenue-raising system in reasonably progressive, the cost burden falls largely on those who can most afford to pay.

Developmental aid policies, however, tend to be significantly more expensive than preferential selection policies, since they involve substantial resource transfers from government agencies or private institutions to the beneficiaries. Such organisations have limited budgets and many demands on their largesse; and there is only so much that they are able and willing to devote to help members of particular ethnic communities.

In any case, preferential policies and resource redistribution policies in favour of any given group are not mutually exclusive ways of reducing group disparities. First of all, a significant element of preference is involved in directing resources transfers to members of a specific group, second, a certain amount of
resource transfer is likely to be very helpful to the success of any preferential policy favouring a disadvantaged group.

Critics of preferential discrimination policies based on preferential selection frequently allude to the fact that such policies tend to favour the best-off members of under-represented beneficiary communities rather than the worst-off, since it is the former who are best placed to qualify—with a little help—for selection to top educational institutions, influential jobs, etc. To assure that preferential discrimination policies help those who are most disadvantaged, many observers have proposed that preferential selection should be geared not to members of under-represented ethnic communities but to individuals of low socio-economic status. Such class based preferential selection policies, as compared with ethnicity-based preferential selection policies would lead to the selection of:

1. Many more poorly off and far fewer better off applicants from under-represented ethnic communities.

2. Many poorly off applicants from well represented communities.

The result would be much greater socio-economic diversity and much less ethnic diversity. There are several reasons for which this would be an undesirable outcome.

First of all, for any given numbers of preferential selection beneficiaries, the number of beneficiaries from under-represented ethnic communities would obviously smaller. Indeed, this number would be significantly smaller except in the event that there were relatively few members of other ethnic communities to be found in the nether reaches of the society's socio-economic strata. Yet one of the central purposes of preferential discrimination policies is to reduce disparities among ethnic communities. This is so because disparities among ethnic communities are especially likely to be attributed to past or present mistreatment of under-represented communities by other communities.

1. Class-based preferential selection is very likely to lead to significantly poorer performance on the part of its beneficiaries than is ethnicity-based preferential selection.
Class-based preferential selection as compared to ethnicity based preferential selection is that socio-economic status is more difficult to ascertain than ethnicity identity. There are varieties of ways in which socio-economic status can be and has been measured; indicators such as income, wealth, and educational achievement are all arguably relevant. The determination of a person’s ethnicity involves only one categorical variable that is generally unambiguous and applicable to the whole fame. For some of the same reasons, moreover, socio-economic status is easier to alter- or to falsify-than ethnic identity.

In recognition of the weaknesses of class based preferential policies, some critics of ethnicity based preferential policies have suggested alternative of geography based preferential discrimination policies-providing preferences in selecting to individuals living in disadvantaged localities. The most appealing feature of such plan is that, while steering benefits to groups consisting disproportionately of the under-represented communities to whom ethnicity based preferential discrimination policies are oriented, they eschew direct references to race, caste or any other kind of ethnic characteristic. Geography based preferential discrimination policies are therefore less likely, than ethnicity based preferential discrimination to exacerbate inter-community tensions and divisions. However, this alternative (geographical based) policy also has some very significant weaknesses:

1. Policies favouring people with particular geographic characteristics can obviously not do as good a job of increasing opportunities for members of under-represented ethnic communities, or members of low socio-economic classes, as policies directly targeted to the disadvantaged communities or classes.

2. The direct beneficiaries of geography-based preferences are likely to be less well prepared and hence less capable of performing well in their new and more challenging environments than those who would have been admitted under an ethnicity based preference policy. Because most of them came from relatively impoverished families, who generally cannot provide their children with high quality education.
3. Geographic location and/or school attendance is relatively easy to alter, as compared to ethnicity. Thus geography-based preferences are likely to encourage people who are in no way disadvantaged to change their geographic location in order to become eligible for preferential selection—thus undermining the preferential discrimination objective of increasing opportunities for members of under-privileged groups.

Thousands of years of discrimination and exploitation cannot be wiped out in one generation. However, even here, economic criterion is worth applying by refusing preferred treatment to those amongst them who have already benefited by it and improved their position.

As regards the economic spheres, countries, like the US, Northern Ireland, South Africa and Malaysia, have developed legal and affirmative action policies for minority groups not only for labour markets, but also for agricultural land, capital and other markets.

The US, for instance, has extended affirmative action polity to education and government contracts for construction and purchases of goods from minority businesses. While in Malaysia, the affirmative action policy is also extended to agriculture land and capital market. Thus broadly speaking in some countries multiple economic and social spheres are covered under the orbit of anti-discrimination and affirmative action measures.

As regards the strategies, these countries have used at least three kinds of measures. First is the legal protection against discrimination in the form of Equal Opportunity Laws (EOL). These laws prohibit private and public employers from discrimination of workers based on group identities and provide legal safeguards to discriminated groups in the event of discrimination in employment and other spheres of economic activities.

The second method is the affirmative action measures of various types. In principle, at least affirmative action can be distinguished from legal measures, the former require proactive steps to ensure fair participation of discriminated groups, and the latter in contrast only prevent discrimination of minorities in the labour market and other spheres by their employers. Therefore, EOL are supplemented by
affirmative actions, which indeed go a step forward and attempt to ensure a fair share to the discriminated groups in employment, and other spheres based on some reasonable criterion.

A third strategy is reparation or compensation. The affirmative action policies have been largely designed to address the question of present discrimination and do not in general rest on the goal of compensation for past injustices. The instruments of reparation on the other hand are specifically used in terms of compensation for the denial of property rights or injustices in the past. Therefore, some countries have selectively used compensation strategy as one time settlement to pay to the discriminated groups. This include compensation to Japanese persons in the late 1980’s subjected to internment during the Second world War, land and monetary compensation to native Indian or tribes in the US and compensation to Jews in Germany and Austria for forced labour during the war. In the US, several estimates of income loss during slavery of African-American have been worked out and claims put forth for compensatory payment.

As for India, the logic for continuing affirmative action for Scheduled Caste and Scheduled Tribes is based on the following set of arguments:

1. **Inter-group economic disparity:** Various standard of living indicators establish persistent inter-group disparity between Scheduled Caste and Scheduled Tribes. On the one hand and the rest of the population on the other. Deshpande constructs a Caste Development Index (CDI) based on five indicators of standard of living (land holding, occupation, education, ownership of consumer durables and of livestock). The all India mapping of the Caste Development Index reveals that in the early 1990s there was a substantial regional variation in the status of Scheduled Caste and Scheduled Tribes populations, but in no state of India was their Caste Development Index higher than that of the others. Whatever the improvement in their status over 50 years after independence, it has not been sufficient to reverse the economic gap. The belief that liberalisation of the economy would lower inter-caste disparities is not borne out by evidence. In fact, some of the more pro-reform states in India have seen an increase in disparities.
2. Dalits continue to suffer from a stigmatised ethnic identity, due to their untouchable past and there is corresponding social backwardness. Human Rights watch (1999) amply demonstrates the various aspects of violence, exclusion and rejection that dalits continue to face in contemporary India. There is evidence to suggest that this stigma can affect economic performance adversely, thus perpetuating caste based inequalities. Hoff and Pande (2004) provide experimental evidence that a social identity—a product of history, culture and personal experience of discrimination—creates pronounced economic disadvantage for a group through its effect on individual’s expectations. In controlled settings, in which any possible difference in treatment towards castes was removed, social identity affected behaviour largely because it effected expectations. Thus, their findings provide evidence for an additional explanation, beyond differences in access to various resources, for the tendency for social inequalities to reproduce themselves over time.

3. If equality of opportunity between castes is the objective, then affirmative action is needed to provide a level playing field to members of Scheduled Caste and Scheduled Tribes communities.

4. Social policy ought to compensate for the historical wrongs of a system that generated systematic disparity between caste groups and actively discriminated against certain groups.

5. Caste based discrimination in labour, land, capital and consumer goods markets continue both in urban and rural areas. In labour markets, this is manifested as both wage discrimination and job discrimination. Formal studies of wage and job discrimination are few. These studies of are localised and dated, but they point to discriminatory gaps in earnings both in the formal and informal sector.

Marc Galanter has attempted one of the most comprehensive explorations of the Indian affirmative action programme. A monetary cost-benefit evaluation is not possible because of the manner in which the Indian programme is formulated. However, he has undertaken a crude assessment
of Scheduled Caste and Scheduled Tribe communities affirmative action programme and some of his major findings are as follows:

1. The programme has shown substantial re-distributive effects in that access to education and jobs is spread wider in the caste spectrum than earlier, although redistribution is not spread evenly through out the beneficiary groups. There is evidence of clustering but Galanter believes that these reflect structural factors, since the better situated enjoy a disproportionate share of the benefits in any government programme, not just in affirmative action programmes.

2. The vast majority of dalits are not directly affected by affirmative action, but reserved jobs bring a manifold increase in the number of families liberated from subservient roles.

3. In the short run, beneficiaries might get singles out and experience social rejection in offices, college hostels and other set-ups where they are introduced through affirmative action. However, in the long run, education and jobs weaken the stigmatising association of dalits with ignorance and incompetence. Moreover, resentment of preferences may lead to hostility to these groups, but rejection of them exists independently of affirmative action programmes.

