

## **CHAPTER-IV**

### **BACKWARD CLASSES – THE SOCIAL ORDER AND THE CONSTITUTIONAL ARRANGEMENTS IN INDIA.**

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**CHAPTER - IV**  
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**CONSTITUTIONAL ARRANGEMENTS IN INDIA**

**(A)**

**CASTICISM IN INDIA**

Caste played a dominant role in the rigid structure of the society. Right from the Rig Vedic Period till the later Vedic Age, the fourfold division of the society was based on Varnas, Caste and sub-caste had been divided on the basis of their profession. Brahmins were placed in the upper strata of the society performing the work of a priest, Kshatriyas (the warrior group) the Vaishyas (the peasants, traders) placed in the second and the third section while the sudras were placed at the lowest strata of the society. This rigidity of the caste system still persists today and thus created disparity, inequality discrimination among the upper and lower sections of the society. The sudras were considered to be the people of low birth, hence they had to serve the upper three classes. Mahatma Gandhi had considered them "the Harijans" as untouchables who were deprived from the main stream of the society. India since Independence had witnessed this caste rigidity which gave birth to inequality and injustice in a massive form. In the mid nineteenth century social, and religious reformers like Raja Rammohan Roy, Justice Ranade, Iswar Chandra Vidyasagar, Jotibe Phule felt the need of "abolishing caste rigidity" along with the spread of the western education.<sup>1</sup> They strived hand for uprooting the very evils of the society like "abolition of sati" ban of polygamy. Jotiba Phule in Maharastra in the early 1849 had founded the Paramhansa Mandoli institution, through which he had been able to bring all sections of under one entity.

Many eminent scholars have defined caste in a vivid manner. Sir H. Rishley has defined caste as a collection of families or group of families possessing a common name which usually denotes or is associated with specific occupation, a common descent or belonging to a single homogenous community. Caste in India means an artificial chopping off the population into fixed and definite units each one prevented from fusing into another through the custom of endogamy. This endogamy is confined only to caste itself. Caste has been considered as a homogeneous group having a common culture. Nesfield defines caste as “a class of the community which disowns any connection with any other class and can neither intermarry nor eat nor drink with any but persons of their own community.” Caste has its own characteristics- caste, class, gender.

The effect of the British Rule has somehow had an impact on the caste system. The British had introduced a new principle of justice where all men are equal before the law. The uniform civil code was established. The uniqueness of the western civilisation has however reflected on the Indian society. Bankim Chandra Chatterjee in his work “The Tract on Equality” – stressed on the discrimination against the poor by the rich, against the Shudros by Brahmins – which has been subjugated under the colonial rule of the British. The humiliation has no doubt brought the inequality of race, .... as well as the inequality of the castes. For an egalitarian society unevenness in economy should be abolished as Gandhi, had expressed his feeling towards the untouchables, ..... The discrimination has however paralysed the Indian society. The idea of equality and experience of inequality has become a day today affairs a debate and discussion. In order to achieve the social justice, ..... many eminent scholars have discussed about the welfare state. Welfare state’s main objective is the social welfare, which in other words been “well being of the society”.<sup>2</sup> In a modernised society, social welfare has its great significance to

improve the quality of life specially ... vulnerable sections of the society. Various policies and programmes have been initiated by the specific organisation government at the state and the centre agencies and institutions for the welfare of the backwards section of the society.

The Backward Classes – are totally segregated from the main stream of the society. Usually backwardness is due to the poverty, illiterary and perpetual exploitation by the upper classes of the society. Scholars like Ghurya and Dube have opined that castes have differentiated the social reality which is blanketed by biasness, prejudices' clear wages in the social system. Gandhi in his visit in South Africa, at witnessed the racial discrimination (between the Whites and the Africans) and also had his own experiences in the journey by train from Durban to Pretoria at Maritsbery railway where he was been humiliated and ill treated by the whites. After his return from South Africa, Gandhi took active part in the National Movement. Alongwith the Congress leaders, he started the Non-Cooperation Movement in order to bring the British administration to a stand still. Gandhi adopted the “principle of non-violence” – to restore peaceful agitation against the British. According to this movement, Indians had to renounce all government titles, boycott the legislatures law courts, government schools and colleges and the foreign goods.

The Simon Commission appointed by the British Parliament under the Chairmanship of Sir John Simon ..... but it did not prove to be beneficial for the Indians. Gandhi in his Lahore session in 1929 urged for the complete Independence movement. The Indians defied laws and orders of the British Government. This campaign was started with Gandhis famous March Dandi ... violating the salt laws. Thousands of Congress leaders were put behind the bars. In 1931, the agreement was signed between Gandhi and Irwin (known as Gandhi Irwin Pact) according to which prisoners were set free and Gandhi

actively participated in the second Round Table Conference as the only representative of the Congress.<sup>3</sup> But the outcome of this conference did not favour the congress. In order to create differences between Hindus and Muslims on the one hand and the Hindus and Harijans on the other, the British Government announced the Communal Award in August 1932. It gave separate representation to the Muslims and the Harijans. Gandhi raised a strong protest against this communal award and commenced fast unto death. Gandhi adopted the principle of Satyagraha along with ahimsa and non-violence. He spoke about “Dharmashastra” – ethical and moral values of the Hindu Law brought the four fold division of the society and the caste rigidity. Sanskritisation could not unit the heterogeneity of culture, but in fact, humanised the upper caste, oppressed the people belonging the lowest ladder. Gandhi’s plea for the depressed class, nevertheless was sympathised by the other leaders like B. R Ambedkar, Jotiba Phule, Justice Ranade. Ambedkar in Nagpur conference, referred to Gandhi’s moral influence. Gandhi broke his fast when Ambedkar pacified him, giving assurance that “a separate electorate was to be granted to the depressed classes. This was discussed in the Poona Pact (1932). The highest number of representatives was given to the depressed classes in the Provincial Legislature. Here Ambedkar’s viewed “the untouchables should use the political means to achieve social, economic equality while Gandhi viewed untouchables to be sudras – who were considered as “outcaste” – their work has to be honoured just as the upper classes. Dr. Ambedkar pressed the demand for the recognition of the Schedule Caste who had taken part in Satyagrahis.<sup>4</sup> He also asked for the separate representation in the state legislature in Poona and Nagpur in 1946. Backward Classes are presumed to be the important minorities in the country. Ambedkar in his paper “Bahiskriit Bharat” voiced the grievances of the depressed classes. He launched a

successful satyagraha at the Mahad in Kolabe district where the untouchables were denied access to temple. While he was in Bombay, having his legal practice, he suffered the humiliation for being a lower caste. He was helped by M.N. Joshi and D.A. Khane, for the separate electorates and reserved seats for the backward classes. He fought against the caste and injustice. Caste infact has weakened the spirit of nationalism ... In his words .. "Caste has killed the public spirit ... virtue has become caste ridden and morality has become caste bound .... The caste feeling is the mother of communalism ..." He struggled hard to create the human right.

**(B)****CONCEPT OF BACKWARD CLASSES**

Backward classes refers to the low born people, who are deprived from the socio-economic, political spheres of the society. Nearly thirty percent of the total population consist of backward classes. "Who belong to the Backward classes" The Sociologists have given different opinion regarding the backward classes. The Backward classes mainly consist of Scheduled Castes, Scheduled Tribes and Other Backward Classes. The origin of backwardness is poverty, illiteracy, ignorance, lack of adequate skill, exploitation by the upper classes, the colonial rule, untouchability. Poverty is imbedded in the basic structure of Indian society. This is mainly due to inequality which persists right from the traditional Indian History. This inequality persist due to rigidity of caste system. The dominance of the Brahminical society right from the pre-Independence days created a social distance between the various social groups (castes). The rigid structure has no doubt created hindrance on the path of modernisation. The backward class were placed in the lowest ladder of social hierarchy.

In India, the Constitution makers were conscious of the conditions of those who suffered from social, economic, educational disparities in the egalitarian society. In order to safeguard the rights of these weaker section the framers have provided various provisions in the constitution. Article 16(1) provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. Article 330 provides the number of seats to be reserved for SC and ST in Legislative Assemblies of various states and Unions of India. The preamble of the constitution proclaims to all citizens – social, economic and political, justice, equality of status and of opportunity and to promote fraternity

assuring the dignity of the individual. The Fundamental Rights and Directive Principles of state policy emphasis the establishment of an egalitarian social order devoid of caste system and based on socio-economic justice, equality of status and of opportunity. Article 17 of the Indian Constitution abolish untouchability and its practice in any form is forbidden.

### **Constitutional Safeguards for Scheduled Castes and Scheduled Tribes:**

Our Constitution emphasis on the “ideals of equality of justice” both in the social, economic and political field”. The preamble to the constitution secures to every citizen, justice, social economic and political, equality of status and opportunity. Our founding fathers visualised the inequitable forces in the social economic system which lead to the deprivation of a large number of sections from the socio, economic, political status of a society. The Constitution framers in order to equalise the “vulnerable sections” took the necessary steps for safeguarding the rights of “these disadvantaged groups. Various safeguards and protective measures have been undertaken to ensure all round development and freedom of the weaker section. Ruthless exploitation and social injustice at any cost be forbidden. In order to bring the nation on the democratic footing, equality should be practised at all levels. Article 46 of the Directive Principle ensures the “State to take special case in promoting the educational and economic interest of the weaker sections of the people, particularly the Scheduled Castes and Scheduled Tribes and also to prevent from social injustice.” Any such provision made by the state cannot be challenged on the grounds of being discriminatory. To facilitate the implementation of the above Directive Principles the Constitution of India provides for a number of safeguards for the SCs and STs. These safeguards can be classified as (i) Social safeguards, (ii) Educational and cultural (iii) Service and (iv) Political Safeguards.

**(i) Social Safeguards :**

Article 15 prohibits discrimination by the state on the grounds only of religion, race, sex, caste, etc. With regard to the access to public places. Nothing in the Article shall prevent from making any special provisions for the advancement of socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes.

Article 17 abolishes untouchability and forbids its practice in any form. The enforcement of any disability arising out of untouchability is to be an offence punishable in accordance with law. Article 23 prohibits traffic in human being and any other similar forms of forced labour. Second part of this article declares that any contravention of this provision shall be an offence punishable in accordance with law. Article 24 of the Constitution prohibits employment of children below 14 years of age in factories and hazardous employment. Since majority of the child labour engaged in hazardous employment belongs to SC and STs. Article 25(2)(b) empowers the state to “open all Hindu religious institutions of a public character to all classes and sections of Hindus. It enables the individual to enter the temple irrespective of the his caste.” Untouchability, social inequality or under privileged class.

**(ii) Educational and Cultural Safeguards:**

Article 45(4) empowers the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs. It was added by the Constitution (1<sup>st</sup> Amendment Act 1951) as a result of the decision in the state of Madras Vs. Champakam Dorairajan. After this amendment the state took positive steps towards the advancement of the “backward classes” specially the Harijans. According to this provision, the seats for SCs and Sts have been reserved in the

educational institutions – specially technical, engineering and medical colleges.<sup>5</sup>

Article 29(1) guarantees to any sections of the citizens residing in any part of India, having a distinct language, scripts, or cultures of the own, the right to conserve the same, the language, scripts or culture. A minority community can preserve its language, scripts, or culture by and through the educational institution.

Article 350(A) instructs the state to provide adequate facilities for encouraging the mother tongue at the primary stage of education to the children belonging to the linguistic minority. Many tribal communities speaking in their own language press for identification of such language in the state officials.

#### **Under Service Safeguards:**

Article 16(4) empowers the state to make any provision for the reservation of appointment posts in favour of any backward classes of citizens which in his opinion of state is not adequately represented in the services under the state. Article 16(4A); Article 16 was amended according to seventy seven Amendment in 1995, empowering the government to provide the reservation in promoting for SCs and STs by inserting clause 4A which clearly says “Nothing in this article shall prevent the state from making any provision for reservation matters of promotion to any class or classes of post in the service under the state in favour of SCs and STs which in the opinion of the state are not adequately represented in services under the state.”<sup>6</sup>

Article 320(4) provides that the UPSC or any state public service commission shall not make any provision which will effect the “Article 16(4) and provisions laid in Article 335.

### **Political Safeguards:**

Article 164(1) provides special provisions relating to the appointment of a minister in charge of a tribal welfare in state of Bihar, MP and Orissa. Article 330 provides for reservation of seats in Lok Sabha for SCs and STs. Article 332 provides for reservation of seats for SCs and STs in Legislative Assemblies. Article 371(A) to 371(H) contains the special provisions with respect to Nagaland, Assam, Manipur, Sikkim, Mizoram, Arunachal Pradesh respectively. Article 325 provides the state to have one general electoral rolls which means that a member belonging to SCs and STs may control the seat other than reserved i.e. for general seat.

### **Statutes and Legislations:**

There are plenty of laws, both central and states which provides for the safeguard to SCs/STs. A list of such laws are given below:-

- 1) The Bonded labour system (abolition) Act. 1976
- 2) The Forest Conservation Act (1989)
- 3) Immoral Traffic in Women and Girls Act.
- 4) The Child Labour (Prohibition and Regulation Act) 1986.

With the growth of population, economy, and division of labour the varnas split. New groups of the same kind of hierarchy emerged known as jatis. Despite a degree of mobility and assimilation, the hierarchy and social oppression of defined class – the social boundaries performed a definite role and enjoyed a certain status in the society. Ambedkar's essay in 1816 – defines the specificity of caste in India as a product of Brahminical social order. Ghurye's has pioneered work in caste showing the bases of caste. Ram Mohan Lohia (1964) too emphasised the social bases of caste and need for a changing the production relations so that caste inequality can be destroyed. Even though there has been a structural change with the

abolition of Zamindari system in 1950 and green Revolution in 1960s and 1970's the caste dynamic still evident in Indian politics. The agriculture output has increased the economic status. The caste emerged as a significant forces in the political and social spheres. The V.P. Singh Government felt that the need of reservation of backward classes. Since the social inequalities has been visualised in every spheres of the society. The Dalit Liberation Movement first appeared in 1980's.

