

CHAPTER EIGHT
REPORTS AND
RECOMMENDATIONS

8.1 MAIN REPORTS AND RECOMMENDATIONS OF BACKWARD

CLASSES COMMISSION :

THE FIRST BACKWARD CLASSES COMMISSION :

The First Backward Classes Commission was set up by a Presidential Order under Article 340 of the Constitution of India on January 29th, 1953 and it submitted its reports on March 30th 1955. The composition of the Commission and its terms of reference are given below :

Composition :

1. Shri Kakasheb Kalekar, M.P. Chairman.
2. Shri Narayan Sadoba Kajrolkar, M.P.
3. Shri Bhookha Bhar, M.P.
4. Shri Shivdayal Singh, Chaurasia.
5. Shri Rajeshwar Patel, M.P.
6. Shri Abdul Gaiyum Ansari, M.L.A.(Bihar).
7. Shri T.Mariappa, M.L.A. (Mysore).
8. Lala Jagannath.
9. Shri Atma Singh Namdhari, M.P.
10. Shri N.R.M. Swamy, M.P.
11. Shri Arunagshu De (Member Secretary).

Terms of Reference :

The Backward Classes Commission shall -

- a) determine the criteria to be adopted in considering whether any sections of the people in the territory of India (in addition to the Scheduled Castes and Scheduled Tribes specified by notifications issued under Articles 341 and 342 of the Constitution) should be treated as Socially and educationally backward classes, and, in classes setting out also their

approximate numbers and their territorial distribution.

b) investigate the conditions of all such socially and educationally backward classes and the difficulties under which they labour; and make recommendations :-

- i) as to the steps that should be taken by the Union or any State to remove such difficulties or to improve their condition, and
- ii) as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made;
- c) investigate such other matters as the President may here after refer to them, and
- d) present to the President a report setting out the facts as found by them and making such recommendation as they think proper.

The Commission may -

- a) obtain such informations as they may consider necessary or relevent for their purpose in such form and such manner as they may think appropriate, from the Central Government, the State Government and such other authorities, organisations or individuals as may, in the opinion of the Commission, be of assistance to them;
- b) hold their sittings or the sittings of such sub-committees as they may appoint from amongst their own members at such authority of the Chairman, and
- c) visit or depute a sub-committee of theirs to visit such parts of the territory of India as they consider necessary or convenient.

The Commission issued a Questionnaire comprising 182 questions for eliciting the view of the State Government and the general public on various aspects of its inquiry. It also undertook extensive touring of the country to collect on the spot evidence.

After sifting and sorting the facts collected as above the Commission formulated the following criteria for identifying socially and educationally backward classes :-

- i) Low social position in the traditional caste hierarchy of Hindu society.
- ii) Lack of general educational advancement among the major section of a caste or community.
- iii) Inadequate or no representation in Government service;
- iv) Inadequate representation in the field of trade, commerce and industry.

It also prepared a list of 2399 backward castes or communities for the entire country and 837 of these were classified as "most backward". The Registrar General and Census Commissioner of India assisted the Commission in making population of 930 backward castes or communities.

The recommendations of the Commission for the upliftment of the backward classes are extremely wide-ranging and comprehensive. They cover such diverse fields as Extensive Land Reforms, Reorganisation of Village Economy, Bhoodan Movement, Development of Livestock, Dairy Farming, Cattle Insurance, Bee-Keeping, Piggery, Fisheries, Development of Rural and Cottage

Industries, Rural Housing, Public Health and Rural Water Supply, Adult Literacy, University Education Representation of Backward Classes in Government service etc. etc. Some of the most noteworthy recommendations of the Commission were -

- i) Undertaking caste-wise enumeration of Commission were - Census of 1961;
- ii) Relating Social backwardness of a class to its low position the traditional caste hierarchy of Hindu Society;
- iii) Treating all women as a class as "backward";
- iv) Representation of 70 per cent seats in all technical and professional institutions for qualified students of backward classes;
- v) Minimum reservation of vacancies in all Government services and local bodies for other Backward Classes on the following scale :-

| | |
|-----------|--------|
| Class I | 25% |
| Class II | 33.33% |
| Class III | 40% |

It is pertinent to note that the Commission could not present an unanimous report. In fact five of its Members recorded minutes of dissent. Dr. Anup Singh, Shri Arunangshu De and Shri P.G.Shah were opposed to the view of linking caste with backwardness. They were also opposed to the reservation of posts on the basis of caste. On the other hand, Shri S.D.S.Chaurasia strongly advocated the acceptance of caste as the criterion for backward-

ness in his 67 page minutes of dissent. Shri T.Mariappa's minute of dissent was concerned only with the inclusion of couple of castes in the list of other Backward Classes.