4. Affirmative action has kept the beneficiary groups and their problems visible to the educated public but it has not motivated widespread concern for their inclusion beyond what is mandated by government policy.

Thus, Galanter concludes that affirmative action has been a partial success. It has accelerated the growth of a middle class and Scheduled Caste and Scheduled Tribe members have been brought in to central jobs considered unimaginable few decades ago.

Although “Weiss Kopf” is not as critical of India’s preferential discrimination programmes as they deserve to be criticised, his observations are key to understanding the basis for the widespread failure of the policies in India. For one, Weiss opt observation that sensitivity in the selection
process often determines how beneficial the policy is important especially in the Indian context, in which admission process are a mere numbers game and little attention is paid to the individual's background aptitude and orientation of students. In fact, what Weiss Kopf observes as linked to the problem of proportional representation or quota system which has the problems of reserved seats for Scheduled Caste students going unfilled, is the fact that there is a general tendency to question the merit of the reserved category or scheduled community students and to eliminate the possibility of their at all entering the system. So negative has the gate keeping through the invocation of merit been that supporter of preferential discrimination policies are now, unfortunately questioning the very idea of merit.

More significantly, most institutions are hostile and indifferent to the academic and social support needs of reserved candidates, accounting for the high dropout rates, especially in institutions of professional education.

Weiss Kopf's observation in the summarise review of the study that the 1990's in India have witnessed even fewer first generation Scheduled Caste students in the professional stream must be linked to the widespread and gathering institutional antipathy towards such students.

In contextualising reasons for the low accessibility of higher education among scheduled communities in India Weiss Kopf draws on inter linked date to note how a high dropout rate at the school level and the poor quality of schooling itself account for making higher education inaccessible to a large number of students.

Marc Gelernter has pointed out that three broad kinds of resources are necessary to produce the results in competitive exams that qualify as indicators of merit:

1. Economic resources (for prior education, training materials, freedom from work, etc.);

2. Social and cultural resources (networks for contacts, confidence, guidance and advice, information, etc);
3. **Intrinsic ability and hard work.** Some combination of these allows people to acquire merit.

The international Convention on the Elimination of All Forms of Racial discrimination stipulates that affirmative action programmes may be required of states that have ratified the convention, in order to rectify systematic discrimination. It states, however, that such programmes “shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.” The United Nations Human Rights Committee states that the principle of equality sometimes requires states parties to take affirmative action in order to diminish or eliminate conditions, which cause or help to perpetuate discrimination prohibited by the covenant. For example, in a state where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the state should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination, in fact, it is a case of legitimate differentiation under the covenant.  

**Evolution of the Compensatory Discrimination**

The word **Reservation** has originated from the Latin Language, ‘**reservare**’ it is known as arrangement. The term Reservation has not been defined under Indian Constitution. In order to ascertain the meaning of the word reservation, consulted the dictionary. As per the Revised and Updated, Illustrated Oxford Dictionary, it says Reservation the act or an instance of reserving or being reserved; a booking (of a room etc.); the thing booked, e.g. a hotel room; an express or tacit limitation or exception to an agreement etc; ( in full central reservation) Brit. A strip of land between road carriageways; an area of land reserved for occupation by N. American Indian etc. Therefore, legal interpretation word reservation is that

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1 S.N. AMBEDKAR .First, Pg, 26 publication 2008, Publishers ABD PUBLISHERS, B-46, Natraj Nagar, Imliwala Phatak, Jaipur-302 005 (Rajasthan) INDIA.
some benefits or concessions are arranged in favour of the Scheduled Castes and Scheduled Tribes.¹

Now, term Reservation is able to ascertain the meaning. Reservation is one of the fundamental instrument through which protective discrimination can effectively provided to the targeted people in India. It is a social policy of the welfare state to ensure the positive progress of the traditionally and deliberately neglected aboriginals of the soil of this Nation. It involves fixation of quotas in the legislative bodies, in educational institutions and in the public employment.

Reservation Benefits are conferred to the depressed, exploited classes with a view to boost their life in the independent Indian. These classes were depressed by the upper class from the generation to generations, cause of that they became reluctant in all walks of their life; they are socially, economically and educationally became backward. Therefore Indian Constitution itself has taken accountability to make them equals in all walks of their life comparatively with others as well as restoration of their rights are safeguarded once again in the egalitarian Nation.

The Three Round Table Conferences (India)

The three round Table Conferences of 1930-32 were a series of conferences organised by the British Government to discuss Constitutional norms in India. They were conducted as per the recommendation by the report submitted by the Simon Commission in May 1930. Demands for the Swaraj, or self-rule, in India had been growing increasingly strong. By the 1930, many British politicians believed that India needed to move dominion status. However, there were significance disagreements between the Indian and the British political parties that the Conferences would not resolve.

The Round Table Conference was opened officially by King George V on November 12, 1930 and chaired by the British Prime minister, Ramsay Mac Donald. Sixteen delegates represented the three British political parties. Three were fifty-seven political leaders from British India and sixteen delegates from the princely states. However, the Indian National Congress, along with Indian business leaders, kept away from the conference. Many of them were in jail for their participation in civil disobedience.

[Participants in the First Round Table Conference]

- **Hindu Mahasabha**: B.S. Moonji and M.R. Jayakar.
- **Liberals**: Tej Bahadur Sapru, C.Y. Chintamani and Srinivasa Sastri.
- **Sikh**: Sardar Ujjal Singh.
- **Depressed Classes**: B.R. Ambedkar.
- **Princely States**: Akbar Hydari (Dewan of Hyderabad), Mirza Ismai (Dewan of Mysore), Kailas Narain Haksar of Gwalior, Maharaja Bhupinder Singh of Patiala, Maharaja Sayajirao Gaekwad III of Baroda, Maharaja Hari Sing of Jammu and Kashmir, Maharaja Ganga Singh of Bikaner, Nawab Hamidullah Khan of Bhopal, K.S. Ranjitsinhji of Nawanagar, Maharaja Jai Singh Prabhakar of Alwar and the rulers of Indore, Rewa, Dholpur, Koriya, Sangli and Sarila.

The idea of an All-India Federation was moved to the centre of discussion. All the groups attending the conference supported this concept. The responsibility of the Executive to Legislature was discussed, and B.R. Ambedkar demanded a separate electorate for the Untouchables.
SECOND ROUND TABLE CONFERENCE  
(September – December 1931)

The second session opened on September 7, 1931. There were three major differences between the first and second Round Table Conferences. By the second:

*Congress Representation ---* The Gandhi-Irwin pact opened the way for congress participation in this conference. Mahatma Gandhi was invited from India and attended as the sole official Congress representative accompanied by Sarojini Naidu and also Madan Mohan Malaviya, Ghanshyam Das Birla, Muhammad Iqbal, S K Dutta and Sir Syed Ali Imam. Gandhi claimed that the Congress alone represented political India; that the untouchables were Hindus and should not be treated as a “minority”; and that there should be no separate electorates or special safeguards for Muslims or other minorities. These claims were rejected by the other Indian participants. According to this pact, Gandhi was asked to call off the Civil Disobedience Movement (CDM) and if he did so, the prisoners of the British government would be freed excepting the criminal prisoners, i.e. those who had killed British officials. He returned to India, disappointed with the results and empty-handed.

*National Government ---* two weeks earlier the Labour government in London had fallen. Ramsay MacDonald now headed a National Government dominated by the Conservative Party.

*Financial Crisis ---* During the conference, Britain went off the Gold Standard further distracting the National Government.

During the Conference, Gandhi could not reach agreement with the Muslims on Muslim representation and safeguards. At the end of the conference, Ramsay MacDonald undertook to produce a Communal Award for minority representation, with the provision that any free agreement between the parties could be substituted for his award.

Gandhi took particular exception to the treatment of untouchables as a minority separate from the rest of the Hindu community. He clashed with the
Untouchable leader, B.R. Ambedkar, over this issue: the two eventually resolved the situation with the Poona Pact of 1932.

**THIRD ROUND TABLE CONFERENCE**  
(November-December 1932)

The third and last session assembled on November 17 1932. Only forty-six delegates attended since most of the main political figures of India were not present. The Labour party from Britain and the Indian National Congress refused to attend.

In this conference, Chaudhary Rahmat Ali, a college student, coined the name “Pakistan” (which means, “Land of pureness”) as the name for the Muslim part of partitioned India. He took the “p” from Punjab, the “A” from the Afghan, the “KI” from Kashmir, the “S” from Sindh and the “TAN” from Balochistan.

From September 1931 until March 1933, under the supervision of Samuel Hoare, the proposed reforms took the form reflected in the Government of India Act 1935.

**THE COMMUNAL AWARD**

What was Communal Award of 1932? When the Indian leadership failed to come up with a Constitutional solution of Communal issue, the British Prime Minister Ramsay Mac Donald announced his own formula for solving the problem. He said that he was not only a Prime Minister of Britain but was also a friend of the Indians and thus wanted to solve the problems of his friends.