### **A Case Study of Andhra Pradesh**

#### **Development for the Tribals of Andhra Pradesh:**

According to the Andhra Pradesh Scheduled Areas Land Transfer Regulation, Justice Punnaya Commission has recommended some regulations like Ryotwari Settlement Regulation. The government of Andhra Pradesh was reluctant to make some implementation. Tribals for long were not able to get their land and according to the Land Transfer Regulation Act. With the depletion of forest, resources, diversion of water resources to the plains and scare land resources ... the tribals were alienated from the land. The problem of Tribal Land Alienation has gained significance in the context of tribal economy because of the forces of marginalization are very strong. The land for the tribal was more significant for their survival. According to report of Tribal welfare Department 48% percent of land has been acquired by non tribal. And a large number of agricultural labours consist of tribal who are forced to migrate in the urban areas.

The Protective Land Transfer Regulations prohibits the transfer of lands not only between the tribals and non tribals but also among the non tribals in the schedule areas. In spirit of this law the tribal land alienation is still prevalent. The steps being taken by enforcing authorities in implementing the tribal protective land laws and the

government is not sufficient. The survey has been made in the 1970-76 where most of the land belonging to the tribals are surveyed in the name of non tribals under the Ryotwari settlement's 2 of 69 and Ryotwari Settlement Regulations 2 of 70. Non tribals managed to get settlement pattas over the lands of tribals. Authorities under the Ryotwari Settlement Regulation did not conduct proper inquiry into the land holdings of non tribals and in pursuance of the Land Transfer Regulation at the time of granting settlement patta.

The Government of Andhra Pradesh has directed the District Collectors in the Scheduled Areas to prefer the appeals through the tribals against the erroneous patta granted in favour of non tribals. But this has not been implemented. According to the Ryotwari Settlement Regulations 2 of 69 no power has been given to the Collector to decide the appeals against the Land Survey Settlement Officers.... so the tribals receive no justice from the collectors as well as the lower courts. The conflicts which arise from the judgements of the High Court and the officers under Ryotwari Settlement did not provide any benefit to the tribals. It had become serious hardship to the tribals in retrieving their lost lands to the non tribals. Most of the Judgement of the Andhra Pradesh High Court were in favour of non tribals. The pattas were granted to them. Speedy justice to the tribals in land cases is denied. The project officers ITDA's (Integrated Tribal Development Agency) are not exercising the powers conferred on them on par with District Collectors as under Land Transfer Regulations through Government Order, Memo No.19 (Revenue) dated 8<sup>th</sup> January 1987 under District Collectors Powers (Delegation) Act 1961. If these officers exercise their powers, it would be easy for the tribals to redress their grievances of land disputes and justice would be at their door steps. Tribals are not getting proper justice through the Deputy Tahsildars who are appointed to File petitioners under Land Transfer Regulations on behalf of tribals before special Deputy

Collector for the restoration of land from the possession of non tribals. Their attempts and efforts are mismatching with the advocacy of lawyers engaged by non tribals in the court. The Deputy Tahsildars are not taking steps to prefer appeals if they failed to get an order from the Lower Court (SDC) Court in favour of tribals. This situation would forfeit the very objective of land Transfer Regulation which is intended for the restoration of tribal lands. Even if any person or organization is interested in taking steps to move appeals before the appellate authority i.e. district collectors, the district collectors are not entertaining appeals since the appellants were not the parties in the Lower Court Proceedings.

Due to lack of proper understanding of Land Transfer Regulations and related laws and proper orientation towards the land issue of tribals revenue authorities are taking a lot of time in deciding the matters under Land Transfer Regulations. Since the officers are posted at the Lower Courts, they do not paid any heeds by the government so there is a delay of justice. The enquiry reports are not submitted properly and hence the tribal are disallowed to filled their petitions. Due to the lack of proper knowledge proper evidences, both oral and documentary very often the tribals are denied their justice. When the matter was send to the A.P. Panchayat Gram Panchayat in the scheduled areas, perform functions to prevent the alienation of land in scheduled areas and to restore any unlawfully alienated land of a scheduled tribe which not implemented.

### **Reservation of Posts**

The promotion and advancement of socially and educationally backward classes by means of provisions for the reservation of the posts under the government has been incorporated in the Indian Constitution. Article 16<sup>8</sup> has banned and disfavoured discrimination in respect of employment on ground of religion, caste or race. Article

16 guarantees equality of opportunities for all citizens in matters relating to employment under the state. Equality of opportunity has not only afforded the citizens right to entry into the service but also in the case of promotion. When the state makes suitable rules as to the classification etc. for the selection for appointment of promotion, the action of the State based on such rules cannot be held to be relative on the principle of equality laid down in Article 16. The reason is obvious because, such rules are application to all the candidates desirous of joining the services or those who already being in service have an eye on further promotions. In order to see whether the rule making authority has made a proper classification or not whether the classification made has any means with the object which the rule making authority sought to achieve or not, it becomes necessary to examine the nature of services, the duties which it called upon to perform and other peculiar characteristics relevant to the services. There are certain cases like –

In *Triloki Nath Vs State of Jammu & Kashmir*,<sup>9</sup> the petitioner had by the writ petition claimed that the promotion to them was declined. The state had acted purely on the communal basis, and the senior members servicing belonging to one community had been placed below the junior most members of other communities and on the basis of residence in a locality and had thereby denied the guarantee of equality in matters of employment to the gazetted cadre of the Education Department of the State of Jammu & Kashmir.

Justice Subha Rao has also pointed out that the backward classes for the purpose of Article 16(4) could not be taken to mean only such classes of citizens who were not adequately represented in the service of the state. The test to apply in giving effect to Article 16(4) were to see whether a particular class of citizen was socially and educationally backward and (2) whether the said class was adequately

represented in the service under the state. Adequate representation in the services under the state, could not therefore be the sole criterion.

The recent trend in the Supreme Court is to curb the unfettered powers of the state in this matter. No longer the Supreme Court held by a majority of two to one the "carry forward rule" providing for the reservation of unfulfilled appointment and post under the government of India for the SCs and STs was unconstitutional.<sup>10</sup> In fact the reservation which could be made under Article 16(4) was intended merely to give adequate representation to the backward communities. If the carry forward rule was allowed, it might create monopolies or it might unduly disturb the legitimate interests of other employees. It is also feared that it might also effect the efficiency of administration. Thus the court rightly protected the interest of other employees and emphasized the case of reservation of post, the government had to take into consideration not only the claims of backward classes but also a paramount importance of maintaining efficiency in the field of administration. This point is further emphasized by the Supreme Court in C.A. Rajendran Vs Union of India<sup>11</sup> where it was observed by J Ramaswami that the language of Article 16(4) had to be interpreted in the context and the background of Article 335 of the Constitution. In other words, in making a provisions for reservation of appointments or posts the government had to take into account not only the claims of the members of the backward classes but also keep in view the necessity of maintenance of efficiency of administration.

The judges tried to interpret Article 15, 16 and 14 of the Constitution. Directive Principles of the State Policy is placed higher than the Fundamental Rights, Except on the ground of reasonable restriction, the Directive Principles would not infringe or encroach into Fundamental Rights, since, they are obligatory on the part of the state. Clause (4) of Article 15 and Clause (4) of article 16 are in nature exceptions to Fundamental Rights guaranteed by Article 15 and 16 of

the Constitution. In the matter of achieving equality, Article 16(4) is to exception to Article 16(1). It is not exhaustive of the classification necessary and therefore, permissible for achieving equality. The general principles applicable to situations under Article 14 are equally applicable to Article 16(1).

In *N.M. Thomas Vs State of Kerala*<sup>12</sup> – Chief Justice Ray observed that right to equality within Article 14 and 16(1) will not be violated by a rule which will ensure equality of representation in the services for unprecedented class after satisfying the basic needs of efficiency. Justice Mathew in this regard, observed that if “equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). Article 16(1) is only a part of comprehensive scheme to ensure equality in all spheres. Thus the concept equality under the law is embodied in Article 14 and Article 15. Article 16(1) permits the classification as just in Article 14. Justice Ray has observed that Articles 14,15,16 form a part of constitutional guarantee of rights. These rights are supplementary to each other. Article 16 ensures to all citizens equality of opportunity in matters relating to employment is an exception in compare to the guarantee of equality certain in “Article 14. Article 16(1) gives effect to Article 14. Both Article 14 &16(1) permit reasonable classification of the employees in matters relating to employment or appointment.” Article 16(1) uses the expression “equality” which makes it relatable to all the matters of employment from appointment through promotion and termination of payment of pension and gratuity.<sup>13</sup> Article 16(1) permits classification on the basis of object and purpose of law or state action except classification involving discrimination prohibited by Article 16(2). Equal protection of laws necessarily involves classification. The validity of classification is adjusted with the reference to the purpose of law, the classification in the present case is justified because the purpose of classification is

to enable members of Scheduled Castes and Tribes find representation by promotion to a limited extent, from the point of view of time a different treatment is given to members of Scheduled Castes and Tribes for the purpose of giving them equality consistent with efficiency “Chief Justice Mathew reiterated the position that Article 16(1) was only a part of a comprehensive scheme to ensure equality in all spheres, that it was an instance of application of large concept of equality under the land embodied in Article 14 & 15 and that it permitted classification just as Article 14 did. Justice Krishna Iyer has observed that “equal opportunity is a hope not a measure. If Article 14 admits reasonable classification so does Article 16(1) and this Court has held so. In the present situation, the economic advancement and the promotion of claims of the grossly under represented and pathetically neglected classes, otherwise, described as Scheduled Caste and Scheduled Tribes, consistently with the maintenance of administrative efficiency is the object, constitutionally sanctioned by Article 46 and 325 and reasonably accommodated in Article 16(1).<sup>14</sup> So this had rational relation with the object – set above “According to the discussions of Justice Ray, J. Mathew, J. Krishna Iyer wanted to introduce a new dimension into the concept of equality and particularly equality of opportunity.

### **Caste as Criteria for Reservation :**

Even after achieving independence for four decades we cannot say that we have achieved equality. Our Constitution has made a provision for backward classes – especially the Scheduled Caste and Scheduled Tribes and other Backward classes. The Constitution has guaranteed the equal protection of law to every citizens. In fact a large section of society are still oppressed suffers from misery, lacking shelter, poverty, ignorance, they are ruthlessly exploited by the dominant classes.<sup>15</sup> The lower caste is been placed at the lowest radder of social stratification. Even though the government, legislature

and the judiciary are striving for casteless society, the attitude of caste discrimination, creates a stigma in every society. The Harijans are still despised and exploited. Keeping the caste rigidity in mind the framers of the Constitution made a special provision for 'abolition of caste system' i.e. discrimination on ground of caste, place of birth race, sex religion is violation of Article 17 which states that untouchable has been abolished and the practice in any form is forbidden.<sup>16</sup>

Every individual has the right to equality i.e. equality of opportunity which means, right to be employed in any of public offices in this case, no citizen shall on the ground of religion, race, caste, sex, place of birth – be discriminated against in respect of any employment or office under the state.<sup>17</sup>

Our founding fathers feel that mere provisions against discrimination was not sufficient. The socially backward classes needed to be brought at par with others giving them special push through positive state action. According to the provision of the Constitution "Nothing shall prevent the state from making any provision for the reservation of appointments or post in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the services under the state.<sup>18</sup> The Constitution especially diverted the State in Directive Principles of State Policy. The fundamental principles of our Constitution is that the State shall promote with a special care, educational and economic interests of the weaker sections of the people. Particularly scheduled caste and scheduled tribes and shall protect them from social injustice and all forms of exploitation.<sup>19</sup> For maintaining the efficiency in administration in appointment of services and post, the government takes the special claims of Scheduled Castes and Scheduled Tribes. B.R. Ambedkar has rightly pointed out that protection of the backward classes of citizens was necessary and the state should make

provisions for reservation while appointing the member of Backward classes in the State Services.

The founding fathers of the Constitution felt that backward classes are usually the “classes which are socially, educationally and economically backward”. Caste can also be one of criteria for identifying the backward classes but it cannot be sole criteria as envisaged by Article 16(4) and Article 46 of the constitution of India. But unfortunately it is the caste alone which has played the dominant role in indentifying the backward classes, and thus the reservation benefits have been usurped by certain castes even though they were economically well of because of the same caste, economically sound is always in an advantageous position as compared to economically weak. Thus in the backward castes, the benefit of reservation reached only to the upper crust. Within the class and instead of filling the gap between the higher and lower castes themselves.

Moreover those poor people who unfortunately belong to a higher caste, but are economically worse, even though the lower caste, have been the most disadvantaged lot. According to the Report of Rane Commission (appointed by Gujrat Government) several castes have degraded themselves to such an extent that they have no hesitation in attributing different types of vices – to fall in the socially and educationally backward classes.

Judiciary did not consider caste and poverty as the criteria for socially and educational backwardness and so the purpose of reservation as laid in Article 16(4) of the Constitution.

In *Madras Vs Smt. Champakam Doraivajan case*<sup>20</sup> the Supreme Court struck down the classification in the communal G.O. founded on the basis of religion and caste or the ground that it was a clear violation of fundamental rights guaranteed to citizens of India. In *M.R. Balaji Vs State of Mysore*,<sup>21</sup> the Supreme Court observed that though

caste in relation to Hindus may be a relevant factor to be considered in determining the social backwardness of groups or class of citizens, it can not be made the sole and dominant test, social backwardness is in the ultimate analysis, the result of poverty to a very large extent. The classes of citizens who are deplorably poor, automatically became socially backward. In *R. Chitallekha Vs State of Mysore*,<sup>22</sup> the Court viewed that Classification of backward classes based on economic conditions and occupations is not bad and does not offend Article 15(4). The Caste of a group of citizens may be a relevant factor to determine social backwardness of a class; it cannot be the sole or dominant test in that behalf.

In *Triloki Nath Vs State of Jammu and Kashmir*<sup>23</sup> the question of reservation of 50% gazetted posts in favour of Muslims of Jammu and Kashmir to be filled by promotions. The court opined that inadequate representation in the state services would not be decisive of determining the backwardness of the section of the community. The court over ruled that the expression backward class is not used as synonymous with backward caste, or backward community. The members belonging to the same class or community whether measured in social, economic and educational scale are treated as "backward class" – but they formed a "class" – A class means a group of people belonging to a homogenous section. Whether the people having common traits, professing a same occupation, same race or religion or belonging to a same locality, but for purpose of Article 16(4) in determining whether a section form a class a test solely based on caste, community, race or religion or community cannot be adopted since it would offend the Constitution.