Shri Kaka Kalekar, the Chairman, took a rather equivocal stand on this issue. Through he did not record a formal minute of dissent, in his forwarding letter to the President he opposed the acceptance of caste as the basis for backwardness. He also expressed his reservations regarding several other important recommendations made by the Commission.

STATUS OF OTHER BACKWARD CLASSES IN SOME STATES :

In view of this, Government of Andhra Pradesh appointed a Backward Classes Commission in April 1968 under the Chairmanship of Shri Manohar Pershad and it presented its report in June, 1970. This Commission identified four different categories of OBCs and recommended reservation of seats both in professional colleges and in Government services. The recommendations of the Commission on these two important items and the action taken by the State Government are indicated in the following table :-

T A B L E

| Sl. Category of OBC. No. | Reservation of professional colleges and Government services. | |
|---|---|---|
| | As recommended by the Commission. | As recommended by the State Government. |
| 1. Aboriginal Tribes, Vimukta Jatis. Nomadic and Semi Nomadic Tribes. | 7% | 7% |
| 2. Vocational groups | 13% | 10% |
| 3. Harijan Converts | 1% | 1% |
| 4. Other Classes | 9% | 7% |
| | 30% | 25% |

The State Government also accepted the Commission's recommendation that candidates selected on merit in an open competition would not be adjusted against the reserved vacancies. The reservation of 25% was also extended to all posts under the control of local bodies, State Government under-takings etc.

The State Government has also reserved 25% of the house-sites and 15% of the houses constructed by Housing Board for OBCs. Backward Classes students whose family income is below Rs. 6000/- per annum are exempted from payment of tuition fees and are eligible for award of scholarships, hostel facilities etc.

The Government further accepted the Commission's recommendation for the allotment of house sites and surplus land to OBCs and to set up a separate Finance Corporation Scholarship and other benefits on the basis of economic criteria was also accepted by the State Government.

Subsequently, a Committee of the Fifth Legislative Assembly under the Chairmanship of Shri Agisam Veerappa was set up to recommend further measures for the welfare of backward classes. It submitted its report in 1977 and some of its important recommendations accepted by the Government are :-

- i) Grant of Scholarships from the first standard onwards instead of the sixty standard, as per prevailing practice.
- ii) Enhancement in the rate of scholarships.
- iii) Lowering the qualifying marks for OBCs from 40% to 35% for admission to various institutions.

BIHAR :

Bihar Government also appointed a Backward Classes Commission under the chairmanship of Shri Mungari Lal in June, 1971 and it submitted its report in February, 1976. This Commission identified 128 communities as "Backward" and 94 of them were classified as "Most Backward".

The main recommendation of the Commission were :

- i) Reservation of 20% vacancies in all Government Department local bodies and State Government Undertakings for the candidates of Other Backward Classes. In addition, 3% of such vacancies were recommended to be reserved for women and the same percentage for economically weaker sections. Only those candidates should be given this benefit whose family income was below the minimum income-tax limit;
- ii) Reservation of 24% seats in engineering, medical and other professional institutions for students of Other Backward Classes, and
- iii) Grant of various other benefits like allotment of house sites, grant of scholarships, reimbursement of tuition fees, etc. to OBCs.

GUJRAT :

Gujrat Government set up a Backward Classes Commission in August 1972 under the chairmanship of Shir A.R. Bakshi and it submitted its report in 1976. This Commission listed 82 castes and communities as socially and educationally backward classes

and recommended the following measures for their advancement :-

- i) Reservation of 10% of seats in medical engineering and other professional institutions;
- ii) Reservation of 10% of vacancies in all Class III and IV Government services;
- iii) Reservation of 5% of all Class I and Class II vacancies in all Government services, local bodies, State Public Undertakings etc.
- iv) Reservation of 10% of seats in training-cum-production centres.
- v) Award of scholarships and other educational facilities to DbC students, provided their parental income did not exceed Rs. 4,800/- per year. This income limit was raised to Rs. 7,200/- in the case of nomadic tribes and denotified tribes.