After the failure of the Second Round Table Conference, Mr. Mac Donald announced the “Communal Award” on August 16, 1932. According to the Award, the right of separate electorate was not only given to the Muslims of India but also to all the minority communities in the country. The Award also declared untouchables as a minority and thus the Hindu depressed classes were given a

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1Retrieved from “http://en.wikipedia.org/wiki/Roud_Table_Conferences_India” Categories: British rule in India | Pakistan Movement 930 in India | 1931 in India | 1932 in India, This page was last modified on 27 March 2010 at 19:40. Text is available under the Creative Commons Attribution-Share Alike License; additional terms may apply. See Terms of Use for details. Wikipedia® is a registered trademark of the Wikimedia Foundation, Inc., a non-profit organization.
number of special seats, to be filled from special depressed class electorates in the area where their voters were concentrated. Under the Communal Award, the principal of weight age was also maintained with some modifications in the Muslim minority provinces. Principal of weight age was applied for European in Bengal and Assam, Sikhs in the Punjab and North West Frontier Province, and Hindus in Sindh and North West Frontier Province.

Though the Muslims constituted almost 56% of the total population of Punjab, they were given only 86 out of 175 seats in the Punjab Assembly. The Muslim majority of 54.8% in Punjab was thus reduced to a minority. The formula favoured the Sikhs of Punjab and the Europeans of Bengal the most.

The Award was not popular with any Indian party. Muslims were not happy with the Communal Award, as it has reduced their majority in Punjab and Bengal to a minority. Yet they were prepared to accept it. In it, annual session held in November 1933, the All Indian Muslim League passed a resolution that reads; “Though the decision falls far short of the Muslim demands, the Muslims have accepted it in the best interest of the country, reserving to themselves the right to press for the acceptance of their demands”.¹

That part of the decision which relates to the Untouchables is produced below—

**COMMUNAL DECISION BY HIS MAJESTY GOVERNMENT 1932**

1. In the statement made by the Prime Minister on 1st December last on behalf of His Majesty’s Government at the close of the second session of the Round Table Conference, which was immediately afterwards endorsed by both Houses of Parliament, it was made plain that if the communities in India were unable to reach a settlement acceptable to all parties on the communal questions which the Conference had failed to solve, His Majesty’s Government were determined that India’s constitutional advance should not on that account be frustrated, and that they would remove this obstacle by devising and applying themselves a provisional scheme.

¹ Retrieved from [http://wiki.answers.com/Q/what_was_Communal_Award_of_1932?](http://wiki.answers.com/Q/what_was_Communal_Award_of_1932?) on 20th May 2011
2. On the 19th March last His Majesty’s Government, having been informed that the continued failure of the communities to reach agreement was blocking the progress of the plans for the framing of a new Constitution, stated that they were engaged upon a careful re-examination of the difficult and controversial questions which arise. They are now satisfied that without a decision of at least some aspects of the problems connected with the position of minorities under the new Constitution, no further progress can be made with the framing of the Constitution.

3. His Majesty’s Government has accordingly decided that they will include provisions to give effect to the scheme set out below in the proposals relating to the Indian Constitution to be laid in due course before Parliament. The scope of this scheme is purposely confined to the arrangements to be made for the representation of the British Indian communities in the Provincial Legislatures, consideration of representation in the Legislature at the Centre being deferred for the reason given in paragraph 20 below. The decision to limit the scope of the scheme implies no failure to realize that the framing of the Constitution will necessitate the decision of a number of other problems of great importance to minorities, but has been taken in the hope that once a pronouncement has been made upon the basic questions of method and proportions of representation the communities themselves may find it possible to arrive at modus vivendi on other communal problems, which have not received the examination they require.

4. His Majesty’s Government wish it to be most clearly understood that they themselves can be no parties to any negotiations which may be initiated with a view to the revision of their decision, and will not be prepared to give consideration to any representation aimed at securing the modification of it which is not supported by all the parties affected. However, they are most desirous to close no door to an agreed settlement should such happily be forthcoming. If, therefore, before a new Government of India Act has passed into law, they are satisfied that the communities who are concerned are mutually agreed upon a practicable alternative scheme, either in respect of
any one or more of the Governors’ Provinces or in respect of the whole of the British India, they will be prepared to recommend to Parliament that that alternative should be substituted for the provisions now outlined.

5. Members of the "depressed classes" qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely, by this means alone, to secure any adequate representation in the Legislature, a number of special seats will be assigned to them as shown in the table. These seats will be filled by election from special constituencies in which only members of the "depressed classes" electorate qualified will be entitled to vote. Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the depressed classes are most numerous, and that, except in Madras, they should not cover the whole area of the Province.

In Bengal, it seems possible that in some general constituencies a majority of the voters will belong to the Depressed Classes. Accordingly, pending further investigation, no number has been fixed for the members to be returned from the special Depressed Class constituencies in that Province. It is intended to secure that the Depressed Classes should obtain not less than 10 seats in the Bengal Legislature.

The precise definition in each Province of those who (if electoral qualified) will be entitled to vote in the special Depressed Class constituencies has not yet been finally determined. It will be based as a rule on the general principles advocated in the Franchise Committee’s Report. Modification may, however, be found necessary in some Provinces in Northern India where the application of the general criteria of untouchability might result in a definition unsuitable in some respects to the special conditions of the Province.

His Majesty’s Government does not consider that these special Depressed Classes constituencies will be required for more than limited time. They intend that the Constitution shall provide that they shall come to an end after 20 years if they have not previously been abolished under the general powers of electoral revision.
referred to in paragraph 6.

Mr. Gandhi found that his threat had failed to have any effect. He did not care that he was a signatory to the requisition asking the Prime Minister to arbitrate. He forgot that as a signatory he was bound to accept the award. He started to undo what the Prime Minister had done. He first tried to get the terms of the Communal Award revised. Accordingly, he addressed the following letter to the Prime Minister: — ¹ YERAVDA CENTRAL PRISON, August 18, 1932.

**THE POONA PACT, 1932**

[The Text of Poona Pact]

The following is the text of the agreement:—

(1) There shall be seats reserved for the Depressed Classes out of the general electorate seats in the Provincial Legislatures as follows:

Madras 30; Bombay with Sind 15; Punjab 8; Bihar and Orissa 18; Central Provinces 20; Assam 7; Bengal 30; United Provinces 20; Total 148.

These figures are based on the total strength of the Provincial Councils, announced in the Prime Minister’s decision.

(2) Election to these seats shall be by joint electorates’ subject, however, to the following procedure:

All the members of the Depressed Classes, registered in the general electoral roll in a constituency, will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of the single vote; the four persons getting the highest number of votes in such primary election shall be candidates for election by the general electorate.

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

¹ Dr. BABASAHEB AMBEDKAR WRITINGS AND SPEECHES “What Congress and Gandhi have done to the Untouchables – Mr. Gandhi and the Emanipation of the Untouchables, Pgs. 80-82, Vol. 9, First Ed., 1991, Publisher, The Education Department Government of Maharashtra, Bombay 400 032, for Dr. Babasaheb Ambedkar Source Material Publication Committee.
(4) In the Central Legislature, eighteen per cent of the seats allotted to the general electorate for British India in the said legislature shall be reserved for the Depressed Classes.

(5) The system of primary election to a panel of candidates for election to the Central and Provincial Legislatures, as hereinbefore mentioned, shall end after the first ten years, unless terminated sooner by mutual agreement under the provision of Clause 6 below.

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

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

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

(9) In every province out of the educational grant, an adequate sum shall be earmarked for providing educational facilities to the Members of the Depressed Classes.

The terms of the Pact were accepted by Mr. Gandhi and given effect to by Government by embodying them in the Government of India Act. The Poona Pact had produced different reactions. The Untouchables were sad. They had every reason to be. There are, however, people who do not accept this. They never fail to point out that the Poona Pact gave the Untouchables larger number of seats than what was given to them by the Prime Minister in his Communal Award. It is true that the Poona Pact gave the Untouchables 148 seats, while the Award had only given those 78. However, to conclude from this that the Poona Pact gave them more than what was given by the Award is to ignore what the Award had in fact given to the Untouchables.
The Communal Award gave the Untouchables two benefits: — (i) a fixed quota of seats to be elected by separate electorate of Untouchables and to be tilled by persons belongs to the Untouchables; (ii) double vote, one to be used through separate electorates and the other to be used in the general electorates.

Now, if the Poona Pact increased the fixed quota of seats it also took away the right to the double vote. This increase in Seats can never be deemed to be a compensation, for the loss of the double vote. The second vote given by the Communal Award was a priceless privilege. Its value as a political weapon was beyond reckoning. The voting strength of the Untouchables in each constituency is one to ten. With this voting strength free to be used in the election of caste Hindu candidates, the Untouchables would have been in a position to determine, if not to dictate, the issue of the General Election. No caste Hindu candidate could have dared to neglect the Untouchable in his constituency or be hostile to their interest if he was made dependent upon, the votes of the Untouchables. Today the Untouchables have a few more seats than were given to them by the Communal Award. However, this is all that they have. Every other member is indifferent, if not hostile. If the Communal Award with its system of double voting had remained, the Untouchables would have had a few seats less but every other member would have been a member for the Untouchables. The increase in the number of seats for the Untouchables is no increase at all and was no recompense for the loss of separate electorate and the double vote. The Hindus, although they did not celebrate the Poona Pact, did not like it. Throughout their commotion to save Mr. Gandhi’s life there was a definite current of conscious feeling that, the cost of saving his life may be great. Therefore, when they saw the terms of the Pact they very definitely disliked it, although they had not the courage to reject it. Disliked by the Hindus and disfavoured by the Untouchables, the Poona Pact was given recognition by both parties and was embodied in the Government of India Act.