In *Janaki Prasad Parimoo Vs State of Jammu & Kashmir*,<sup>24</sup> the Supreme Court suggested that mere poverty can not be test of backwardness because in a country leaving few, a large section of the people are generally poor. In rural areas, leaving some sectors, three

fourth of the total population are socially and educationally backward. Applying the Yardstick, priest class following the traditional profession was held not to be socially and educationally backward. Cultivators of the land designated as backward, measured by the size of land holding was held to be impermissible on the ground that on "economic consideration" can not be determining factor for backwardness. In fact the court refused to accept that "the Economic factor" cannot be sole criteria for social and economic backwardness.

In State of U.P. Vs. Pradip Tandon's case reservations<sup>25</sup> in favour of rural areas was upheld by the Supreme Court, that 'rural areas cannot be sole criteria for determining the social and educationally backward class of citizen. Poverty in the rural areas cannot be the sole criteria for classification of reservation for rural areas.

In Kumar K.S. Jayasree Vs State of Kerala,<sup>26</sup> case the Supreme Court held that only caste cannot be basis of determining social and educational backwardness. Occupation, place of habitation may also be the relevant factors in determining socially and economical backwardness.

In Akhil Bharatiya Soshit Karmachari Sangh (Railway) Vs Union of India,<sup>27</sup> the Court upheld the reservation of various concessions in favour of members of Scheduled Castes and Scheduled Tribes.

Thus, from the above discussion, we can conclude that the courts have neither accepted the caste alone or poverty alone as the criteria for identification of backward classes. But in practice caste has been the sole criteria for making reservation and so. Even those, who are not poor but belong to a backward class based on caste, have enjoyed the benefits of reservations. As a consequence, castes, classes, and communities queue up for the sake of gaining backward status. Justice Chinnappa Reddy observed in recent case, "Nowhere else in the world is there competition to attain backwardness and to

claim we are more backward than you." Justice Desai has rightly in the same case observed that "a time has come to review the criteria for identifying socially and educationally backward classes ignoring the caste label. The only criteria which can be realistically devised is the one of economic backwardness". Justice Desai concluded that if economic criteria for compensatory discrimination or affirmative action is accepted, it would strike at the root cause of social and educational backwardness and simultaneously take a vital step in the direction of destruction of caste structure which in turn would advance the secular character of the nation. This approach would translate into reality the twin constitutional goals to strike at the perpetuation of caste stratification and move towards a casteless society and to gradually eliminate poverty by giving an opportunity to the disadvantaged section of society.

Justice Desai, however, classified that the approach of economic backwardness as suggested for backward classes is not applicable to reservations in favour of Scheduled Castes and Scheduled Tribes, since thousands of years of discrimination cannot be wiped out in one generation. Economic criteria is worth applying to those, who are very poor. But the reservation should be for a fixed period. Chief Justice Chandra Chud agreed with Justice Desai in *K.C. Vasanth Kumar Vs State of Kerala*<sup>28</sup> for the Continuation of reservation in favour of Scheduled Castes and Scheduled Tribes but only for a fixed span of fifteen years and after this period they should also be subjected to the means test; i.e. the test of economic backwardness. But for identifying backward classes, Chief Justice Chandra Chud, stressed upon two tests. One, that they should be comparable to Scheduled Castes and Scheduled Tribes in matter of their backwardness and two, that they should satisfy 'means test' such as state government may lay down in the context of prevailing economic conditions. Justice Chandra Chud

right stressed that the policy of reservation in employment, education and legislative institutions should be reviewed every five years or so.

The cases of Scheduled Castes and Scheduled Tribes is however different. They have been despised discriminated and exploited for centuries. They are humiliated and forced to do the menial jobs and live in slum. Despite of the continuous effort of government in abolishing untouchability, and constitutional provisions, welfare programmes, for the upliftment of the backward class, their position in the society still remained the same. They are forced to do menial jobs like sweeping, cleaning, sewerages, removing the waste from factories.

Even though, urbanisation, rapid industrialization and dynamic changes in the society, the Harijans are still remaining backward. A negligible percentage of Harijans are recruited in low grade services. Harijan, even today, are not allowed to enter the Hindu temples in Puri. Often they have to opt for odd jobs, and being humiliated by the higher castes. So reservation, for the backward classes, SCs and STs will continue till we are able to change our Sanskaras. Marc Galanter, while commenting on the reservation policy – said 'Reserved seats is seen as conscription of a arbitrarily selected groups of citizens to discharge an obligation from which equally culpable debtors are excused. Gradual reduction of percentage of reservation in consonance with improvement of their social and educational and economic conditions may be solution. Reservations can be abolished only when equality infact is achieved. According to Marc Galanter, reservation of seats for Backward Classes should not be for employed in professional colleges. But Government should take special measures to improve the backward classes – like free education, scholarship, free boarding and lodging in the hostels. Reservation policy is the preferential programme for upliftment of weaker sections

in “state employment, private sector and self employment”. Today very few Harijans are privately employed or self employed.

After independence, the Indians were sympathetic towards the downtrodden classes. The policy of reservations are to be rationalised. So that downtrodden gets the benefits out of this reservation. The Harijans should not remain backward. At least a minimum eligibility would be prescribed for the Harijans, which is required for the job in the state services. Anybody possessing the minimum eligibility qualifications and intelligence shall be able to do the job efficiently. Merit starts only after the initial minimum. This change can be introduced in the reservation policy henceforth the Harijans will get aspiration to acquire the minimum eligibility – for appointment in job. Thus the case of reservation has to be introduced at the entry points and after that since the beneficiaries would be placed at the equal footing with others. The nationalisation of the reservation policy is needed not for the abolition of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes.

The General Manager Southern Rly. Vs. Rangachari<sup>29</sup> (AIR 1962, SC 36), validity of the circulars issued by the Railway administration providing for reservation in promotion was questioned. The Madras High Court agreed that Article 16(4) does not take in or comprehend reservation in promotion and further that the word posts in reserved the High Court decision J. Gajendragadkar while speaking for the majority enunciated certain proposition. First, matters related to the employment must include all matters in relation to the employment both prior and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment. Second the promotion to a selection posts is also included in the matters relating to employment, and even in regard to such a promotion to a selection post all the Article 16(1) guarantees is equality of opportunity to all citizens who enter service.

Third the condition precedent for the exercise of the powers conferred by Article 16(4) is that backward classes should not only have adequate representation in the lowest ring of the service but that the state should aspire to secure adequate representation in the services as well. Lastly, in providing for the reservation of appointment of post under Article 16(4) may theoretically and conceivably mean same impairment of efficiency, but the risk involved in sacrificing efficiency of administration must always be borne in mind when any state set about making a provision for reservation of appointments of posts. "Thus the view in Rangachari was that Article 16(4) contemplates or permits reservation in promotion. The expression "appointment" takes in appointment, by direct recruitment, appointment by promotion and appointment by transfer.

**Constitutional Amendment:**

Article 16(4-A) of the Constitution provides that "Nothing in this article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the state in favour of the Scheduled Castes and Scheduled Tribe which in the opinion of the State is not adequately represented in the services under the state. But before, this five years, could terminate, a new clause, clause 4-A to Article 16 was inserted. This clause was inserted by the Constitution (77<sup>th</sup> Amendment) Act 1995, to overcome decision in Mandal Case that no reservation in promotions could be made under clause-4 of Article 16. By amending the constitution, Parliament has removed the base as interpreted by the Supreme Court in Indira Sawhney that "appointment does not include "promotion". Article 16(4-A) thus revives the interpretation put on Article 16 in Rangachari. The evil of bitterness and disappointment among the employees of the same category who were by-passed by their colleagues having less merits. There was no demand from it from any section of SC and ST. Article 16(4-A) permits reservations in

promotion posts only for the members of Backward Classes. This means the position taken by the Supreme Court in Indira Sawhney still prevails as regard. Other Backward Classes in respect of promotion. No reservation can be made in promotion for that Backward Classes.

**Position after Constitutional Amendments:**

Various aspects of promotion came before this caste and the court have struck to the decision that reservation, under Article 16(4) is confined to initial appointment and does not take into account promotion. In *Ajit Singh Tanuja Vs State of Punjab*<sup>30</sup> (AIR, 1996, SC 1189 SC) dealing with another aspect of promotion the court held that the members of the Backward Class who have been appointed / promoted on the basis of policy reservation and the system of roster cannot claim promotion against general category posts in the higher grade. On the basis of their seniority in the lower grade having been achieved because of the decelerated promotion of appointment by applying the roster. The equality principle requires exclusion of the factors of extra weightage of earlier promotion to reserved category because of reservation alone when he competes for further promotion to a general category with a general category candidates, senior to him in the panel. The court in this case concurred with the decision of the court in Indira Sawahney.

R.K. Sabharwal and Virpal Singh Chauhan. In *R.K. Sabharwal Vs State of Punjab*<sup>31</sup>, the court observed that the members of scheduled caste and Backward Classes are classified into two categories i.e. those who are appointed or promoted having completed with general category candidates on merit and those who are appointed / promoted on the basis of reservation and roster. For those who have competed on the basis of merit it was held that their number was not to be taken into consideration while working out of

the percentage of reservation. In respect of those members of Backward Classes who has been appointed / promoted on the basis of reservation and roster it is said that "running account shall stop after the quota provided under the instruction was reached and roster cannot be operated thereafter. In that words, there was no question of promoting further number of such candidates, who have been appointed / promoted on the basis of reservation and roster.

The court in the Union of India Vs Virpal Singh Chauhan,<sup>32</sup> held that in the matter of promotion, the candidate promoted earlier by the virtue of rule of reservation / roster shall not be entitled to seniority over his senior in the feeder category and that as when general candidate who was senior to him in the feeder category was promoted. Such general candidate will regain his seniority over the reserved candidate not withstanding that he was promoted subsequent to the reserved candidate.

In Ajit Singh Vs State<sup>33</sup>, the court had stated that if the reserved category candidate reaches a higher grade by superseding the general candidates in same grade after words by virtue of seniority, the seniority between such general category candidate and reserved candidate is not governed by the dates of their promotion to such higher grade but by their initial seniority in the grade from which they were promoted. In other words, the general category candidate even though promoted later than reserved category candidate will become senior to the candidate who was promoted earlier to him due to reservation. The court while coming to this conclusion overruled. Jagdish Lal Vs State of Haryana,<sup>34</sup> the court observed that right to promotion was a statutory right, while the rights of a reserved candidate under Article 16(4) and Article 16(4-A) were fundamental rights and this was followed in Ashok Kumar Gupta Vs State of U.P.<sup>35</sup> which was contrary to Indira Sawhney, R.K. Sabharwal.<sup>36</sup> At the same time, the court approved the decision laid down in Ajit Singh and

Virpal Singh. In *Ashok Kumar Gupta Vs State of U.P.* the Court observed that the right to promotion to post or class of posts depended upon the operation of the condition of service. Article 16(4) read with Article 16 and 14 guarantees a right to promote to Dalits and Tribes a fundamental right where they do not have adequate representation. Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be considered for promotion. Equal opportunity means the right to be considered for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then will be clear infraction of his fundamental right to be considered for promotion which is his personnel right.

If promotion from the basic level is by selection or merit or any rule involving the consideration of merit the senior who is eligible at the basic level has to be considered and if found meritorious in comparison with others, he will have to be promoted first. If he not found meritorious the next in order of seniority is to be considered and if found eligible and more meritorious then the first person to in the seniority list, he should be promoted. A person who is appointed first, will normally count his seniority from the date of such promotion. That is how the right to be considered for promotion and seniority attached to such promotion became important facts of fundamental rights guaranteed in Article 16(1).

In another case, *Ram Prasad Vs State of Punjab*<sup>37</sup> AIR 1999 SC 3563-3566, the court observed that so far the seniority of the roster point promotion is concerned, the reserved candidates contention that upon promotion at the roster points, the promotion can claims seniority and senior general candidates who get promoted later cannot be treated as seniors at the promotional level. The court while coming to this conclusion approved the decision of court in *Ajit Singh*. The court in *Jatindra Pal Singh Vs State of Punjab*<sup>38</sup>, AIR 2000, SC 609,

followed the observation that clause (4) of Article 16 was an enabling provision which held that where reserved candidates are promoted on the basis of continuous affiliation of roster point promotion had to be reverted in order to allow a candidate from the general category to occupy it. While drawing such limits to reservation for the Backward Classes the court was not oblivious to the need for an affirmative action for their empowerment. They cannot compete with general category candidates or equal terms. The court while coming to this conclusion followed Sabharwal and Ajit Singh (II) Case.

**Effect of Reservation is Promotion:**

The decisions of the court have made it explicit that a candidate belonging to a reserved category do not have vested right to promotion but definitely he has the right to be considered for promotion according to the rules.<sup>39</sup> The reservation of appointment or posts contemplated by clause (4) is only at the stage of entry into the State Service i.e. direct recruitment and providing for reservation thereafter in the matter of promotion that amount to a double reservation and if such a provision is made or each successive stage of promotion it would be a case of reservation being provided that many times. By providing reservation in matter of promotion, the member of reserved category can have frog leap over his colleagues and may well lead to inefficiency in Administration. In this aspect, reference can be made to constituent Assembly debate.

Constituent Assembly Debate (CAD) on draft of Article 10(3) did not in any manner indicate that it was supposed to extend promotion as well. If Art 16(4) is constined as warranting reservation even in the matter of promotion it would contrary to the mandate of Article 335 of the Constitution. Reservation in promotion would amount to provision which is inefficient. The members of the reserved category would not work hard since they do not have to compete with all other colleagues

but only within the reserved category. But this rule will militate against the goal of excellence, preferred to in clause (j) in Article 51A.

In Rangachari "it was argued that reservation of appointment of post implies same impairment of efficiency" but risk introduced in sacrificing efficiency of administration must always be born in mind<sup>40</sup> when state mentioned a provision for reservation of appointment of post. In Indira Sawhney case, it was rejected on the ground that "there is no justification in multiplication of risk" and for holding that reservation can be provided in the case of promotion.

Reservation to the backward class of citizens at the initial stage of appointment, would be serious and unacceptable in road to rule of equality of opportunity and to say that such reservation should be provided at every stage of promotion throughout their career. This would imply creation of permanent separate category apart from the mainstream a vertical division of administrative apparatus.