JAMMU & KASHMIR :

A Backward Classes Committee was set up by the Government of Jammu & Kashmir in February, 1969 under the Chairmanship of Shri J.N.Wazir and its report was submitted in November 1969. Acting on the recommendations of this Committee, the State Govt. framed "The Jammu & Kashmir Scheduled Castes and Backward Classes (Reservation) Rules, 1970". As a result of a petition, the Supreme Court pointed out certain lacunae in these Rules and observed that the same should be rectified before giving effect to them. Consequently, the State Government appointed a Committee under Justice(Dr) Adarsh S. Anand in August, 1976. This Committee

submitted its report in September, 1977, and recommended that -

Permanent residents of the State falling in the following categories be declared backward classes :-

- i) Twenty-two weak and under-privileged classes; and
- ii) Residents belonging to specified back areas.

The Committee recommended the following benefits for the backward classes of the State :-

- i) Reservation of 42% of vacancies arising in all Government services;
- ii) Reservation of 42% seats in all technical and professional institutions;
- iii) Award of scholarships and stipends to students whose family income does not exceed Rs. 3000/- per annum and award of similar scholarships and stipends at higher rates to students from backward classes with the same limit on their family income.

The above reservations in services and educational institutions are in addition to 8% reservation made for Scheduled Castes. (There are no Scheduled Tribes and Jammu & Kashmir).

KARNATAKA :

It was in August 1972 that Karnataka Government set up Backward Classes Commission under the Chairmanship of Shri L.G. Havanur and it submitted its report in November, 1975. In its findings, the Commission stated that it had not gone by the criterion of caste in dealing the social backwardness of caste and communities. Instead it had relied on multiple tests, such as communities

economic, residential and occupational factors in determining social backwardness of castes and communities. Instead, it had relied categories of backward classes, worked out the percentage of their population in the State and recommended reservation of vacancies in Government services as given below :

| Name of Backward Classes | Percentage of population | Percentage of reservation |
|--------------------------|--------------------------|---------------------------|
| 1. Backward Communities | 19.20% | 16% |
| 2. Backward Castes | 14.47% | 10% |
| 3. Backward Tribes | 8.00% | 6% |
| Total - | 41.67% | 32% |

The State Government while broadly accepting the recommendations of the Commission, order the following scale of reservation in services and educational institutions for various categories of backward classes :-

| Sl. No. | Name of Backward Classes | Percentage of reservation in | |
|---------|--------------------------|------------------------------|---------------------|
| | | Educational Institutions. | Government Services |
| 1 | 2 | 3 | 4 |
| 1. | Scheduled Castes | 15% | 15% |
| 2. | Scheduled Tribes | 3% | 3% |
| 3. | Backward Communities | 20% | 18% |
| 4. | Backward Castes | 10% | 10% |
| 5. | Backward Tribes | 5% | 5% |
| 6. | Special Groups | 15% | 15% |
| | Total - | 68% | 66% |

KERALA :

Kerala Government has set up three Committees/Commissions so far on other Backward Classes. The first one was an Evaluation Committee, appointed under the chairmanship of Shri V.K.Vishwanathan in June, 1961. It submitted its report in October 1963 and its main recommendations were :

- i) Reservation of 40% of seats in technical and professional colleges for OBC students and 10% for students belonging to Scheduled Castes and Scheduled Tribes.
- ii) The above reservation to be made applicable to all fresh appointments under the State Government also, and
- iii) Appointment of an Expert Committee to go into the question of reclassification of backward communities.