Signing of the Poona Pact was followed by the appointment of the Hammond Committee to demarcate constituencies, to fix the number of seats for each constituency and settle the system of voting for the legislatures to be set up under the new constitution.
In carrying out its functions, the Hammond Committee had to take into account the terms of the Poona Pact and the special sort of electoral plan, agreed upon to meet the needs of the Untouchables. Unfortunately, the Poona Pact having been concluded in a hurry had left many things undefined. Of the things that were left undefined, the most important were two namely: (1) Does the ‘panel of four’ to be elected at the primary elections imply four as a maximum or a minimum? (2) What was intended to be the method of voting in the final election? It was contended on behalf of the Hindus that the panel of four was intended to be a minimum. If four candidates are not forthcoming there could be no primary election and therefore, there can be no election for the reserved seat, which they said must remain vacant and the Untouchables should go without representation. On behalf of the Untouchables, I was called to state my interpretation of the disputed points. I contended that four in the Poona Pact meant “not more than four.” It did not mean “not less than four.” On the question of voting, the Hindus contended that the compulsory distributive vote was the most appropriate. On behalf of the Untouchables, I contended that the cumulative system of voting was the proper system to be introduced. Fortunately, for the Untouchables the Hammond Committee accepted the views propounded by me and rejected those of the Hindus. It is interesting to know why the caste Hindus put forth their contentions. One may well stop here for a moment and ask why did the Hindus raise their particular contentions before the Hammond Committee? Was there any particular motive behind the stand they took? So far as I am able to see the object which the Hindus had in demanding four candidates as the minimum for a valid primary election was to place the Hindus in a position to capture the seat for an election of such a representative of the Untouchable candidate, who would be their nominee and who would be most willing to be the tool of the Hindus. To get such an Untouchable elected in the final election he must first come in the panel, and he can come in the Panel only if the panel is a large panel. As the election to the panel is by separate, electorate consisting exclusively of Untouchable voters it is obvious that if there were only one candidate in the Panel then he would be the staunchest representative of the Untouchable and worst from the standpoint of the Hindus. If there are two, the second will be less staunch than the first and therefore good from the standpoint of the Hindus. If there are three, the third will be less staunch than
the second will and therefore better from the standpoint of the Hindus. If there were, four the fourth will be less staunch than the third and therefore best from the point of view of the Hindus. The Panel of four could therefore give to the Hindus the best chance of getting into the Panel such representatives of the Untouchables as is most suitable to the Hindus. That is why they insisted before the Hammond Committee that for a valid panel the minimum number must be four.

The object of insisting upon the system of compulsory distributive vote was the same namely to enable the Hindus to capture the seats reserved for the Untouchables. Under the cumulative vote, the elector has as many votes as there are seats. He may give them all to one candidate or he may distribute them over two or more candidates, as he may desire. Under the distributive system of voting the elector has also as many votes as there are seats, but he can give only one vote to any one candidate. Although the two look different, yet in effect there may be no difference, because even under the cumulative vote a voter is not prevented from distributing his votes. He is free to give one vote to one candidate. However, the Hindus did not want to take any chance. Their main object was to flood the election to the seat reserved for the Untouchables in the joint electorate by, using the surplus votes of the Hindus in favour of the Untouchable candidate, who happens to be their nominee. The object was to outnumber the Untouchable voters and prevent them from electing their own, nominee. This cannot be done unless the surplus votes of the Hindu voters were diverted from the Hindu candidate towards the Untouchable candidates. There is a greater chance of the diversion of these surplus votes under the distributive system than there is under the cumulative system. Under the former, the Hindu voter can give only one vote to the Hindu candidate. The other vote not being of use to the Hindu candidate is usable only for an Untouchable candidate. The distributive system thus had the possibility of flooding the election to the seat reserved for the Untouchables and this is why the Hindus preferred it to the system of cumulative voting. However, they did not want to leave it to chance. For, even the distributive system from their point of view was not foolproof. Under the distributive system, there was no compulsion upon the voter to use all his votes. He may use one vote for the caste Hindu candidate and may not at all use the balance of his votes. If this happened, the purpose of getting
in their untouchable nominee would be defeated. Not to leave things to chance, the Hindus wanted that the distributive system of voting should be made compulsory so that a caste Hindu voter whether he wants it or not can have no option but to vote for the Untouchable candidate who may be the nominee of the Hindus, and thus make bids election sure and certain.

In the light of these considerations, it cannot but appear that the Poona Pact was only the first blow inflicted upon the Untouchables and that the Hindus who disliked it were bent on inflicting on it other blows as and when circumstances gave them an occasion to do so. The two contentions, which the Hindus raised before the Hammond Committee, furnish the best evidence of the existence of a conspiracy by the Hindus the object of which was to make the Poona Pact, as it could not be repudiated, of any benefit to the Untouchables. The story of how the Congress dealt with the political demands of the Untouchables cannot be left here for the simple reason that it does not end here. The subsequent parts of it are more instructive than those that have gone before.

Continuing the story, the next part of it relates to the election that took place in February 1937 to the Provincial Legislatures, as reconstituted under the Government of India Act, 1935.

This was the first occasion in its lifetime that the Congress came down to fight an election. It was also the first time that the Untouchables got the privilege to elect their own representatives. Some leaders of the Untouchables, who were siding with the Congress when the Poona Pact was being forged—such as the late Dewan Bahadur M. C. Raja—cherished the fond hope that the Congress will not inter-meddle in the elections of the Untouchables to the seats reserved for them. However, this hope was dashed to pieces. The Congress had a double purpose to play its part in the election to the reserved seats of the Untouchables. In, the first place, it was out to capture in order to build up its majority, which was essential for enabling it to form a Government. In the second place, it had to prove the statement of Mr. Gandhi that the Congress represented the Untouchables and that the Untouchables believed in the Congress. The Congress, therefore, did not hesitate to play a full, mighty and, I may say so, a malevolent part in the election of the Untouchables by putting up Untouchable candidates on Congress ticket pledged
to Congress programme for seats reserved for the Untouchables. With the financial resources of the Congress, it made a distinct gain. The total numbers of seats allotted to the Untouchables under the Government of India Act, 1935 are 151. The following table shows how many were captured by Untouchable candidates who stood on the Congress Ticket.

**Table Five**

<table>
<thead>
<tr>
<th>Province</th>
<th>Total Seats Reserved for the Untouchables</th>
<th>Total Seats Captured by the Congress</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Provinces</td>
<td>20</td>
<td>16</td>
</tr>
<tr>
<td>Madras</td>
<td>30</td>
<td>26</td>
</tr>
<tr>
<td>Bengal</td>
<td>30</td>
<td>6</td>
</tr>
<tr>
<td>Central Provinces</td>
<td>20</td>
<td>7</td>
</tr>
<tr>
<td>Bombay</td>
<td>15</td>
<td>4</td>
</tr>
<tr>
<td>Bihar</td>
<td>15</td>
<td>11</td>
</tr>
<tr>
<td>Punjab</td>
<td>8</td>
<td>Nil</td>
</tr>
<tr>
<td>Assam</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Orissa</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>151</td>
<td>78</td>
</tr>
</tbody>
</table>

This shows that the Congress got just about fifty-one per cent of the seats reserved for the Untouchables.

The Congress in capturing 78 seats left only 73 seats to be filled by true and independent representatives of the Untouchables. The Untouchables were worse off under the Poona Pact than they would have been under the Prime Minister’s Award. In point of effective representation, the Untouchables got less than what the Prime Minister had given them. The Congress on the other hand gained by the Poona Pact. Although under the Poona Pact it gave 151 to the Untouchables it took back 78 and thereby made a handsome profit on its political transaction.

This is by no means the sum total of the losses, which the Congress inflicted on the Untouchables in the elections of 1937. There was another and a greater blow, which the Congress inflicted on the Untouchables. It deprived them of any share in the Executive.

From the very beginning, I had been pressing in the discussions in the Round Table Conference that the Untouchables must not only have the right to be
represented in the legislature, they must also have the right to be represented in the Cabinet. The woes of the Untouchables are not due so much to bad laws as to the hostility of the administration, which is controlled by the Hindus who import into administration their age-old prejudices against the Untouchables. The Untouchables can, never hope to get protection from the police, justice from the judiciary or the benefit of a statutory law from the administration, so long as the Public Services continued to be manned by the Illinois. The only hope of making the Public Services less malevolent and more responsible to the needs of the Untouchables is to have members of the Untouchables in the higher Executive. For these reasons, I had at the Round Table Conference pressed the claim of the Untouchables for the recognition of their right to representation in the Cabinet with the same emphasis as I had done for the recognition of their right to representation in the Legislature.