Promotion to all higher posts contribute to elevating the image of the socially low rated class, serving as a modern catalyst to Sanskritization, Reservation, ordinate the element of efficiency to instant advantage, they also adversely affect the legal vested promotional opportunities of those in the line. While the legal validity of reservations for promotion is no more an issue, more rational policy should be invested to help the backward section for competing to the promotion avenues. The constitution (85<sup>th</sup> Amendment) Act 2001 aims at extending the benefit of reservation in favour of the Scheduled Castes and Scheduled Tribes in matters of promotion with consequential seniority. From April 1995 when the Constitution 77<sup>th</sup> Amendment was enacted. It became clear that the politicians are trying to dilute the effect of the Mandal decision in order to make their vote bank intact. And in times to come, the constitution (77<sup>th</sup>

Amendment) Act and Constitution (85<sup>th</sup> Amendment) Act 2001 might even extended to other Backward Classes.

**Creamy Layer:**

Society do not remain static. Due to industrialisation and urbanisation, political, social and economic awakening, there is a reform movement in the society. The provisions so far been laid in the constitution. Special provision for reservations secured so far at least four individual families are benefited – gaining sufficient means to develop their capacities to compete with others in every field. Legally, they are not entitled to remain backward list or backward class. Some advanced from the backward classes get special benefits which would be testimony “ Right to equality – violating equality” providing of the constitution. Secondly to rank with the vest of the backward classes would equally violate the right to equality of the rest in those classes, it would amount, treating the unequals equally. In Indira Sawhney, the court observed that Office Memorandum do not speak of creamy layers – test, it cannot be said by any stretch of imagination that the government was not aware of some few individual having both socially and educationally above the general average and extend in All India Services and any Civil Services.<sup>41</sup> Supreme Court has directed the government to specify the “basis of exclusion, whether a basis of income, extent to holding or otherwise of creamy layer. The most descending section of the backward class is benefitted by reservation under Article 16(4). At present the benefits of reservation are mostly chewed up by the most affluent sections of the backward class and the poorer section among them keep on getting poorer and more backward. It is necessary that the benefit of reservation must reach the poorer and the weaker section of the backward classes. Every candidate must disclose the annual income of the parent body and which could not be considered to be backward. Creamy layer amongst the backward classes must be excluded by fixation of proper income,

property or status. The court has directed the government of India to set up a commission to classify advanced section, creamy layer and OBCs. For an inquiry the court has directed the Govt. of India to set up a Commission to specify the group who can be excluded from advanced section and creamy layer. In this case, *Vasanta Kumar Vs State of Karnataka* AIR 1993, SC 145, needs to be mentioned.

Justice Ram Nandan Committee is formed under the Union Government to identify the Backward Classes. The committee submitted its report on 16<sup>th</sup> March 1993, identifying the creamy layer from the backward classes – and excluding them from the Mandal Report. There has been a great deal of resistance on the part of the states, to the idea of excluding creamy layer. In *Ashoka Kumar Thakur Vs State of Punjab*<sup>42</sup> Supreme Court held that the families holding, high incomes of any condition prescribed by the Legislation of U.P and Bihar as criteria to identify the creamy layer. In the Mandal Case, the SC category laid that the children of IAS & IPS can not avail the benefit of reservation. The Court find the criteria laid down by the two state government have no nexus or no object behind it. These criteria of the two states to identify the creamy layer are in violation of Article 16(4) and Article 14 of the Constitution as against the law laid by Supreme Court in Mandal Case where the members belonging to All India Services ought to be regarded as belonging to the creamy layer.

In the year 1995, the Kerala Legislative passed an Act declaring there was no creamy layer in Kerala. The state of Kerala nullify the decision of S.C. in *Indira Sawhney* which specifically hold that the “reservation of backward classes in government jobs could be given only after excluding the creamy layer. The validity of the State Act was challenged in the Supreme Court. In *Indira Sawhney Vs. Union of India*<sup>43</sup>, the court explained further the rational underlying the rule of exclusion of creamy layer. The identification of creamy layer in every

backward class is infact based upon horizontal division of every section of the backward class into the creamy layer on non creamy layer. The court directed the state to make provisions for the exclusion of the creamy layer among the backward classes in the state.

**Duration of Reservation:**

The identification of backward class by the Mandal Commission is not with a seal of perpetuity but is subjected to renewability by the govt. The Mandal Commission itself has suggested that the entire scheme should be reviewed after 20 years. The list of backward class may be reviewed at the enterval of 10 year. The court in its decision of Thomas and K.C. Vasanth Kumar have dealt with duration of reservation.

In N.M. Thomas Vs State of Kerala, AIR, 1976, SC 490.<sup>44</sup>

IN K.C. Vasanth Kumar Vs State of Karnataka, AIR 1985 SC 1495.<sup>45</sup>

The Court in Indira Sawhney observed that the list must be received every four to 5 years after there is adequate representation in service. Though no period of reservation has been provided, every state must keep an evaluating periodically if it is necessary to continue reservation and for when. In Jagadish Negi Vs State of UP, AIR 1997, SC 3505, a division bench observed that the state cannot be bound in perpetuity to treat such classes as backward classes of citizen. In other words it is open to state to review the situation from time to time and to decided whether a given class of citizens that has earned the benefit of 27% continues to form a part of that category or has ceased to fall in that category.

**Conclusion:**

Reservation was understood as covering initial appointment but in certain judicial pronouncement it came to be understood as

applying to promotion. The Parliament should be introducing amendment to the provision of article 16(4) declaring that reservation in service is confined only to initial appointment and does not cover reservation in promotion. By introduction of such amendment the problem of maintaining efficiency of administration could also be maintained. Theoretically a government servant or a student who has been admitted to the service under a quota should not be entitled to successive upward phases, he should compete the way through the ladder.

There have been a number of judgements where, quantum of reservation should be below 50%, how much less than 50%, would depend on the facts. The task which hampers the identification of backward class is over expanding list of other backward classes. As advised in *Indira Sawhney* and reaffirmed in *Jagadish Negi* there should be mandatory and periodical review of the backwardness of various classes receiving preferential treatment as backward class which attain the degree of advancement should be excluded from the beneficiaries of reservation.

Problem arises with the exemption of certain services from the ambit of reservation. The court must take a consistent approach. The S.C. in *Indira Sawhney* enumerated certain services which are to be excluded from the period of reservation. But in *Dina Nath Sukla* the court approved such reservation in a single post of Professor by applying the rule of roster. Fortunately in *P.G. Institute of Medical Education and Research Vs Faculty Association*, the court set aside all the decision and laid down that it is not advisable to provide for reservation in certain position, including the technical post in the establishment engaged in Research and Development, the teaching part of Professors etc. This ruling ought to be made a law and be followed without any changes. In *Jagadish Negi Vs State of Punjab*, the AIR 1997, SC 3505 division bench observed that state cannot be

bound in perpetuity to treat such classes as backward classes of the citizen. In other words, it is open to a state to review the situations from time to time and to decide whether a given class of citizens that has earned the benefit of 279 continues form a part of that category or has ceased to full in that category. Unfortunately what was originally intended to be only 10 year affair has now become, a forever, renewed of facility. Political parties make way the social justice and reservation, now in their 52<sup>nd</sup> year but the key question remains whether reservation has served the intended purpose.

### **Backward Classes:**

The Schedule Castes and Scheduled Tribes are entitled to the special treatment once modified in the Presidential order. They are said to be a standing examples of social, economic and educational backwardness, the special treatment for them is justified because of this position consequently the scheduled castes and scheduled tribes has acquired the characteristic of Indian caste system. Members belonging to these group are standing examples of backwardness. Government has emphasised on rural based vocational training for the scheduled castes and scheduled tribes. The financial assistance like “fee a concessions, scholarships and aid are to be provided to the students of the weaker sectors.

### **Promotion quota – has become a serious issue – be raised by advanced classes :**

The reservation in promotion was not accepted by the other classes of the society what the upper section feels that “promotion to higher post contribute to the elevating the image of “modern society”. Enthusiasm for work will be reduced.<sup>46</sup> The Judiciary has played a decisive role in protecting this “right of the backward section”. Besides this the National Commission for Backward classes, constantly carried out work from state to state and region to region, inquiring the “conditions of the backward classes.”

**Quantum:**

Clause (4) of Article 16 is an enabling provision that confers a discretionary power on the state to make reservations for the backward under represented classes. In *Rajendran Ramaswari, J*, held that Clause 4 of Article 16 is an exception clause is not an independent provision and it has to be strictly constrained. In recent Kerala LDC case (*State Vs Thomas*) *Supra*, Chief Justice Ray introduced a new Principle of interpretation by equating protective discrimination with classification rule. In his opinion, both Article 14 and Article 16(1) permits classification. His logic runs “equal protection of laws necessarily involves classification. Article 16(1) prescribes equality therefore like Article 14 includes implied power to classify, except classification involving discrimination prohibited by Article 16(2), therefore like Article 14 includes implied power to classify except classification involving discrimination prohibited by Article 16(2), therefore the G.O. is valid being a reasonable classification.<sup>47</sup> The objects enshrined in Article 46 and Article 335 are realised in service field by Article 16(4) the observed. The specified and express mode of realisation of these objects contained in Article 16(4) must exclude the possibility of other methods which would be implied and need into Article 16(1) for securing them (the backward classes in this field”. Justice J. Mudholkar expressed his view in *Devdasan’s* case that excessive reservation practically denies a reasonable opportunity for employment to members of other communities, the position may well be difficult and it would be open for a member of a more advanced class to complain that he has been denied equality by the state. Clause (4) of Article 16 would not permit the state to discriminate in favour of backward classes in matters of salary, allowances, leave, pension etc. Equality in these matters is protected by Clause (7) and Clause (2) and they fall outside Clause (4). Following the ratio of *Balaji* “more than 50% reservation would be excessive,

destructive of Article 15(1) and hence outside Clause (4) of Article 15 the Supreme Court was held in Devdasan that the carry forward rule was bad. The court held on the basis of Balaji that Article 16 & 15 were substantially the same so far as the general principles regarding reservations were concerned. J. Mudhalkar admonished the Government to treat each year of recruitment by itself and observe the principle of equality.”

### **Kalelkar Commission :**

The first Backward Class Commission was set up by a presidential order under Article 340 of the Constitution of India on 29<sup>th</sup> January 1953. This commission of the Backward Classes is known to be Kalelkar Commission. This commission consist of eleven members – Shri N.S. Kajrolkar, Shri Bheekha Bhai, Shri Shivadayal Singh Chowrasia, Shri Rajeshwar Patel, Shri Abdul Qaim Ansari, Sri J Mariappa, Shri Alma Singh Namdhari, Lala Jagannath, Shri NRM Swamy, Shri Arunangshu De with Shri Kakasaheb Kalelkar as its Chairman.<sup>48</sup> The commission was set up to investigate those section of the people who are treated as socially and educationally backward class and prepare a list of those classes according to the population of each state. Identify the people who are deprived from the original stream of the society. The commission investigated the “living conditions of the backward class, the difficulties, their problems and prepared a Report of list of people belonging to the Backward classes. After a tremendous work of ten years, the commission – submitted its report to the president – identifying the reasons for the socially and educationally backward classes.

### **Various Policies and Programmes – Undertaken for the Welfare of the Backward Classes :**

In the First Plan period extensive strategy measures has been undertaken for the welfare of the backward classes. The Central

government has provided a sum of Rupees four crores for the expenditure during the First Five Year Plan. For the upliftment of the Harizons, both the Central and the State Government under this task in the second Five Year Plan. In the Third Five Year Plan, the Economic programmes have been undertaken by the voluntary organisations. Subsidies of Rupees 38 crores are been paid to Scheduled Castes families, Hospitals, Health Centres, Educational Institutions, Housing, Loans, Cooperatives are provided to the backward classes. In the Fifth Five Year Plan a new policy has been emphasized for the welfare of the Backward Class. The Planning Commission undertook the task of dividing the departments under each sector and according policies and programmes are to be initiated by each department. Separate Funds facilities are to be provided for the Backward classes. The Finance Department created the cells for smooth flow of resources to the Harijans and other Backward classes. Minor irrigation facilities, increase in agricultural production, Animal husbandry, cottage industries for the landless labourers are been launched by the Finance Department. In the same way, the State Education Department also took the responsibilities providing scholarship stipends, books, mid day meals, uniforms and residential schools for the students of the most backward cases. The Special Central Assistance (SCA) and Scheduled Castes Development Corporation (SCDC) was undertaken in the Sixth Five Year Plan. The Financial Development Corporation and Bank increase the marginal loan facilities amounting Rs.370.84 crores and Rs.1000.50 crores as subsidy.<sup>49</sup> In the seventh Five Year plan the programmes undertaken in the sixth Five Year Plan has been implemented. Greater emphasis was given on the educational development of Schedule Castes and Scheduled Tribes. Pre Matric Stipends and scholarships were given by the State Government. Nearly hundred lakhs students were benefitted out of it. In between 1978-79 and 1990-91 nearly 21,000 students

receives the benefits of Stipends and Scholarships, are provided by the government. The students in the professional, technical, degree colleges, Engineering colleges received the "Scholarships on the basis of "Graded Means Test". The Integrated Rural Development Programme (IRDP) Jowar Rojgar Yojana Programme (JRY) undertook the task of providing benefits to the Scheduled Caste and Scheduled Tribes families. At the Village Panchayat level, nearly 15 percent of the annual allocation is been spent on the items for the SCs and STs. The Backward Classes is confronted with different types of social and economic problems, special component Plan (SCP) and Tribal sub Plan (TSP) for STs took a separate strategy for the development of the Scheduled Castes and Scheduled Tribes.

a) Special Component Plan (SCP): The Special Component Plan (SCP) emphasised on "composite income generation programme:" for the sectors belonging to the scheduled castes. This orientation programme is mainly for the benefit of Scheduled Castes agricultural labours, leather workers, weavers, artisans, fishermen, sweeper. It is expected that per family (belonging to SC/STs) must crosses the poverty line – though the integrated family oriented programmes (according to the Sixty Plan) and secondly, the standard of education for SCs/STs, must be raised to a level, where they can compete with general candidates. Though the effective organisations and Training, the skills of the Scheduled Castes / Scheduled Tribes can be developed as an element of human resource.

This SCP also draw the special attention to the vulnerable sections of the society i.e. women and children. Alongwith this the mobilisation in the occupational pattern of both SCs and STs must be encouraged the Sixth Five Year Plan, has no doubt catered the specific needs of the "Weaker Sections". The two National Level Institutions were set up for the economic development of Scheduled Castes and Scheduled Tribes – they are (1) Tribal Cooperative Marketing

Development Federation is an upper body for the State Tribal Development Cooperative Corporation. (2) National Scheduled Castes and Scheduled Tribes Finance and Development Corporation which acts a catalytic agent in developing schemes for employment generation and financing the pilot projects. Under the poverty, alleviation programmes, 30 percent were beneficiaries of Scheduled Castes and Scheduled Tribes population under IRDP. The wage employment programme under Jawhar Rozgar Yojana scheme has been undertaken for the Scheduled Castes and Scheduled Tribes.