The Round Table Conference accepted the validity of the claim and considered ways and means of giving effect to it. There were two ways of giving effect to this proposal. One was to have a statutory provision in the Government of India Act so as to make it a binding obligation, which it would be impossible to evade or to escape; the other way was not to have a statutory provision but to leave it to a gentleman’s agreement—to a convention—as is the case in the English Constitution. I and the representatives of the other minorities although we did not insist upon the first in deference to the wishes of some leading Indians not to show such distrust in our own countrymen were not prepared to accept the second alternative as there was no enforceable sanction behind it. A via media was agreed upon. It was to introduce a clause in, the Instrument of instructions to the Governors imposing an obligation upon them to see that in, the formation of the Cabinet representatives of the Minorities were included. The clause ran as follows:—

"In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgement is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a
position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."

What happened to this provision is an interesting story. The Congress declared that they were not prepared to accept the Government of India Act 1935 for various reasons, which it is not necessary to reproduce. It was obvious to all and even too many Congressmen that there was no sincerity behind this declaration. It had no other motive but to enhance the prestige of the Congress in the eyes of the public by making it appear that the Congress was a radical and revolutionary body, which was out to destroy and bury British Imperialism, which is a legend, the Congress has all along tried to create. It was a mere matter of tactics. The Congress wanted to take the powers, which the Governors had been given under the Constitution to intervene whenever matters, which were his special responsibilities, were involved. The Congress did not mind, making the declaration rejecting the Constitution because it thought that as it was the only body which could run the new Parliamentary system the British Government would be obliged to come to terms with it.

The British Government threatened to bypass the Congress. It not only appointed 1st April 1937 as the date of the inauguration of the Provincial part of the Constitution but also actually went to the length of appointing an interim Ministry of non-Congressmen. Congressional representatives, who were hungering for power and who constitute a most jealous crowd of politicians, were shaken and felt that they were going to be deprived of the fruits of their labours. Negotiations were started between His Majesty’s Government and the Congress High Command. The Congress High Command demanded that if an undertaking was given by His Majesty’s Government that the Governors will not use their powers given to them under the Special Responsibility Clauses in the Constitution by interfering in the day to day administration of the Provinces, the Congress, which was most anxious that the new Constitution should begin to operate with the goodwill of the majority, agreed to give the undertaking demanded. The surprising part of it is that the Congress High Command enlarged the scope of this undertaking so as to include in the undertaking the non-exercise by the Governors of the Provinces of the powers
given to them under the Instruments of Instructions to see that the representatives of the minorities were included in the Provincial Ministries. The Governors who gave full accommodation to the Congress surrendered their authority and allowed the Congress to ride roughshod through a very important part of the Constitution with the result that the Untouchables and the other minorities were deprived of their right to representation in the Cabinet by the Congress with impunity and with alacrity.

The deprivation of the Untouchables by the Congress of their right to representation in the Cabinet has the appearance of malice aforethought. One of the grounds, urged by the Congress for the non-inclusion of representatives of the minorities in their Cabinets, was that a cabinet must be a party Cabinet if it is to take collective responsibility and that the Congress was quite ready to include members of the Minority communities in its Cabinet provided they were prepared to join the Congress and sign the Congress pledge. Whatever may be the value of such argument against other minorities, it had absolutely no value against the Untouchables. The Congress could not use it to defend its conduct in excluding the Untouchables from the Cabinet for two reasons. In the first place, the Congress was bound by the terms of the Poona Pact to give representation to the Untouchables in the Cabinet.

In the second place, the Congress could not say that there were no Untouchables in the Legislatures who were not members of the Congress Party. On the contrary, there were as many as 78 Untouchables returned on the Congress ticket and pledged to the Congress policy. Why then did the Congress not include them in the Cabinet? The only answer is that it was a part of the Congress policy not to admit the right of the Untouchables to be represented in the Cabinet and that this policy had the support of Mr. Gandhi. Those who may have any doubt as to the correctness of this statement may well consider the evidence set out below.

The first piece of evidence lies imbedded in the story of the expulsion of the Hon’ble Dr. Khare from the Congress. As is well known, Dr. Khare was the Prime Minister in the Congress Ministry in the Central Provinces. Owing to internal quarrels among the members of his Cabinet, Dr. Khare to get rid of those that were inconvenient adopted the perfectly normal course of tendering his own resignation
and that of the other ministers to the Governor with a view to form a new Cabinet. Thereafter, the Governor in full conformity with constitutional practice recalled Dr. Khare and asked him to form another Cabinet with himself as the Premier. Dr. Khare accepted the invitation and formed a new Cabinet dropping old and inconvenient hands and taking in some new ones. Dr. Khare's new Cabinet was different from the old in one important respect namely, that it included Mr. Agnibhoj, an Untouchable, who was a member of the Central Provinces, who belonged to the Congress Party and who by his education well qualified to be a minister.

On the 26th July 1938, the Congress Working Committee met in, Wardha and passed a resolution condemning Dr. Khare on the ground that in tendering the resignation of his colleagues in the old ministry he was guilty of a grave error of judgement and that in forming a new ministry he was guilty of indiscipline. In explaining what was behind this charge of indiscipline in forming a new ministry. Dr. Khare openly said that according to Mr. Gandhi the act of indiscipline consisted in the inclusion of an Untouchable in the Ministry. Dr. Khare also said that Mr. Gandhi told him that it was wrong on his part to have raised such aspirations and ambitions in the Untouchables and it was such an act of bad judgement that he would never forgive him. This statement was repeatedly made by Dr. Khare from platforms. Mr. Gandhi has never contradicted it.

There is, however, more direct evidence on this point. In 1942 there was held All-India Conference of the Untouchables. In that Conference resolutions setting out the political demands of the Untouchables were passed. An Untouchable of the Congress Party who attended the Conference went to Mr. Gandhi to ascertain what Mr. Gandhi had to say about these demands and put him the following five questions: ---

“1. What will be the position of the Harijans in the future constitution to be framed?

“2. Will you advise the Government and the Congress to agree to fix the five seats from a Panchayat Board upwards to the State Council on population basis?
"3. Will you advise the Congress and the leaders of the various majority parties in the legislatures in the provinces to nominate the Cabinet members from among the Scheduled Caste legislators who enjoy the confidence of the majority of Scheduled Caste members?

"4. In view of the backwardness of the Harijans, will you advise the Government to make a provision in the Act that Executive posts in the Local Boards and Municipal Councils be held on communal rotation, so as to enable the Harijans to become Presidents and Chairmen?

"5. Why do you not fix some percentage of scats for Harijans from District Congress Committee upwards to the Working Committee of the Congress?

Mr. Gandhi gave his answers in the issue of the Harijan dated 2nd August 1942. This is what Mr. Gandhi said:—

"1. The constitution, which I could influence, would contain a provision making the observance of untouchability in any shape or form an offence. The so-called 'untouchables' would have seats reserved for them in all elected bodies according to their population within the elected area concerned.

"2. You will see that the answer is covered by the foregoing.

"3. I cannot. The principle is dangerous. Protection of its neglected classes should not be carried to an extent, which will harm them and harm the country. A cabinet minister should be a topmost man commanding universal confidence. A person after he has secured a seat in an elected body should depend upon his intrinsic merit and popularity to secure coveted positions.

"4. In the first place, I am not interested in the present Act which is as good as dead. However, I am opposed to your proposal on the ground already mentioned.

"5. I am opposed for the reasons mentioned. However, I should like to compel large elective Congress organisations to ensure the election of Harijan members in proportion to their numbers on the Congress register. If Harijans are not interested enough in the Congress to become 4 Anna
members, they may not expect to find their names in elective bodies. But I
would strongly advise Congress workers to see that they approach Harijans
and induce them to become members of the Congress."

Is there any doubt that Mr. Gandhi and the Congress were determined on
principle not to recognise the right of the Untouchables to be represented in the
Cabinet? As to the question of qualifications, there would have been some sense if
Mr. Gandhi had that limiting condition applicable to all minorities. Dare Mr.
Gandhi say that about the Muslim demand? What is the use in shutting it out in the
case of the Untouchables only? Nobody has claimed that an unqualified
Untouchable should be made a Minister. It only confirms the inner feeling of
opposition that lies locked in the heart of Mr. Gandhi.

In the series of acts, which the Congress perpetrated in order to nullify the
Poona Pact, there remain two more to mention. First relates to the policy adopted
by the Congress Parliamentary Board in selecting candidates for election.
Unfortunately, this question has not been studied as deeply as its importance
demands. I have examined this question, and I hope to publish the results along
with the evidence in a separate treatise. Here, all I can do is to set out the general
principles, which seem to have been. Adopted by these Boards in selecting
candidates for election. Communal principle played a very great part in it. In a
constituency where there were two candidates to choose from, the Congress did not
feel it necessary to choose the one more worthy. It chose the one who belonged to a
caste, which was more numerous. Considerations of wealth also played their part.
A wealthier candidate was often, preferred to a poor and a better-qualified
candidate. These considerations were unjustifiable. But they could be understood,
as the object was to adopt a safe candidate who will pull through. But there were
other principles followed which reveal a deep-seated plot. Different classes of
qualifications were set down, for different classes of candidates. From candidates
who came from high caste Hindus as Brahmins and the allied communities those
with the highest qualifications were selected. In the case of the Non-Brahmins,
those with low qualifications were preferred to those with higher qualifications.
And in the case of the
Untouchables those with little or no qualifications were selected in preference to those who had. I do not say that is true in every case. But the general result was that of the candidates selected by the Congress, the candidates from the Brahmin and allied communities were the most highly educated, candidates from the non-Brahmins were moderately educated and those from the Untouchables just about literates. This system of selection is very intriguing. There seems to be a deep-laid game behind it. Any one who studies it carefully will find that it is designed to allow none but the Brahmins and the allied castes to form the main part of the ministry and to secure for them the support of a docile unintelligent crowd of non-Brahmins and Untouchables who by their intellectual attainments could never dream of becoming rivals of the minister-folk but would be content to follow the lead for no other consideration except that of having been raised to the status of members of the Legislatures. Mr. Gandhi did not see this aspect of the case when he said that to be a minister the Untouchable aspiring for it must be a qualified person. Otherwise, he would have seen that if there were no qualified persons among the Untouchable Congressmen, it was because the Congress Parliamentary Board did not choose well-qualified candidates from the Untouchables.

If the present system of election continues, the Congress can always prevent educated Indians from becoming members of the Legislature, which is the stepping-stone for becoming a member of the Cabinet. It is a very grave prospect and some steps will have to be taken to retrieve the position. In the meantime, it is enough to say that the scheme of selecting candidates adopted by the Congress dealt the Untouchables a severe blow by depriving them of Executive power under the cover of there being no qualified men to hold it, which it created for itself by such clandestine and subterranean means.

The second misdeed of the Congress was to subject the Untouchable Congressmen to the rigours of party discipline. They were completely under the control of the Congress Party Executive. They could not ask a question which it did not like. They could not move a resolution, which it did not permit. They could not bring in legislation to which it objected. They could not vote as they chose and could not speak what they felt. They were there as dumb driven cattle. One of the
objects of obtaining representation in the Legislature for the Untouchables is to enable them to ventilate their grievances and to obtain redress for their wrongs. The Congress successfully and effectively prevented this from happening.

To end this long and sad story, the Congress sucked the juice out of the Poona Pact and threw the rind in the face of the Untouchables.¹

**Reservation Policy for Scheduled Castes & Scheduled Tribes**

Reservation, the moment the subject pop-up the entire Nation thrusts itself into the heated debates. No consensus, no alternative model is offered - if the reservation policy is to wind up addressing the problem of such a concern. The debates spark off controversies, spread and aggravate hatreds and breed conspiracy theories. Groups take up positions in favour or against reservation. The argument envelopes the entire nation, which is scorched by the flames of divided opinions.

The subject of reservation has always been like a demonic thunderbolt that keeps popping up every now and then and looms upon us like a dark tempest of social unrest.

It is quite a well-known historical fact, and quite over discussed as well, that the reservation policy came into effect for the unfortunate, underprivileged and downtrodden sons of India, under the guidelines of the ‘Pune Pact’ The pact was signed with only one holy assumption and purpose, that it would secure the future of more than 90 million people (in year 2001 the population recorded was 250 millions) in the hands of the rest of India, in lieu of the fact that these 90 million people would desist from asking for a separate state of their own, like Pakistan, as was proposed by the then ruling “west India” company Great Britain. The pact was meant to erase the blot of historical socio-economic wrongs inflicted upon millions

¹ Dr. Babasaheb Ambedkar Writings & Speeches V.9, Pgs. 88-102, “What Congress and Gandhi have done to the Untouchables – Mr. Gandhi and the Emancipation of the Untouchables’, First Ed., Publisher: The Education Department Government of Maharashtra, Bombay – 400 032, for Source Material Publication Committee.
of socially depressed class spanning thousands of years. The initial period that was
decided for the restructuring and to restore them to the mainstream was a flat
period of 10 years, with the provision for revision in case continuation needed,
depending upon the result the reservation policy achieve. This has now continued
for more than 50 years. The major reason cited – ‘the holy purpose did not quite
happen’.

There has been a constant and nagging voice of protest and disapproval
from some of the sections of privileged India against the policy of reservation. “The
dark and ugly demon of reservation has been looming over the future of our sons
and we see no hope of its end – it is now here to stay to wobble our existence.” This
pithy line sums up the frustration of privileged Indians and they often vent it in the
forms of protest rallies or through letters to the editor with headlines like, “When
will reservation end?’ or ‘Revoke reservation’. It used to haunt the anxious parents
and their sons/daughters over the academic future and job prospects.

The story of Reservation goes back to the era when the nation was still to
make its ‘tryst with destination’, as India’s independence came to epitomise in
Jawaharlal Nehru’s word, and to that critical time when it was on the brink of a
trifurcation into three separate nations: one for the Hindus, second for the Muslims
and third for the backward community before it could get complete sovereignty, for
such was the divisive formula devised by the British.

There is no denying the fact that the Muslim community couldn’t be
persuaded for not to split the country mainly because some sections of the Muslims
thought that a partition was the only way to escape from the grip of the land
because they were quite firm on their demand and had monetary as well as muscle
power in certain parts of the subcontinent.

On the other hand, the scene was exactly the opposite for the backward
community led by Dr. Babasaheb Ambedkar. Had he been a little more fervent on
his demand and had he had the required monetary and muscle power, the present
Indian structure would have been more or less like without this so-called
perpetuating reservation problem and both the communities would have lived
happily thereafter. Fortunately or unfortunately, this did not happen and Dr.
Babasaheb Ambedkar was left with no option other than to literally surrender –
much against his own wish – the future of 90 million unfortunates into the hands for the rest of India. Since then there has been no substantial change in the lives of the majority of the people covered under the protection of reservation policy.

The Pune Pact was signed between Dr. Babasaheb Ambedkar as a representative of the oppressed class and Mahatma Gandhi on behalf of the Hindu community class and the commission it was quite clear that the Oppressed class was going to get a separate state of their own. Gandhi went on to fast- unto-death at Pune’s Yerwada Jail against the divisive proposal put forth by the British. He was continuously on the fast, but when Gandhi’s health started deteriorating, finally on September 24, 1932, a pact was signed between Mahatma Gandhi and Dr. B.R.Ambedkar, consented to the formula of Reservation suggested by Gandhiji – that in lieu of a separate state the backward community would get reservation in jobs and educational institutes. Therefore, in a way, Reservation is not something like a sort of burden imposed on some sections of the Indian society. It is in fact the legitimate right of the backward community. However, considering the precarious plight of this community it is quite apparent that the policy makers and the successive administrators have ditched them and comprehensively failed in delivering what had been decided.

The reservation for the SCs/STs is predominantly in the government sectors, both for jobs and education. Moreover, the limited opportunities for the SCs/STs in the government sector have also been on a constant decline because of changing industrial policies, socio-economic compulsions and as part of the economic privatization moves pursued over the years by successive governments have seriously hindered the growth of the SCs/STs in the private sector.

I think, in the wake of this new problem the remedial solution proposed has taken an unfortunate turn. Therefore, it has absolutely become necessary to look at the problem of reservation through all the possible angles, taking some of the past and contemporary social factors into consideration.
The Graph of Reservation in India

Caste and community profile of people below the poverty line in India, as outlined in the Sachar Report

Indian Government now Indian law provides for a quota system whereby a percentage of posts are reserved in employment in Government and in the public sector units, and in all public and private educational institutions, except in the religious/linguistic minority educational institutions, in order to mitigate backwardness of the socially and educationally backward communities and the Scheduled Castes and Tribes who do not have adequate representation in these services and institutions. The reservation policy is also extended to the Scheduled Castes and Scheduled Tribes for representation in the Parliament of India. The central government of India reserves 27% of higher education, and individual states may legislate further reservations. Reservation cannot be exceeded 50%, as per the rulings given by the supreme court, but certain Indian states like Rajasthan have proposed a 68% reservation which includes a 14% reservation for forward castes.

Reservations are intended to increase the social diversity in campuses and workplaces by lowering the entry criteria for certain identifiable groups that are grossly under-represented in proportion to their numbers in the general population. Caste is the most used criteria to identify under-represented groups. However there are other identifiable criteria for under-representation—gender (women are under-represented), state of domicile (North Eastern States, as Bihar and Uttar Pradesh are under-represented), rural people, etc. -- as revealed by the Government of India sponsored National Family Health and National Sample surveys.

The underlying theory is that the under-representation of the identifiable groups is a legacy of the Indian caste system. After India gained independence, the Constitution of India listed some erstwhile groups as Scheduled Castes (SC) and Scheduled Tribes (ST). The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-
The Constitution laid down 15% and 7.5% of vacancies to government aided educational institutes and for jobs in the government/public sector, as reserved quota for the SC and ST candidates respectively for a period of five years, after which the situation was to be reviewed. The succeeding governments routinely extended this period.