(b) In March 1980, Special Centre Assistance was started by the Government to accelerate the development of the Scheduled Castes families. It was discretionary on the part of the State Government to utilize the development Programme for the Scheduled Castes. Special Component Plans, Corporations, Cooperatives, Commercial and Financial Institutions provided the resources to the beneficiaries.

(c) Scheduled Caste Development Corporation (SCDC): In 1989 the government of India has set up such Corporation to mobilise the institutional credit for income generation schemes. The objective was to enhance the perception assistance to Scheduled Caste families in order to ensure optimal returns from the investment made for the economic upliftment of the target groups. This corporation plays a Catalytic role in developing schemes for employment generation. It works with the Nationalised Banks and NABARD in improving the flow of financial assistance to the Scheduled Castes and Schedule Tribes. Through special survey, the corporation has identified the Scheduled Castes clusters and benefits are given to Scheduled Castes. A wide range of promotional activities has been undertaken by the Corporation for the development of economy of Scheduled Caste. Public sector institutions, government Department secured such purposes.

### **Organisational and Institutional Framework:**

At the Central level, the Ministry of Welfare Department performed the various programmes for the welfare of Scheduled Castes and Scheduled Tribes. Various commission like “National Commission of Scheduled Castes and Scheduled Tribes, Planning Commission like Backward Classes Divisions, National SC/STs Financial Development Corporations are set up relating to the welfare of the backward classes. The Ministry and the Welfare Department consist of separate wing having joint Secretary, guided by three Directors, four Deputy Secretaries, Six Under Secretaries, Research Staff, Desk and Section Officers to formulate policies for the Backward Classes.

**At the State level :** In the state level the State Planning Board, performed the task of maintaining the administrative linkages with the Political Authority of the Centre Committee. The Government at the State Level, emphasised on the implementation of programmes for the development of Scheduled Castes.

**At the Local level:** The work of Welfare and development of SCs at the district level is taken up by the Zilla Parisad under the Chairmanship for President under his Supervision, control the collector who operates through Additional District Magistrate. The Nodal department of Social Welfare and Sectoral Department caters to the needs of the weaker sections. The implementation of SCP is done by SCA and SCDC. The District Social Welfare Officers – collaborates with the District Technical Officers – regarding the implementation of SC schemes and development programmes are initiated by Technical Officers of the District. At the Block level, the work is taken by Block Development Officer. Each BDO is being assisted by Additional District Officers who investigate areas where the “weaker section dwells”. At the grass root level, village Panchayat plays a prominent

role with regard to the implementation of schemes / programmes for the welfare of the “Backward Classes”.

### **Special Rights in the Constitution:**

#### **Who are covered under Socio-Economic Backwards?**

People belonging to Scheduled Caste and Schedule Tribe were identified as socio-economic backward category. There is a list stating various castes and sub castes coming under these categories the common words like Dalits and Harijans are used to identify this category. Our Constitution writers and political leaders felt that unless this category is given representation in electoral bodies it will not be possible to give full and respectful meaning to democracy. Initially it was decided that reservation of seats (15% to SC and 7.5 to ST) in elected bodies should be for 10 years. Later on, constitution was amended to continue the practice of reservation. The initial ten years was provided under the assumption that after ten years, equality will be achieved. However subsequent political pressures and popular moves made it necessary to continue the reservations. Other than elected bodies there was a need to provide equality in society to (i) Linguistic minorities (ii) Religious minorities (iii) women and children, (iv) other backward. All these measures are related to education, prayers, social activities and to retain socio-cultural heritage of India.

#### **Special rights for Dalits (SC & ST):**

In order to do justice in social, economic and political fields it was necessary to uplift the scheduled castes and scheduled tribes, people all over India, regardless of their religious affiliations the Constitution provides, various special provisions for the protection of SC and ST category as follows –

- (1) What ever provisions are made for SC, ST category people cannot be challenged by others in the court of law as discrimination against them.
- (2) In case of ST, SC, people, the state can prohibit others from acquiring their land or properties to protect their interest.
- (3) In connection with making appointments to various services of state or union the claims of SC, ST members shall be taken into consideration, consistently, with the maintenance of efficiency of the administration.
- (4) A national commission for SC, ST will be constituted by the President of India. It is the duty of this committee to investigate all matters relating to the safeguards provided for the SC and ST under the Constitution and report to the President upon working of these safeguards annually or at earlier intervals as required and President shall forward these for discussion and decision making in the Parliament (Art. 341-342).
- (5) The President, by an order can appoint a Commission to report on the administration of the scheduled areas and welfare of the Scheduled Tribes in the states. The order may define the composition, power and procedures of the Commission and may contain such incidental or ancillary provisions as the president may consider necessary.
- (6) The Parliament can direct any state government to draw up and execute schemes essential for welfare of the ST people of that state (Art. 339-1). In order to involve parliament members and other members of the public, three committees are formed. Their function is to formulate and review the working on plans for welfare of SC, ST people and to suggest recommendation to the Government of India.

- (7) As per special representation of reservation of seats the constitution provides 15% reserved seats for SC and 7% for ST in elected bodies. However in tribal oriented states and the Union territories like Manipur (1 seat), Meghalaya (2), Mizoram (1), Nagaland (1), Lakshadweep (1) and Dadra (1) and all reserved for ST. Similarly in Orissa, MP and Jharkhand there is more representation to ST. Due to these reasons, ultimately, Loksabha has 15% SC and 9% of ST representations.
- (8) Special provisions are laid in the Constitution for states to care the educational and economic interest of weaker sections of the people and in particular SC, ST and to protect them from serial injustice and all forms of exploitation.
- (9) There are more tribals in the state of Orissa, MP and Bihar (now in Jharkhand) and hence, these states are directed to create a Ministry for Welfare of SC, ST and Backward Classes (Article 164). In every state there shall be department of welfare for SC, ST and Backward Classes.

### **Welfare Measures for Weaker Sections – Administrative Function:**

Since India has decentralised administrative system. (i) Urban level (ii) Rural. At the rural level, there are three types of administration. (i) Zilla Parishad, (ii) Panchayat Samiti, (iii) Gram Panchayat.

The District Administration is headed by the District Magistrate who is overall in-charge of the development, revenue and judiciary administration. As a result of democratic decentralisation, the task of planning, execution and implementation of all development programmes of the departments of social welfare, development of women and children in rural areas, agriculture, economic and statistic, cooperative, industry are managed by the respective department heads under the direct supervision and control of

additional collector. The Additional Collector is also officiating project Director of District Rural Development Agency (DRDA). There is a Project Manager for Scheduled Castes Development Corporation (SCDC). Chief Planning Officer working under direct Control and supervision of the Collector. The District Planning Officer in DRDA who is assisted to Additional Collector (Development) in supervising the work of district officers responsible for Anti Poverty Programmes. Under the democratic decentralised pattern of Panchayati Raj at district level District President is supposed to organise meetings at Zilla Parishad. Chief Executive Officer looks after the work of Zilla Parishad. The Panchayat Samiti level for coordinating the activities of different department members of Panchayat Samiti are supposed to attend the General Body meeting in which officers of different department participated. Committees such as Finance, Establishment, Education, Community Development. BDO is elected as a coordinator of the Advisory Committee. For Coordination of activities of different sectoral departments including the Financial institution, DRDA under the Chairman of the Collector is formed in which MLAs, President of Panchayat Samiti, Officers of different department. For the development administration at local level each Panchayat Samiti is headed by Block Development Officer (BDO), with the help of Extension Officers or Assistant Development Officer in different fields carry out the work of welfare and development of weaker sections. At village level Panchayat Secretary cum Village Level Officer acts as assistant to the BDO in the implementation of rural development programmes.

### **Administrative functioning:**

In order to understand the dynamic relationship between nodal department of social Welfare, Sectoral Departments DRDA, SCDC, Zilla Parishad and Tribal Development Authority, it is necessary to study the administrative arrangement meant for welfare and

development of weaker sections.<sup>53</sup> Various plan/programmes / schemes sponsored by DRDA, SCDC, Zilla Parishad and Social Welfare Department are implemented by sectoral departments after earmarking certain percentage of planned budget for the welfare and development of Backward Classes. The responsibility of implementation of programmes schemes for weaker sections and Backward Classes rests with the department concerned. In the annual action plan, decision relating to earmarking of fund for the development of weaker section is taken to District Level Committee under the Chairmanship of Collector / Magistrate.

### **Rule of Law in India :**

The Rule of Law is the basis or foundation of common Law System of England and represents the process by which the king of England became the nominal head of the state and real sovereignty can be vested to the elected representatives of the people i.e. the British Parliament. English concept of rule of law recognises the supremacy of Parliament and develops acceptable methodology to effectively work the English democracy. In the words of Bracton ... a scholar of the Medieval period said "King ought naught to be under any man but under god and Law"<sup>54</sup> ... Sir Edward Coke, Chief Justice of the court of the Common Pleas reminded king James of England in 1615 that the common law of England should be permitted to prevail. Lord Coke felt the need of the Judiciary which would establish the principles to govern those who are subjected to law. Prof. A.V. Dicey gave the full shape to this Principle which is known as the Rule of Law. (i) No man is above the law. (ii) Every person, irrespective of his status or position is subjected to jurisdiction of courts. (iii) No person should be subjected to harsh, uncivilised or discriminatory treatment. The concept of rule of law received a new meaning in the U.S.A., because unlike England the USA has a written Constitution. The concept of Constitutionalism in USA discards the theory of supremacy

of legislature and promotes that the constitution is supreme and above all including the legislature. According to Prof. Achibald Cox thinks that rule of law in USA means (i) Check on executive oppression, and bureaucratic caprice. (ii) respect for individual human rights and (iii) securing equal justice for “all citizen” – Ronald Dworkin who was Prof. of Jurisprudence at Oxford University thinks that rule of law consists of two different conceptions.

Rule Book Conception – which states that power of the state should never be exercised against any individual citizen except in accordance with rules explicitly set out in a public rule book available to all. (ii) All rights of the citizens should be recognised in positive law and be enforceable by the individual citizen through courts. Indian Judicial system is basically English. It however incorporates the bests of American traditions also. No jurists has so far attempted in defining the Indian concept of rule of law, though our constitutional courts have been trying to enforce it. In one of the case *Jaisinghai Vs Union of India* (AIR 1967 SC 1427; pg 1434) the application must be done according to the existing principles and rules which means the rule of law and decide the citizen must be knowing where his position lies. In *Central Board of Secondary Education Vs Nikhil Gulati & Others* (AIR 1998 SC 1205) the Supreme Court declared that the “Practice of permitting the ineligible students .... To appear in the examination is a violation of the Rule of Law” – In *Dalmia Cement (Bharat) Ltd. Vs Union of India* (AR 1996 – 10SCC – 104 – Para – 18) the court decided that equality before the law is correlative to the concept of rule of law – which provides a healthy social order. In the *State of Bihar Vs Subhash Singh* (AIR 1997 SC 1390 Para 3) the Court observed that Judicial Review of the administrative action is an essential part of the rule of law. The Supreme Court has applied the rule of law in *Indira Gandhi Vs Raj Narayan* (AIR 1975 SC 2299) case. Article 329A was added to the constitution by 29<sup>th</sup> Amendment Act according to which

person holding office of a Prime Minister – stand for the election of Lok Sabha is subjected to the Rule of Law. This happened in the case of Mrs. Indira Gandhi who was then the Prime Minister of India and been protected by the Allahabad High Court. Similarly the Rule of law has been violated in Supreme Court advocates on Record Association Vs Union of India (AIR 1994 SC 268) where any arbitrary exercise of discretionary power can be prevented by providing guidelines and norms – related to the Rule of Law.”<sup>55</sup>

The judges considers that along with Democracy the rule of law is considered the basic structure of the Constitution. The rule of law is a genuine concept which implies inequality before the law and equal subjection of all classes to the ordinary law though our constitution has adopted Judicial Review and independence of Judiciary from the American Constitution but we can discard the Rule of Law – which is essential for the foundation of Democracy. The concept of rule of law is significant in India due to the fact that our Constitution is supreme and no one is above the law. (ii) Administration at all levels are done according to the established law. (iii) The Laws should be habitually obeyed to promote justice and secure a welfare regime.

### **How far the “Rule of Law” is been practised in India?**

Today circumstances changed the very doctrine of the Rule of Law. There are numerous factors behind it. The present national life is succumbed to (1) diminishing stature of political leadership. (2) Executive Lawlessness and vast legal illiteracy and the lack of intellectual support.<sup>56</sup> Before independence the political leaders fought for the common cause selfless work for attaining freedom from the ruthless and exploitation of the British rule was the national objective or goal. The leaders have attained their education from the England and presented a “Social change in the country through the active participation in various movements.” The leaders like Mahatma

Gandhi, Jawharlal Nehru, Dr. Rajendra Prasad, Sardar Vallah Bhai Patel, Jagjivan Ram, C. Rajagopalchari, Dr. B.R. Ambedkar dedicated themselves for the cause of the country. The leaders of the Assembly actively participated in bringing social, economic and political changes in the country.

Today the political leadership is self centred and uses various means to achieve its end (struggle to survive) the ability to retain in power through election. The politicians at present are more or less, lack the spirit of nationhood, their only objective is to utilise their money power and muscle power. After election, the leaders who win the majority never fulfils their promises, they made before the ignorant citizens. They never confess the rule of law. On the other hand bureaucracy plays a major rule in implementing policies and programmes for the government. They also draft guidelines for applying and implementing laws and execute such laws according to the norms of the Constitution. But such law proved to be beneficiaries only to a few elite groups. Infact the executive powers are exercised by these bureaucrats in the name of President and Governor of the state. The exercise of such executive powers of Union and State Government are invested in Article 77 and 166 of the Constitution. Though the judiciary had extended a certain limit in resisting the exercise of executive powers. The rule of law acknowledge due to "Lawlessness, and prevailing corruptions within the country. Besides this, poverty, illiteracy and ignorance are anti-thesis of the rule of law. Education is an effective tool for eradicating poverty and promoting development. The process of poverty elimination is necessarily for the process of development. So the first priority is given to the education. Thus India is loomed with large number of problems, which can be eradicated only through execution of rule of law.