Later, reservations were introduced for other sections as well. The Supreme Court ruling that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. However, there are states laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69% and is applicable to about 87% of the population in the state of Tamil Nadu (see section on Tamil Nadu below). ¹

**History of the practice**

Main articles: Poona Pact, Communal Award, 1946 Cabinet Mission to India, Kalelkar Commission, Mandal Commission, and 2006 Indian anti-reservation protests

Reservations in favour of Backward Classes (BCs) were introduced long before Independence in a large area, comprising the Presidency areas and the Princely States south of the Vindhyas. Chatrapati Sahuji Maharaj, Maharaja of Kolhapur in Maharashtra introduced reservation in favour of backward classes as early as 1902 to eradicate poverty from amongst them and to give them their due share in the State administration. The notification of 1902 created 50% reservation in services for backward classes/communities in the State of Kolhapur. This notification is the first Government Order providing for reservation for the welfare of depressed classes in India.

The concept of untouchability was not practiced uniformly throughout the country; the identification of oppressed classes is not an easy task. What is more, the practice of segregation and untouchability prevailed more in the southern parts of India and was more diffused in Northern India. An additional complexity is that there are certain castes/communities, which are considered as untouchables

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¹ Reservation_in_india Retrieved on 05th May 2011
in one province but not in other provinces. Some castes, based on traditional occupations, find place in both Hindu and non-Hindu communities. Listing of castes has had a long history, starting from the earliest period of our history with Manu. Medieval chronicles contain description of communities located in various parts of the country. During the British colonial period, listings were undertaken after 1806, on an extensive scale. The process gathered momentum in course of the censuses from 1881 to 1931.

The Backward Classes movement also first gathered momentum in South India particularly in Tamil Nadu. The continuous efforts of some of the social reformers of the country viz. Rettamalai Srinivasa Paraiyar, Ayothidas Pandithar www.paraiyar.webs.com, Jyotiba Phule, Babasaheb Ambedkar, Chhatrapati Sahu ji Maharaj and others, completely demolished the wall created by the upper classes between them and the untouchables.

India is divided into many endogamous groups, or castes and sub-castes, as a result of centuries of practicing a form of social hierarchy called the caste system. Proponents of reservation policy says that the traditional caste system, as it is practiced, leads to severe oppression and segregation of the lower castes and limited their access to various freedoms, including education. Caste, according to ancient scriptures such as "Manu Smriti", is "Varnasrama Dharma", which translates to "offices given according to class or occupation". "Varna" in Varnasrama (Varna + Ashrama) is not to be confused with the same word meaning 'colour'. The practice of caste in India followed this rule.

- 1882 - Hunter Commission appointed. Mahatma Jyotirao Phule made a demand of free and compulsory education for all along with proportionate reservation/representation in government jobs.
- 1891 - The demand for reservation of government jobs was made as early as 1891 with an agitation in the princely State of Travancore against the recruitment of non-natives into public service overlooking qualified native people.
- 1901 - Reservations were introduced in Maharashtra in the Princely State of Kolhapur by Shahu Maharaj. Reservations in the princely states of Baroda and Mysore were already in force.
1908- Reservations were introduced in favour of a number of castes and communities that had little share in the administration by the British.

1909- Provisions were made in the Government of India Act 1909

1919- Montagu-Chelmsford Reforms introduced.

1919 - Provisions were made in the Government of India Act 1919

1921- Madras Presidency introduces Communal G O in which reservation of 44 per cent for non-Brahmins, 16 per cent for Brahmins, 16 per cent for Muslims, 16 per cent for Anglo-Indians/ Christians and eight per cent for Scheduled Castes.

1935- Indian national congress passes resolution called Poona Pact to allocate separate electoral constituencies for depressed classes.


1942- B.R. Ambedkar established the All India Depressed Classes federation to support the advancement of the scheduled castes. He also demanded reservations for the Scheduled castes in government services and education.

1946- 1946 Cabinet Mission to India proposes proportionate representation with several other recommendations.

1947- India obtained Independence. Dr. Ambedkar was appointed chairman of the drafting committee for Indian Constitution. The Indian constitution prohibits discrimination on the grounds only of religion, race, caste, sex and place of birth. While providing equality of opportunity for all citizens, the constitution contains special clauses "for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes". Separate constituencies allocated to Scheduled Castes and Tribes to ensure their political representation for 10 years. (These were subsequently extended for every 10 years through constitutional amendments).


1953- Kalelkar Commission was established to assess the situation of the socially and educationally backward class. The report was accepted as far as Scheduled Castes and Scheduled Tribes were concerned. The recommendations for OBC’s were rejected.
- 1956-Schedules amended as per Kaka Kalelkar report.
- 1979-Mandal Commission was established to assess the situation of the socially and educationally backward.[5] The commission didn’t have exact figures for a sub-caste, known as the Other Backward Class (OBC), and used the 1930[6] census data, further classifying 1,257 communities as backward, to estimate the OBC population at 52%.[6]
- 1980-the commission submitted a report, and recommended changes to the existing quotas, increasing them from 22% to 49.5%.[5]. As of 2006 number of castes in Backward class list went up to 2297 which is the increase of 60% from community list prepared by Mandal commission.
- 1990-Mandal commission recommendations were implemented in Government Jobs by Vishwanath Pratap Singh. Student Organizations launched nationwide agitations. Rajiv Goswami Delhi university student attempted self-immolation. Many students followed suit.
- 1991-Narasimha Rao Government introduced 10% separate reservation for Poor Among Forward Castes.
- 1992-Supreme court upheld reservations to Other backward classes in Indira Sawhney Case. Also see Reservations and Judiciary section
- 1995-Parliament by 77th Constitutional amendment inserted Art 16(4) (A) permitting reservation in promotions to the Schedule Castes and Schedule Tribes. Later it was further amended to include consequential seniority by 85th amendment.
- 1998-Central Government conducted large nationwide survey for the first time to estimate economical and educational status of various social groups. The National Sample Survey puts the figure at 32%. There is substantial debate over the exact number of OBC’s in India, with census data compromised by partisan politics. It is generally estimated to be sizable, but lower than the figures quoted by either the Mandal Commission or and national Sample Survey [4]. Mandal commission has been criticised of fabricating the data. National surveys indicated that status of OBC is comparable to Forward castes in many areas.[5]
12 August 2005 - The Supreme Court delivered a unanimous judgement by 7 judges on 12 August 2005 in the case of P.A. Inamdar & Ors. vs. State of Maharashtra & Ors. Declaring that the State can’t impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges.

2005-93rd Constitutional amendment brought for ensuring reservations to other backward classes and Scheduled castes and Tribes in Private Educational institutions. This effectively reversed the 2005 August Supreme Court judgement.

2006-The Constitution Bench of the Supreme Court in M. Nagraj & Ors Vs. Union of India & Ors upheld the constitutional validity of Art 16(4) (A), 16(4) (B) and proviso to Art 335.

2006-Reservations introduced for Other backward classes in Central Government Educational Institutions. Total Reservation went up to 49.5%. Also See Recent Development.

2007-Supreme Court give stayed on OBC reservation in Central Government Educational Institutions.

2008—The Supreme Court of India on 10 April 2008, upheld the Government’s move for initiating 27% OBC quotas in Government funded institutions. The Court has categorically reiterated its prior stand that "Creamy Layer" should be excluded from the ambit of reservation policy. The Supreme Court avoided answering the question whether reservations can be made in private institutions, stating that the question will be decided only as and when a law is made making reservations in private institutions. The verdict produced mixed reactions from supporting and opposing quarters.

Several criteria to identify creamy layer has been recommended, which are as follows:[7]

Those with family income above Rs 250,000 a year should be in creamy layer, and excluded from the reservation quota. Also, children of doctors, engineers, chartered accountants, actors, consultants, media professionals, writers, bureaucrats, defence officers of colonel and equivalent rank or higher, high court
and Supreme Court judges, all central and state government Class A and B officials. The court has requested Parliament to exclude MLAs’ and Males’ children, too.¹

1951 16% Reservation for SC/ST and 25% Reservation for OBCs introduced. Total Reservation Stood at 41%

1971 Sattanathan Commission recommended Introduction of "Creamy Layer" and altering Reservation percentage for Backward Classes to 16% and separate reservation of 17% to Most Backward Classes (MBCs).

DMK Government increased OBC reservation to 31% and Reservation for SC/ST has been increased to 18%. Total Reservation stood at 49%

1980 ADMK government excludes "Creamy Layer" from OBC reservation benefits. Income Limit for availing Reservation benefit has been fixed at Rs 9000 Per Annum. DMK and other Opposition parties protested the decision.

Creamy Layer scheme withdrawn and Reservation % for OBC has been increased to 50%. Total Reservation Stood at 68%

1989 Statewide Road Blockade Agitations were launched by Vanniar Sangam (Parent Body of Pattali Makkal Katchi) demanding 20% reservations in State Government and 2% Reservations in Central Government exclusively for Vanniyar Caste.

DMK Government Split OBC reservations as 2 Parts with 30% for OBC and 20% for MBC. Separate Reservation of 1% introduced for Scheduled Tribes. Total Reservation percentage stood at 69%.

1992 Supreme Court, in Mandal Judgement, reiterated that Reservation percentage couldn’t exceed 50% and "Creamy Layer" to be excluded from Reservation benefits.

1994 Court instructed Tamil Nadu Government to follow 50% reservations in the case filed by famous lawyer K. M. Vijayan on behalf of VOICE Consumer forum. Anandakrishnan, one of the members of Oversight committee, and then Anna University chairman announced that 50% reservation will be followed.

69% Reservation was included in 9th Schedule.

K. M. Vijayan was brutally attacked and maimed while leaving to New Delhi to file case in Supreme Court against inclusion of 69% reservation in 9th Schedule[13]

2006 Supreme Court asked Tamil Nadu Government to exclude Creamy Layer from Reservation benefits.

Main articles: 2006 Indian anti-reservation protests and Reservation policy in Indian Institutes of Technology

May 2006-August 2006 Anti Reservation Protests intensified in many parts of India.[14][15][16]. Pro reservationists claim protests were intensified by media bias."[17] Tamil Nadu stayed calm. This is attributed to low percentage of Forward castes in Tamil Nadu (13%) as against 36% in India.

Alternative systems of Affirmative Action proposed by academics Prof. Purushottam Agrawal of the Jawaharlal Nehru University in the form of the Multiple Index Related Affirmative Action (MIRAA)

- http://www.sabrang.com/cc/archive/2006/june06/report3.html and by Prof. Satish Deshpande and Dr. Yogendra Yadav of the Centre for the Study of Developing Societies1

Dr. Sam Pitroda, Chairperson of the National Knowledge Commission [an advisory body instituted by Prime Minister Manmohan Singh] came out in opposition to the proposed scheme to extend caste-based reservations to OBCs in institutes of Higher Education (http://www.indiadmin.org/entry/sam-pitroda-review-quota-policy/)

Dr. Pratap Bhanu Mehta, member-convener of the National Knowledge Commission resigns from his post in protest against the policy of reservations [Dr. Mehta's open letter of resignation –
http://www.indianexpress.com/story/4916.html].

Indian Prime Minister appoints Oversight committee headed by former chief minister of Karnataka M. Veerappa Moily to suggest ways for implementation of

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1 http://www.hindu.com/2006/05/22/stories/200605222261100.htm
reservations for Other Backward Classes and to suggest measures for increasing seats in educational institutions.

Oversight committee submits interim report and suggests phased implementation of reservations in central educational institutions for other backward classes.¹

OBC reservation bill introduced in the Lok Sabha and referred to standing committee. It has not excluded creamy layer (rich and affluent amongst the other backward classes) from enjoying reservation benefits per supreme court judgement.²

Supreme Court referred inclusion of 69% reservation in Tamil Nadu in 9th schedule to 9 member bench

**September 2006-2007** Supreme Court observed that central Government is trying to introduce quota without adequate data.

Oversight committee submits final report.

Supreme Court upheld constitutional amendment for providing reservations in promotions for Scheduled castes and Tribes. It reiterated 50% limit and exclusion of Creamy layer from enjoying reservation benefits.³

Parliamentary standing committee recommended preference for non creamy layer (Poor among backwards) among backward classes from enjoying reservation benefits and comprehensive population survey to identify real backward people.⁴

Sachar committee submitted its report regarding backwardness of Indian Muslims. It made many recommendations for uplifting Indian Muslims. It indicated that current enrollment in educational institutions of non Muslim OBC’s is almost

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equal to/close to their population. It also recommended alternative method for identifying real needy people.¹

Union cabinet meeting rejected Parliamentary standing committee recommendations and decided to bring reservations bill by including creamy layer (Super rich) among other backward classes. Parliament passed OBC Reservations bill through voice vote.²

**April 2008** on 10 April 2008, the Supreme Court of India upheld the law that provides for 27% reservation for Other Backward Castes (OBCs) in educational institutions supported by the Central government, while ruling that the creamy layer among the OBCs should be excluded from the quota.³

**POPULATION DATA**

Main articles: Scheduled Castes and Tribes, Other Backward Classes, and Forward Castes

**NFHS Survey estimated only Hindu OBC population. Total OBC population derived by assuming Muslim OBC population in same proportion as Hindu OBC population)**

**SC/ST**

Only SC/ST population details are collected in Indian census. The SC/ST population is 24.4%.²⁰

**Other Backward Classes**

After 1931, caste data is not collected for non SC/ST caste-groups in census. Mandal commission estimated OBC population based on 1931 census as 52%. There is an ongoing controversy about the estimation logic used by Mandal commission for calculating OBC population. Famous psychologist and researcher, Dr. Yogendra Yadav of the CSDS [who is a known votary of Affirmative Action] agrees that there is no empirical basis to the Mandal figure. According to him "It is a mythical construct based on reducing the number of SC/ST, Muslims and others and then arriving at a number."

³ Reservation_in_india. Retrieved on 27th December, 2011
National Sample Survey's 1999-2000 (NSS 99-00) round estimated around 36 per cent of the country's population is defined as belonging to the Other Backward Classes (OBC). The proportion falls to 32 per cent on excluding Muslim OBCs. A survey conducted in 1998 by National Family Health Statistics (NFHS) puts the proportion of non-Muslim OBCs as 29.8 per cent.[21] These surveys are considered as large by Oversight committee in its final report and by Dr. Yogendra Yadav. Oversight committee has used these surveys extensively in its final report.¹ State population of backward classes in NSS 99-00 can be found in other section of this article.

Arguments

There are several arguments provided both in support and in opposition to reservation. Some of the arguments on either side are often disputed by the other, while others are agreed upon by both sides, with a possible third solution proposed to accommodate both parties.

Arguments offered by supporters of reservation

- Reservations are a political necessity in India because vast influential sections of voting population see reservations as beneficial to themselves. All governments have supported maintaining and/or increasing reservations. Reservations are legal and binding. As shown by Gujjar agitations (Rajasthan, 2007–2008), increasing reservations is also essential for peacekeeping in India.

- Although Reservation schemes do undermine the quality of education but still affirmative Action schemes are in place in many countries including USA, South Africa, Malaysia, Brazil etc. It was researched in Harvard University that Affirmative Action programmes are beneficial to the under-privileged.² The studies said that Blacks who enter elite institutions with lower test scores and grades than those of whites achieve notable success after graduation. They earn advanced degrees at rates identical to those of their white classmates. They are even slightly more likely than whites from

the same institutions to obtain professional degrees in law, business and medicine. They become more active than their white classmates in civic and community activities.¹

- Although Reservation schemes do undermine the quality of education but still Affirmative Action has helped many - if not everyone from under-privileged and/or under-represented communities to grow and occupy top positions in the world's leading industries. (See the Section on Tamil Nadu) Reservation in education is not THE solution, it is just one of the many solutions. Reservations are a means to increase representation of hitherto under-represented caste groups and thereby improve diversity on campus.

- Although Reservation schemes do undermine the quality of education but still they are needed to provide social justice to the most marginalized and underprivileged are our duty and their human right. Reservation will really help these marginalized people to lead successful lives, thus eliminating caste-based discrimination which is still widely prevalent in India especially in the rural areas. (about 60% of Indian population stays in Villages)

- Anti-reservationists have made a gross mix-up between brain-drain and reservation. Brain-drain is mainly attributed to the "want" to become more rich very fast. Even if we assume that reservation could be a fraction of the cause, one must understand that brain-drain is a concept which is meaningless without nationalism, which is separatism from humankind as a whole. If people leave the country whining about reservation, they don't have enough nationalism and brain-drain does not apply to them.

- There concerns among anti-reservationists about meritocracy and aptly so. But meritocracy is meaningless without equality. First all people must be brought to the same level, whether it elevates a section or delves another, regardless of merit. After that, we can talk about merit. Forward people have never known to go backward due to reservations or lack of "meritocracy". Reservations have only slowed down the process of "Forward becoming more richer and backward becoming more poorer". In China,

¹ Ibid.
people are equal by birth. In Japan, everyone is highly qualified, so a
qualified man finishes his work fast and comes for labour work for which
one gets paid more. So the forward people must be at least happy with the
fact that they are white-collared throughout their life¹.

Other Notable Suggestions

The following policy changes have been suggested in order to find a solution
to the problem.

Suggestions by Sachar Committee

✓ Sachar Committee which has studied the backwardness of Indian Muslims
have recommended following scheme for identifying real backward and
needy people.²

Marks based on Merit: 60
Marks based on Household Income (Irrespective of caste): 13
Marks based on District in which person studied (Rural/Urban & Region): 13
Marks based on Family occupation and caste: 14
Total Marks: 100

The Sachar Committee has also indicated that OBC Hindus presence in
educational institutions is almost equal to/close to their population.[²⁷].
Indian Human Resources Minister has immediately appointed a committee
to study the Sachar Committee recommendations on Indian Muslims but did
not offer any comments regarding the other suggestions. The anomaly that
has been detected in this formula is that there can arise situations in which
even the first ranker can be denied admission /appointment, which is
clearly against the principles of natural justice³

¹ Ibid.
³ Ibid.