### **Constitutional safeguards for tribals in India and Tribal Administration :**

India possesses a composite culture comprising of various heterogeneous groups. The Hindus, Muslims, Christians, Parsis, Sikhs have their own cultures. The Scheduled Tribes and Scheduled Caste, consist of large population who are exploited by the other sections of the society. They were originally been discriminated during the British rule. So the framers of the Constitution tried their level best to safeguard the interest of various minority groups based on the religion, language, culture and socio economic factors. Large section of the Scheduled Tribes predominate in areas like North Eastern region, comprising of Madhya Pradesh, Bihar, Orissa ~~the~~ Parts of Gujrat, hilly regions of West Bengal. The constitution made some provisions to safeguards the interest of the scheduled tribes. Article 46, of the constitution provides a special provisions for promoting with special care the educational and economic interests of the Scheduled Caste and Scheduled Tribes and protect them from social injustice and all forms of exploitation. Article 15 prohibits discrimination against any citizen on the ground of religion, caste, sex, place of birth. Clause (4) of Article 15 enables the state government to make special provisions for the advancement of members of Scheduled Castes and Scheduled Tribes.<sup>57</sup> Article 16 provides opportunities for all citizens in matters relating to employment or appointment or post in favour of scheduled castes and scheduled Tribes. Article 19 grants the rights of freedom of speech, assembly, association, union, movement and residence throughout the country, practice of any profession, occupation, trade on business. But for protection of the interests of Scheduled Tribes, Clause (5) permits reasonable restrictions on the exercise of rights of free movement, residence and settlement in any part of the territory of India. Article 23 prohibits traffic in human

beings. "Begar" and other forms of forced labour, this has special reference for Scheduled Tribes.

### **Reservational Provisions:**

Reservation of seats for Scheduled Caste and Schedule Tribe communities has been provided on the basis of population in the House of People as per Article 330 and in the Legislative Assemblies of the States as per Article 332. According to 8<sup>th</sup> Amendment Act 1919, all such reservations extended ten years. But the 23<sup>rd</sup> Amendment Act further extended this period from 20 to 30 years. Article 330 provides reservation in the public services. Reservation is also provided to a lower extent in the allotment of houses by public institutions providing loans, and granting scholarship for the students of the those communities. Providing special infrastructure facilities to the communities where they reside. The problems of the tribal areas are caused by the alleviation of tribal lands to non tribals and the exploitation of the tribals. Article 29 and 30 of the Constitution guarantees cultural and educational rights to the various sectors of the people.

Besides this 65<sup>th</sup> Amendment Act of the Constitution (1999) has set up a "National Commission for Scheduled Caste and Scheduled Tribes" giving them a special provision.<sup>58</sup> Article 342 empowers the President to denote the tribes and tribal communities as Scheduled Tribes. In respect of the state, the President shall notify the Scheduled Tribes within a state after consultation with the governor of the state. The classification of the Schedule Tribe categories depend upon the social and economic conditions of the group.

### **Various Strategies for the Development of the Tribal Groups:**

Both the president and the governor have taken special measures for the "administration of the Scheduled Tribes. Article 275 provided the financial resources for the welfare of the Tribes. The

expenditures are to be made from the Consolidated Fund of India. Article 244 is provided in fifth schedule which enables a complete frame of administration to concretise the directives contained in Article 46. The scheduled areas encompasses all areas the President of India notifies under the fifth schedule. The Governor has been made responsible for the peace and the good governance of the scheduled areas under 5<sup>th</sup> Schedule of a specific provisions is made for setting up a tribal advisory council which is consulted by the Governor in relation to this regulation making powers article 339(2) empowers the Centre to give directions to a state asking them to draw up and execute schemes for the welfare of Scheduled Tribes.

The fifth Schedule [ Clause (7) Article 244] contains provisions regarding administration and control of Scheduled areas and scheduled tribes. The Sixth Schedule [Clause (2) Article 244] contains provisions relating to the administration of tribal areas in the state of Assam, Meghalaya, Mizoram and Tripura. There are Autonomous regional council in these areas. They not only administer the various department and developmental programmes but also have powers to make laws on the subjects like, land, forests, shifting cultivation village or town administration including village or town police public health and sanitation inheritance of property, marriage and divorce and social customs.

### **Government and the Tribal Advisory Council**

The Tribal Advisory Councils are constituted in the state in accordance with clause (4) of the Fifth Schedule to the Constitution which provides that there shall be established in each state, having scheduled areas and if the President so directs, also in any state having Scheduled Tribes but no Scheduled area therein. The Tribal Advisory Council consist of not more than 20 members of which  $\frac{3}{4}$ th shall be representatives of Scheduled Tribes in the Legislative

Assembly of the state. The Constitution has given the Tribal people the Privileges according to which the beneficiaries are constitutionally desired to participate in their policy making enterprise. The central themes of people centered, development are – (1) empowerment of people and (2) development of administrative process which regards the needs of the people. Key elements of people centered development are (i) human growth and wellbeing, equality, self-reliance, participation and sustainability.

Sustainability is regarded as lasting quality in a development programme. A development programme can be sustained by (1) creating a felt need among the beneficiaries about the efficacy of the programme. (2) Developing institutions, which continually adopt, (3) Providing of resources and (4) Building support among political elites and community groups.<sup>59</sup> If Tribes Advisory Councils functions as desired by the Constitution, development will be in accordance with the aspirations of the tribal people which is propagated in people centered approach to development. The Minister of welfare Tribal advisory Council should meet at least twice a year, where part of the State Governments need not convene its meeting regularly.

### **Legislative Functions between Centre & State :**

The federal Indian Constitutional edifice envisages division of Legislative powers between the Union and State Governments. None of the three lists of the seventh Schedule contains specific provision for legislation in respect of Scheduled areas or Scheduled Tribes.

The Laws on tribal affairs are made by the Central Legislature and regulations by the governor State Legislative. The Legislation on tribal affairs is a joint responsibility of the Centre and State. The Tribals have the right to own the lands and forest. They have the right to respect and honour their culture. They have distinct racial and cultural entities. Social divisions among the tribals are partly

indigenous and partly have grown out of contact with administration. Before and after independence, the main social divisions are tribal officials and educated tribals – tribal movements of substance – village headmen or gaonburas, small landholder. The village administration in the tribal area is based mainly on respect for age. Age and experience are considered to be the most desirable qualities in those who administer them. Tribals are usually desirous of being courteous. If they are hurt by any kind of feeling they lose their temper so any official who has been directed to administer the scheduled area must continuously deal with the tribal people.

### **Backward Class Commission in Various States:**

#### **(i) State Backward Class Commissions**

##### **1. ANDHRA PRADESH**

Various Committees and Commissions were set up according to the demands of the backward classes and OBCs. There had been 112 communities belonging to OBCs in the state of Andhra Pradesh. The list of the backward classes as prepared by the State Government was struck down by High Court of Andhra Pradesh, since the state govt. could not produce list based on social and educational backwardness.

##### **(1) Monohar Prasad Commission, 1968**

The first Backward Class Commission was appointed by State Government on 12<sup>th</sup> April 1968. The Chairman of this Commission was Manohar Prasad. The Commission was asked to prepare a list of classes who were not adequately represented in the services of the state or represented in the government post. A certain percentage of proportion for such reservation and time to be fixed – when reservation is to be made. Traditionally the Communities who were performing the undignified occupation – are considered to be the backward classes. Representatives of these castes demanded

reservation upto 40 to 50 percent. On 20<sup>th</sup> June 1970, the commission listed 92 classes as other backward classes. Further it recommended that the reservation of 30% of the vacancies in the government services and educational institutions for candidates belonging to the backward classes. The commission has categorised the OBCs under 4 headings –

- (1) Aboriginal tribes (Nomadic & Semi Nomadic Tribes), Semi Nomadic Tribes – 7%
- (2) Vocational groups – 13%
- (3) Harijan Convert 1%
- (4) Other classes 9%

The report so far been submitted by this Commission did not satisfy the High Court – ‘caste’ can not be only criteria for determining the serial and educationally backward. The entire list is prepared on the basis of the caste.

### **(2) Veerapa Committee (1975)**

After the 5<sup>th</sup> general election in Andhra Pradesh, a committee was again appointed under the chairman of Agisam Veerappa in 1975 to recommend welfare measures for the benefit of the backward classes. The committee submitted its report in 1977, suggesting 25% percent reservation (a) sanction of scholarship from Class I onwards instead of VI standard as was the practice (b) an increase in the amount of scholarship and (c) a lowering of the minimum marks required for students belonging to OBCs for admission from 40 percent to 35 percent.

### **(3) Murlidhar Rao Commission, 1982**

The third state commission, constituted in February, 1982 was headed by Murlidhar Rao. The commission in its Report in September 1982, suggested 44 percent reservation of seats and post for 52

percent state population of OBCs. The commission included lower castes and sub caste in the list of OBCs and the total rose to 102. Under the rule of Telegu Dasam Party, it was again implemented. Under N.T. Rama Rao Government the reservation policy was revitalised and 44 percent reservation was distributed among the five categories of OBCs according to their backwardness and population. The reservation quota was only available to those whose family income is less than Rs.12000/- a year

## **2. BIHAR**

In 1951, the government of Bihar had prepared a list of 109 backward classes for awarding the Post Matric Scholarships etc., a scheme launched by the Ministry of Education, Government of India advised the state govt. to draw their own list as they did not accept the recommendations given by Kaka Kalelkar Commission.

### **(A) Mungerilal Commission, 1971**

The first Backward Class Commission was appointed by the Bihar Government under the Chairmanship of Shri. Mungeri Lal in June 1971 and it submitted its report in February 1976. The commission prepared a list of socially and educationally backward classes on the basis of castes and economic basis. The list contains 128 backward castes including 94 castes known as most backward classes. In Bihar, it estimated 38.1 percent population as OBCs.

### **(B) Karpoor Thakur, 1978**

In 1978, the Janata Party Government chaired by Karpoori Thakur, implemented the recommendations of Mungerilal Commission. The implementations so far been made raised a lot of controversy between the upper classes the backward classes. 20% of the seats to be reserved for the OBC candidates. There has been a misconception by Bihar Government that reservation quota indicated

the minimum and not the maximum quota for the backward class candidates.

### **(C) U.N. Sinha Committee, 1994**

The second Backward classes Commission was appointed in 1994, headed by U.N. Sinha. On the basis of recommendations of Sinha Committee even a few OBCs of Bihar do not come under the exclusion of advanced sections as rarely OBCs have annual income of Rs. 10 lakhs per year or urban property of Rs.20 lakhs. It also recommended inclusion of any well off sections or individuals availing the benefit of reservation within the recommendations of Mandal Commission. The Samata Dal leader Nitish Kumar has supported economically advanced sections of OBCs such as Kurmis and Koiri.

## **3. GUJARAT**

### **(A) Bakshi Commission, 1972**

This commission was appointed to prepare a list of OBCs and recommended measures for their amelioration in August 1972 under the Chairmanship of A.R. Bakshi – a retired High Court Judge. The Commission however submitted its report enlisting 82 castes and communities as socially and educationally backward and recommended – (a) reservation of 10% of seats in medical engineering and other professional institutions. (b) reservation of 10% of class-III and Class-IV posts in all the government services (c) reservation of five percent of all Class I and Class II vacancies in all the government services, local bodies or public undertaking. (d) reservation of 10% of seats in training cum production centres. (e) granting of scholarships and other educational facilities provided the parental income of not more than Rs.4800 per year.<sup>62</sup>

### **(A) Rane Commission, 1981**

Rane Commission was the second Backward Class Commission headed by C.V. Rane in 1981. In the view of the Commission, the social backwardness should be determined without reference to caste. It would facilitate promotion of welfare and educational and economic interests of the weaker sections of the people, and speed up the process of egalitarian society. Rane commission was the first commission to reject the caste yard stick for deciding social backwardness. Caste is not feasible in the case of Non-Hindu Communities. As a parameter the commission took occupation in place of caste for identifying backward classes. It declared that occupation considered to be inferior with low income. Where the main causes were social and educational backwardness. It identified 63 occupations as socially and educationally backward classes agricultural labourers, small farmers, marginal farmers, farmer, share croppers.

This commission has also recommended reservation of seats / posts in educational institutions and in the government services for the socially and educationally backward classes in proportion to the population alongwith a relaxation in the higher age limit in their case for entry into services.

### **4. HARYANA**

Till 1966, Haryana was a part of Punjab. Two committees were appointed in 1951 and 1961. In 1969, a list of backward class was prepared without the proper enquiry into the economic and social backwardness. 10% reservation in government services and 2% in professional and technical institutions. On the ground of the economic backwardness and social status of occupation, certain classes of people have been declared as backward. They included –

- a) All residents of the state whose family income is less than Rs.1000 per annum, irrespective, of the truth as to the caste, community or class they belong to and the profession they follow.
- b) Apart from the above category, certain other communities should be declared as backward by the State Government. These communities should be such as are seriously looked down upon by other people of the state. All the members belonging to the backward communities, excluding those "whose family income was more than Rs.1800 per annum should be entitled to privileges being enjoyed by backward classes. Facilities and concessions are given to backward classes.

#### **(A) Gurman Singh Commission, 1991**

In the year 1990, Anti Mandal agitation was strong in all parts of Haryana. Jats, the dominant caste of Haryana was asking Jats in the list of OBCs. In the early 1991 the First Backward Class Commission was constituted under Chairmanship of Gurman Singh. 27% posts are reserved for OBCs and 19% to SCs. OBC considered to be the most dominant class. It includes Jats, Ahirs, Bishnoi, Gujar, Saini, Rajput, Meo.

#### **5. HIMACHAL PRADESH**

Like Haryana the government of Himachal Pradesh followed the list of OBC. Officials of State Government has prepared a list on the basis of economic backwardness and social status. The identification of the backward sections of the people-

- 1) All residents of Himachal Pradesh whose annual income is less than Rs.6000 are backward to whatever caste or community they belong.

2) Members of certain communities whose annual income is not more than Rs.6000. OBC list is based on both caste and income. On the basis of economy and caste backward classes in Himachal Pradesh will receive the following facilities and concession:-

- a) Pre matric stipends at primary, middle and higher secondary state.
- b) Refund of tuition fees.
- c) Interest free loans
- d) Reservation of two percent in direct recruitment and in promotions to selection posts in class III and class IV services of the government.<sup>63</sup>

## **6. JAMMU & KASHMIR**

Reservation Policy in J&K has been a controversial issue between the government and the judiciary. Judicial intervention forced the state government to appoint three Backward class commissions.

### **A) Gajendragadkar Commission, 1967**

The commission (1967) recommended a list of backward classes on the basis of certain criteria – (a) economic backwardness (b) occupations pursued (c) area of permanent residence (d) caste (e) population.

### **B) Wazir Committee, 1969**

After the Gajendra Commission the state government appointed a committee headed by J.N. Wazir in February 1969. On the recommendation of the Wazir committee submitted on November, 1969, the government passed J&K Scheduled Castes and Scheduled Tribes. According to Rules of Reservation policy jobs to be reserved for

backward classes in the State services. 8% for SCs 42% for backward class.

### **C) Anand Committee, 1976**

The state government appointed Backward Class Committee headed by Justice Adarsh Sen Anand to advise the removal of the various anomalies in the Act of 1970 as advised by Supreme Court. The Committee was asked to make recommendation with regard to the following issues – (a) to determine the criteria to be followed in deciding the backwardness. (b) to identify and prepare a list of backward classes (c) to categorise backward classes and suggest safeguards for giving benefits to the real deserving only and (d) to examine the question of reservation in governmental posts.

## **7. KARNATAKA**

Here some of the Commission are been mentioned – before 1985. Miller Committee, 1918, Nagan Gowda Committee, 1961, Havanaur Commission 1976, Venkataswamy Commission, 1985.

### **(A) Chinnapa Reddy Commission, 1990**

This backward class commission chaired by Chinnappa Reddy dealt with the economic criteria for reservation. The commission suggested following occupational groups under socially, educationally backward classes:

- a) Agricultural labour not owing land more than one hectare of rainfed dryland,
- b) Those who are working on the piece rate basis,
- c) Handloom weavers,
- d) Automobile drivers,
- e) Employees in the factories, Rickshaw pullers,

- f) Blacksmith, carpenters, plumbers, sweepers, cobblers, manual workers, employed on the daily wages.

The recommendations so far been made by C. Reddy Commission in 1994 remained in controversy. On 25<sup>th</sup> July 1994, the Karnataka government raised reservation for OBCs in the State to 57% which was further raised to 80%. In October 1994 the state government got the Karnakata Reservation Law passed and 73 percent reservation passed by the State Legislative Assembly. Infact 69% of reservation violates the Supreme Court guidelines for reservation which is not more than 50%.

## **8. PUNJAB**

### **A) Brish Bhan Committee 1965**

In 1965, the State Government appointed a Committee headed by Brish Bhan to review the concession given to the backward classes. This committee, in its report of 1966, made the following recommendation (1) The existing list of backward class should be made rational so that classes or castes which were no longer backward must be excluded, (2) the existing reservation of 2 percent of seats in educational institutions should be increased to 5%. The committee was not infavour of extending the Reservation Policy.

### **B) Harcharan Singh Commission, 1975**

According to the Punjab Vishan Sabha Committee on welfare of Scheduled Castes, Scheduled Tribes and Backward Classes under the Chairmanship of Harcharan Singh recommended, that 15% reservation should be made for OBCs in services. Finding the improper representation of the backward classes in relation to their population, it recommended 15 percent reservation for them in jobs and education. The government however found it difficult to accept this recommendation as it had already provided for reservation upto

25 percent for SCs and upto 20 percent for retired army personnel. It therefore continued with its policy of reserving 5 percent of the seats in educational institutions and 5 percent of initial appointments in public services. It also provided for 2 percent reservation in promotions upto Class I. It further decided to maintain roster of all vacancies meant for SCs and OBCs after every one year.

## **9. KERALA**

The reservation policy became a subject of an acute judicial controversy so much so that government appointed one committee and three BC Commissions. The problems is still persistent in the state for inclusion and exclusion in the list of beneficiaries of the preferential treatment and determination of creamy layers.

### **a) Vishwanathan Committee, 1961**

The committee of Backward classes was first appointed under the Chairmanship of V.K. Vishwanathan in 1961. The committee was asked to identify the backward classes and certain measures are taken for the improvement of the conditions of life and work. According to the recommendations so far been made – (a) 40% of the seats to be reserved in the technical and professional colleges should be reserved for students of other backward classes and 10% of seats for students belonging to SCs and STs. Though government of Kerala accepted the recommendations of the committee but restricted reservations at the level of 25 percent seats for backward classes.

### **b) Pillai Commission, 1965**

The state government appointed a commission under the Chairmanship of Shri G Kumara Pillai in July 1964 and the commission submitted its report in December 1965. Its main recommendation were (i) It classified 91 communities as backward classes the benefits recommended in the report should be extended

only to the members of the backward classes whose aggregate family income was below Rs.4200 per year. (ii) In Technical and professional institutions 25 percent of the seats should be reserved to OBCs. It included a separate quotas for various categories of OBCs in the allocation of these seats.

### **c) Damodaran Commission, 1970**

The state government has appointed a third backward class commission under the Chairmanship of M.P. Damodaran. The Commission has founded certain factors which is responsible for social backwardness – laid in Article 16(4). (a) Lack of education, (b) lack of economy (c) lack the capability for appointment (d) caste stigma.

Still, social backwardness continued to be a matter of controversy in Kerala. Some of dominant castes like Ezhavas and the Nairs are always in conflict. Some other factors like “Occupation, custom of purdah, hatred towards the English education – effect the social backwardness.

The backward classes of Kerala consist of – Ezhavas, Muslims, OBCs, Nadars, Kammalas, Dhreeva community.

## **10. MADHYA PRADESH**

Mahajan commission was appointed as a Backward Class Commission by the state government. Ramjee Mahajan was the Chairman of Backward Class Commission. The committee drew a list of backward classes and suggested measures for their upliftment. The commission, identified 254 castes and sub castes as backward classes and suggested reservation of 35 percent of the seats for them in educational institutions. It also wanted the same percentage of government and semi government service to be reserved for them. The commission used the caste criterion for identifying backward classes

it suggested the exclusion of prosperous groups from the benefits of reservation. Thus the benefits of reservation should be extended only to those children of those who were not income tax payees or owing the land. If the government has planned to execute the reservation 65% should be on the basis of the caste – 22.5% SCs, 7.5 of STs and 35% for OBCs. On the whole 78 percent reservation should be made for the government post and seats in the educational institutions. In 1993, the government of Madhya Pradesh declared that 50 percent post would be filled through open competition.

### **11. UTTAR PRADESH**

In UP in 1945 United Provinces of Agra and Oudh identified 37 Hindu castes and 21 Muslim grouping as backward and gave them educational concessions. In 1950 the Uttar Pradesh government reserved 10 percent of the jobs in the governmental services and educational institutions for the Scheduled Castes, but did nothing specific for the backward class. In 1955, a cabinet sub committee formed a list of two backwards classes (1) for the purpose of recruitment to the public services and (2) for the sanction of educational concessions.<sup>64</sup>

In 1975 Chhedi Lal Sathi Commission was formed to identify the ‘Backward classes’ and the most backward class, the commission used the parameters like poverty, illiteracy, housing, occupation, caste, social inequality and representation in government services, industry and commerce. After the report being submitted in 1977, the backward classes are classified into three categories – 36 backwards classes has been entitled, out of which 17% are landless and 18% are preoccupation in land. Yadavs, Gujars, Kurmis consist of 10% the Muslim community consist of 2.5%. Government led by Janata Party accepted the recommendations of the commission and 15% of the Government Services and seats in technical and professional

institutions for candidates of the backward classes. 18% of the jobs were reserved for SCs, 2 percent for STs and 8 percent for the military personnel.

After 1977, there has been anti reservationist movement. In Allahabad High Court, the petitioners alleged that many of well off castes like Ahirs, Kurmis who were economically and socially backward were included the Backward Classes which comes under Article 16(4) of the Constitution. According to the Kaka Kalelkar Commission the list of most backward classes has been enlarged. But the Allahabad High Court has struck 120 communities which cannot be enlisted in the backward classes. Later in March 1994, the U.P. Government revised its reservation policy in accordance with the S.C. judgement on Mandal Commission Report. It implemented the SC order of 16<sup>th</sup> November 1992 for 27 percent reservation in favour of OBCs in the State Governments. <sup>1</sup> People of 8 hilly areas of U.P. raised a protest against Reservation Policy. The OBCs constitute only 3% of the population within this region.

## **12. TAMIL NADU**

According to the Communal Government order of 1927 and 1947, the government of Madras has distributed the posts and seats among the various communities to strengthen distributive justice and to regulate financial aid to educational institutions, providing special facilities for the students of depressed classes. The first case Champakam Dorairajan Vs State of Madras, the Communal Government Directives has violated the Constitution. 2/14 Quota has been reserved for Scheduled Caste in 1947. When Andhra Pradesh has been separated from Madras the government has ordered that 16% of all post under the state government should be reserved for Scheduled Castes and Scheduled Tribes and 25 percent for Backward

Classes. The quota for reservation was altered according to 1951 Census.

### **Sattanathan Commission 1969:**

Sattanathan commission was appointed by the State Government in 1969 under the Chairmanship of A.N. Sattanathan. The criteria for backwardness is determined through educational and social backwardness and also the nature of the occupation confined. The Mysore Government has classified the categories of backward classes – (a) actual cultivators (b) artisans (c) petty businessmen (d) those who are engaged manual labour. The commission recommended 33 percent reservation for in backward classes.

The Sattanathan Commission divided the backward classes into two parts – (a) backward classes (b) most backward classes. 17 percent of the reservation for the backward classes and 16% for the most backward classes. It did not support reservation on the basis of population on the basis of population as in the case of the Scheduled Castes and the Scheduled Tribes. Recommendations of the Sattanathan commission were accepted by the government but made some modifications as required by the Supreme Court Judgement in the Balaji Case. In 1971 Census, 31% of all post in the government services and in the technical institutions are reserved for the backward classes 18% of seats are reserved for SCs and STs. In November, 1980 the State government increased the reservation for the other Backward classes from 31 percent to 50 percent. In 1974, the government under M.G. Ramchandran proposed to apply an income limit to Rs.9000 per year for being eligible for reservation and as this proposal would seriously effect the greater part of the backward class. It was opposed by the people led by the Dravida Kazhagan and Dravida Munnettra Kazaghham.

### **Ambashankar Commission, 1982:**

According to the order of Supreme Court the government has appointed "Backward Class Commission under the Chairmanship of J.A. Ambashankar to re-evaluate the classification of backward class in the state and to re-assess their reservation quota of 50 percent. The commission submitted its report in 1985 according to which 32% has to be reserved for the backward classes.<sup>1</sup> According to the rulings of the Supreme Court, the reservation for the backward class and the Scheduled Castes and Scheduled Tribes should not exceed 50 percent. In July 1985, 50% of the reservation for the OBCs has been reaffirmed by the Tamil Nadu Government. The Tamil Nadu Legislative Assembly has made some enactments in "Reservation Act in 9<sup>th</sup> Schedule" according to which 50 percent of the seats and posts are to be reserved for OBCs and 1 percent for STs, 19% for SCs.

### **13. MAHARASHTRA**

#### **Deshmukh Committee 1961:**

The OBCs in Maharashtra consist of half the population. They are specially been dominated by the Brahmins. Jotiba Phule who founded the Satya Shodhek Samaj fought for the welfare of the backward class like Mallis, Tellis and Kumbis. It was due to pressure of the revolutionary groups the state government appointed Backward Class Committee on 1961 under the Chairmanship of B.D. Deshmukh. The committee has submitted its Report in 1964 and classified the backward classes into 4 categories – (i) Scheduled Castes and new Buddhists, (ii) Scheduled Tribes (iii) Nomadic Tribes, (iv) O.B. Communities. State government considered the recommendation of the commission and make special reservation in both central and state services – (1) 13 percents seats for SCs and new Buddhists (2) 7% seats for Scheduled Tribes (3) 4% seats for the denotified and nomadic tribes (4) 10% for the other backward classes,

(5) 80% of all vacancies both at state and the local level are to be reserved for economically weaker sections of the society. The families whose earning is below Rs.200 are considered to be the weaker class. According to its order 80% reservation was made for Other Backward Classes, Scheduled Castes, Scheduled Tribes etc.<sup>65</sup>

### **Kalelkar Commission:**

Even though the Constitution of India has provided certain provisions for Scheduled Castes and Scheduled Tribes in acquiring benefits in educational institutions and in job reservations. But it did not any provision for OBCs. Under Article 340 if the President of India felt the need and aiding the weaker section, he can do so. The OBC was first recognised by Punjabro Deshmukh who was member of Lok Sabha in 1948. The First Backward Class Commission was set up by the presidential order under Article 340 of the Constitution on 29<sup>th</sup> January 1953. The Commission was headed by 11 members, with Sri Kakasaheb Kalelkar as its Chairman.<sup>1</sup> The commission worked for two years and submitted its report to the President on 30<sup>th</sup> March 1955. The Commission has prepared a list of 2399 backward class throughout the country of which 837 were classified as backward. It has laid certain criteria for identifying socially and educationally backward classes –

(1) Who belonged to a low social status in caste hierarchy of the Hindu society, (2) No representation in the government services, (3) Lack of education within the community. The commission for the upliftment of the backward classes are extremely wide-ranging. They cover certain spheres like (a) Extensive Land Reforms. (b) Bhoodan Movement, (c) Development of Live Stock, (d) Dairy Farming, (e) Public Health and Rural Water Supply, (f) Universal Education.

Kalelkar Commission also prepared a list of 2,399 castes belonging to OBC. The commission prepared a list by Ministry of

Education for educational scholarships for the other backward classes. The criteria of determining the backwardness was faulty. Kakasaheb expressed his opinion regarding "Backwardness" of OBCs. Their backwardness is due to their own apathy lethargy and negligence. He prepared the certain quotas for OBC in government services – Class I – 25%, Class II – 33 1/3%, Class III & IV – 40%. Later in 1956 Pt. Govind Ballabh Pant has placed a memorandum before the Parliament – explaining that Kalelkar Commission has not been able to conduct the required objective test or criteria for identification of the OBCs. (ii) Considering caste as the basis of the backwardness of the OBCs the commission has taken a retrograde step, it cannot be refused that the caste system is the greatest hindrance in the way of our progress towards an egalitarian society. Economic poverty cannot be the economic test in determining the type of backwardness as mentioned in Article 340 (I) of the constitution. The government had ignored the constitutional needs. Parliament did not make any provisions for the other Backward classes. These made the OBC happy. Ram Mohan Lohia first took up the cause of OBCs. Though the Congress tried to keep a distance between the Chairman and the upper class Brahmins. The backward Class Federation, became a reactionary movement against the govt. After the death of Punjabrao Deshmukh Brahma Prakash, the Chief Minister of Delhi fought for the OBCs. Under his influential leadership, Yadavs, Yadav Mahasabha had a control over the Federation. The Socialist Party workers with the Federation to uplift the OBCs. A large number of OBCs seem to have been moved by Lohia's call, the Congress faced the strong opposition of Federation. Till 1967, the Congress continued in the Saddle at the centre. But after 1977, when Janata Party formed the government at the centre. Special programmes have been launched in the Five Year Plan ... for the substantial advancement of

OBCs. 25 and 33 percent of all government jobs are reserved for the other Backward Classes.

The Second Backward Class Commission was appointed by the Janata Party Government in 1978 under the Chairman of B.P. Mandal. The Commission was asked to determine the criteria for defining the socially and educationally backward classes and recommended steps for their advancement. In 1989 when Sri V.P. Singh came to power in 1989, it announced the implementation of the recommendations of the Mandal Commission in 1990 and issue a Government order 27% of Post to be reserved for OBCs in Government Service.

Poverty is a social phenomenon; it has prevailed in Indian population. Mrs. Gandhi, while attending one of the meeting of the Central Board of the Reserve Bank of India – suggested that the policy for welfare of the backward class may create unrest to the other sections of the society. Caste can be the sole criteria in determining the backwardness. But it can serve as an important element in winning the battle of election. The Backward classes are usually poor and backward they are economically weak.

### **Economic Criteria :**

The reservation should be on the basis of economic criteria. Only Scheduled Caste and Scheduled Tribes are benefited. 27% reservations for the Other Backward Classes are not applicable to the students for admission in Schools and Colleges. Infact the first priority for reservation in the educational stage without which admission in the jobs would create friction in the society.

### **Reservational Justice to Backward Castes – Some Issues:**

Presently reservation benefits are available to backward classes that includes Scheduled Castes, Scheduled Tribes and Other

Backward Classes (OBCs). The first two categories of people have been granted benefits under execution order. The constitution specifically mentions Scheduled Castes and Scheduled Tribes under Article 15(4), 46, 334, 338, 341 and 342. Article 335 mentions their claims to services and posts. The members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of administration, in making appointments to services and posts in connection with the affairs of the Union and of the States. There is a special provision for the weaker section provided in the House of the People and in the Legislative Assemblies of the States the expression Backward Class in Article 16(4) includes other Backward classes, Scheduled Castes and Scheduled Tribes. Article 46 includes the weaker sections covering SCs and STs. The accent in Article 16(4) is upon social backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are intermingled with low occupations in Indian society. The constitution of India has commitment to ensure justice to all sections of the people. The constitution uses the expression socially and educationally backward classes. (SEBCs). Article 15(4) speaks of making special provisions for advancement of SEBCs and Article 340 speaks of appointment of a Commission by the President to investigate into the conditions of SEBCs. Under this Article Kaka Kalelkar Commission in 1953 and Mandal Commission in 1978 were appointed for investigating the conditions of backward classes. Parliament enacted National Commission for Backward Classes Act 1993 in order to constitute a permanent statutory body National commission for Backward Classes. The commission shall examine request of any individual of any backward caste from legal point of view. In many cases of High courts and Supreme Court eminent jurists have given their decisions whether a caste is socially backward or educationally backward or

both? Can backwardness of a caste be compared with scheduled castes and scheduled tribes? How can the backward class be identified? Though the constitution of India intends to wipe out discrimination on the ground of caste. But the problem lies within the criteria of identification of backward classes. In the pre Constitution days the expression 'caste' and 'class' can be used interchangeably. "A caste is known as class" B.R. Ambedkar declared in his speech in the Parliament – "The Backward class are nothing else but a collection of certain castes". Caste cannot be identical with class. Caste cannot be a class or caste as such can never be taken as a backward class of citizens. The objective of constitution is to create casteless society. According to Mr. Justice Wad, Constitution makers did not consider that abolishing of Caste system is considered as fundamental Right in the form of Article 32 "would have been available to enforce the said provision". The root cause of social inequality is the caste system which is based on hierarchy of birth. There are provisions of Article 15, 16 and 29 on the one hand equating discrimination to religious discrimination. On the other hand there are provisions of Article 25, 26 and 30 which are available even to smaller religious denominations. Caste is considered as a religious denomination. In the late 1960s the Supreme Court in case Balaji Vs State of Mysore considered that caste factor is a relevant factor is determining in social backwardness. Subha Rao further secularised in his majority decision "Chitralekha Vs State of Mysore that a class can not be equated to a caste, though the caste of an individual or group of individuals are regarded as close the caste is identified. At the end of 1960s, the judicial verdict has changed. In P. Rajendran Vs State of Madras, Chief Justice Wanchoo, declared that determination of backwardness based solely on caste taking into consideration the Social and educational backwardness would be violative of Article 15(1). A caste is considered as a class of citizen – Reservation can be

made infavour of a caste on the ground that it is socially and educationally backward classes of citizens who comes within the Article 15(4). In state of Andhra Pradesh Vs. P. Sagar – the Supreme Court spoke of the caste as sole criteria but granting that “expression class” means a homogeneous section of people grouped together due to certain likeness or common traits and who are identifiable by some common attributes such a status rank, occupation residence in a locality, rare, religion and the like. In determining whether particular section form a class, caste cannot be excluded altogether. Triloki Nath Vs. State of Jammu and Kashmir and P. Rajendran Case – the test of backwardness should not base solely on caste.

**Caste as a class** : The Chief Justice J. Hedge asserted that “Caste has always been recognised as a class – in A. Peeriakaruppan Vs. State of Tamil Nadu. The list of backward classes was to be accepted on the basis of caste. After 1980, the scenario was changed. In K.C. Vasantha Kumar Vs. State of Karnataka the Chief Justice Chandrachud discussed the issue of Caste backwardness. After analysing the role of caste in the Indian Social structure. J. Chinnappa Reddy spoke “Social hierarchy and economic position exhibit an indisputable mutuality. The lower the caste the poorer its members. The poorer the members of a caste, the lower the caste and economic situation, reflecting each their as they do .... The social status occupied and the economic poor welded by an individual or class in the rural society. Chinneppa Reddy said “social status and economic power are so interm oven into caste system in India rural society .... that one may hesitant to. Say that if poverty be the cause, caste is the primary index of social backwardness, so that social backwardness is after readily identifiable with reference to a persons caste. J.D.A. Desai accepted the reality of the role of caste in the Indian society but in order to get rid of pernicious effect of caste system, he wanted economic and poverty criterion for the

identification of backwardness. Justice A.P. Sen considered poverty as criterion but acknowledged caste as an identification of acute backwardness. The backward classes used in the Constitution, Social status and economic power are so intermingled with each other that they fund in the rural society. Poverty is the bedroot of the society and caste is the index of the social backwardness. The expression backwards class used in the constitution refers to those who are born in a particular caste or belong to a particular race or tribes or religious minorities which were backward caste is socially and occupationally homogeneous class. Endogamy is its main feature. A learned Judge says that a caste of a person is governed by his birth in a family. Caste in India has primedical force and there is omnipresence of caste in Indian society.

According to Justice J. Sawant, castism has been a 'curse' in the entire Indian society. Every individual is born in a particular caste which he cannot change – A caste by itself constitute a class, caste can not be the sole criteria for backwardness. But illiteracy, poverty, occupation and malnutrition also become the chief source of backwardness. Justice Kuldeep Singh expressed that Class under Article 16(4) can not be need as 'caste' and castes can not be adopted as collectiveness for the purpose of identifying backward class under Article 16(4). Scheduled Castes, Scheduled Tribes and Other Backward Caste (OBCs) are three different social class or groups having different level of social and educational backwardness.

The opinions in Indira Sawhney and others Vs. Union of India was different from U.S.V. Balaram Vs. State of U.P. The Balaji (test) was elaborated by the Supreme Court in Triloki Nath Tikku Vs State of Jammu & Kashmir AIR 1969 SC 1, where backwardness was classified on the basis of caste. In Balaji's case, backwardness of other backwards classes must not exactly in all respect equal to Scheduled Castes and Scheduled Tribes. In attempting to determine the social

backwardness of the other classes one cannot apply the test of nearness as to the conditions of existence of the Scheduled Castes. Such a test would practically nullify the provision for reservation for socially and educationally backward classes other than Scheduled Castes and tribes. The Social, educational and economic backwardness of other backward classes should be exactly of the same kind and degree as that of the scheduled castes and scheduled tribes is recognised by the different provisions of the Constitution itself since they make difference between the Scheduled castes and Scheduled Tribes on one hand and other 'socially and educationally backward classes' of 'backward classes of citizens' on the other. It is further said that if other backward classes are backward exactly in all respects as Scheduled Castes and Scheduled Tribes. The President has power to notify them as Scheduled Castes and Scheduled Tribes and then they would not remain other backward classes.

Whether Backward class of citizen mean both socially and educationally backward class ?

### **Constitutional Provisions for the Backward Classes:**

In order to safeguard the interest of the weaker sections, constitution has provided certain provisions for the weaker sections of the society. In this connection, certain castes and tribes have been included in the schedule on the basis of social and economic disabilities suffered by the backward classes. The backward classes include the Scheduled Caste (SC) and Scheduled Tribes (STs) and the Other Backward Classes (OBCs) is not been properly defined in the Constitution. Article 15(4) and 16(4) uses the term backward classes and Article 45 mentions the weaker sections of the people. The constitution considers the "backwardness" is due to illiteracy, poverty, and lack of education, unemployment, exploitation and obviously the rigidity of the caste system. Backwardness is usually been

experienced in the rural population, they are some how been exploited by the upper classes. In every rural community in each state, three fourth belongs to the lower classes especially people belonging to this category are generally professing the manual / physical work. For example, Kumars (Potters), Lohars (Blacksmith) and Nai (Darbars), Chamars, Cobblers all belonging to the backward classes. The Constitution provides "Directive Principle of the state policy - which lays down that the state shall make special provisions for the advancement of any socially and educationally backward classes of citizen i.e. for the Schedule Castes and the Schedule Tribes (Article 15-4). Article 16(4) enables the state to make the provisions for the reservation of post in favour of any backward class of citizens. Article 46 state shall promote with special care, the education and the economic interest of the weaker sections of the people and in particular of the scheduled castes / scheduled tribes and shall protect them from social injustice and all forms of exploitation. In order to fulfil the promise of Directive Principles of state policy, specific provisions have been outlined in Articles 164, 275, 330 334 of the constitution of India. These Articles provide for the reservation of seats for Scheduled Castes in State Legislation and in the Parliament. The Article 335 of the Constitution requires the state to take into consideration, the claim of the member of Scheduled Caste in the appointment in the various services. The Article 17 in the Constitution declares that untouchability should be abolished and the practice in any form has to be forbidden. The enforcement of any disability arising out of untouchability shall be an offence, punishable in accordance with law. Article 335 lays down that the claims of members belonging to schedule castes and schedule tribes - shall be taken into consideration, consistent with the maintenance of efficiency of administration in making of appointments to services and posts in connection with the affairs of the Union or a state.

Article 338 (amended by the Constitution Sixty Fifth Amendment Act 1990) provides for the National Commission on the Scheduled Castes and Scheduled Tribes for the welfare of Scheduled Caste and Scheduled Tribes and to safeguard their rights in any form.<sup>66</sup> Along with it various committees and commissions have been appointed to look after the welfare of these sections. The special provisions are laid down in the Fifth and Sixth Schedules of the Constitution for the administration of the areas inhabited by the Scheduled Tribes. Article 339 inter-alia empowers the President to appoint a commission to report on the administration of the Scheduled areas and welfare of the Scheduled Tribes in the states and authorises the Union to give directions to a state about drawing up and execution of schemes specified in the direction to be essential for the welfare of Scheduled Tribes.

The Constitution Sixty Second Amendment Act, 1989 has extended the reservation of seats for the Scheduled Castes and Scheduled Tribes. In accordance with the constitutional provisions different committees, commissions, working groups, Advisory Board and Panel were set up for the accomplishment of the objectives and furtherance the spirit contained in the constitution. They are as follows :

- Backward Class Commission, January 1953, Chairman, Kaka Saheb Kalekar March, 1955.
- Untouchability Offence Act (Amended 1976), Protection of Civil Rights Act, 1953.
- Centre Advisory Board for Harijan Welfare, Government of India, 1955 & 1969.
- Committee on Plan Project (1958), Chairman – Renuka Ray, 1959.
- N.R. Malkani Committee on Scavenger (1958), Report, 1959.

- A Study Group on Welfare for Weaker Sections, Chairman – Jai Prakash Narain, 1960.
- Untouchability of Schedule Caste Report, 1969.
- Yarda Working Group – 1967, Ministry of Home Affairs.
- Centre Coordination Committee, 1974, Chairman – the Minister of Home Affairs.
- Bonded Labour System (Abolition Act) 1976.
- Joint Committee of Lok Sabha and Rajya Sabha, 14 August, 1978.
- The Mondal Commission on Backward Classes (1977), Report, 1990, Chairman, B.P. Mandal.<sup>67</sup>

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20. A.I.R. 1951, SC 226.
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24. A.I.R. 1973, SC 930.
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27. A.I.R. 1981, SC 298.
28. A.I.R. 1985, SC 1495, P.1507.
29. A.I.R. 1962, SC 36.
30. A.I.R. 1996, SC 1189, SC
31. A.I.R. 1995, SC 1371.
32. A.I.R. 1996, SC 448.
33. A.I.R. 1999, SC 3471.
34. A.I.R. 1997, SC 2366.
35. A.I.R. 1997 (5) SCC 201.
36. R.K. Sabharwal Vs State of Punjab, A.I.R. 1995, SC 1371.

37. A.I.R. 1999, SCC 3563, 3566.
38. A.I.R. 2000, SC 609.
39. A.I.R. 1993, SC 477, at 569, 572.
40. A.I.R. 1962, SC 36.
41. A.I.R. 1993, SC 477.
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