In the circumstances the Government decided that only by appointing a Commission the matter could be satisfactorily settled. In the meantime, certain minor adjustments were made regarding the inter se percentages of reservations in services prescribed for the eight separate groups of Other Backward Classes, without disturbing the over all reservation of 40 per cent. These reservations are :

| Sl. No. | Name of Group | Reservation for Class IV posts. | Reservation for other than Class IV posts. |
|---------|--|---------------------------------|--|
| 1. | Exhavas | 11% | 14% |
| 2. | Muslims | 10% | 12% |
| 3. | Latin Catholics and Anglo Indians | 4% | 4% |
| 4. | Nadars | 1% | 1% |
| 5. | Scheduled Castes converts to Christianity. | 2% | 1% |
| 6. | 22 Communities like, Asaris, Kammalas, Viswakarmas, etc. | 2% | 3% |
| 7. | Dheevara Community | 2% | 1% |
| 8. | Other Backward Classes | 8% | 4% |
| Total - | | 40% | 40% |

The State Government has not been able to appoint a new Commission so far.

MAHARASHTRA :

After bifurcation of the former Bombay State, the Government of Maharashtra appointed a Committee in November 1961 under the Chairmanship of Shri B.D.Deshmukh to "report on reservation of Backward Classes in the services". In its report submitted in January, 1964 the Committee recommended that :-

- i) Backward Classes should be grouped under four categories i.e. (a) Scheduled Castes and Neo Buddhas; (b) Scheduled Tribes, (c) Denotified and Nomadic Tribes, and (d) Other Backward Communities.

ii) Reservation in services and educational institutions for different categories of Backward Classes should be related to the percentage of their population in the State.

The Government broadly accepted the above recommendations, and made the following reservation in the State services and educational institutions for the four categories of Backward Classes :-

| Sl. No. | Name of Category | Percentage of reservation |
|---------|---|---------------------------|
| 1. | Scheduled Castes and Scheduled Castes converts to Buddhism. | 13% |
| 2. | Scheduled Tribes | 7% |
| 3. | Denotified and Nomadic Tribes. | 4% |
| 4. | Other Backward Communities | 10% |
| Total - | | 34% |

PUNJAB

In 1951 the Punjab Government appointed a Committee on Backward Classes and on the basis of its recommendations declared 14 castes, constituting 2 per cent of the State population, as OBCs. Identification was done on the basis of the recommendations of the Committee, 2 per cent seats in services were reserved for backward classes. Similar concession was given in respect of admission to educational institutions also.

In 1965, the State Government appointed an Evaluation Committee under the Chairmanship of Shri Brish Bhan to review the concessions given to backward classes. In its report submitted in August 1966, the Committee recommended :-

- i) the existing list of backward classes should be rationalised so that classes or castes who are no longer backward could be excluded; and
- ii) the existing reservation of 2 per cent seats in educational institutions should be raised to 5 per cent.

The Committee also observed that reservation in services was not serving any useful purpose and Government should give concessions mainly in matters of education.

UTTAR PRADESH :

A "Most Backward Classes Commission" under the chairmanship of Shri Chhedilal Sathi was appointed in October, 1975 and it gave its report in 1977. The Commission recommended the classification of Backward Classes into three categories and prescribed reservation of separate quota in Government services for each of the three categories, as follows :

| Sl. No. | Name of Category | Percentage of reservation |
|---------|--|---------------------------|
| 1. | List "A" comprising those who are landless labourers, unskilled workers, non-artisans and domestic servants. | 17% |
| 2. | List "B" comprising marginal and small cultivators. | 10% |
| 3. | List "C" Muslims Backward Classes. | 28% |
| Total - | | 55% |

TAMIL NADU :

Tamil Nadu has been the pioneer in providing special concessions to OBCs. As indicated in para 2.1 in 1927 Madras Government has classified all the communities of the State into five categories under the famous communal G.O. and earmarked separate quota for each group for recruitment to Government services. This system continued till independence. In 1947, in view of mounting pressure from backward classes and Government revised their representations follows :-

| Sl. No. | Name of the Group | Group-quota reserved in 1947 | Quota revised in 1947 |
|---------|------------------------------------|------------------------------|-----------------------|
| 1. | Non-Brahmin Hindus | 5/12 | 6/12 |
| 2. | Brahmins | 2/12 | 2/14 |
| 3. | Scheduled Castes/Depressed Classes | 1/12 | 2/14 |
| 4. | Muslims | 2/12 | 1/14 |
| 5. | Anglo Indian and Christians | 2/14 | 1/14 |
| 6. | Backward Hindus. | - | 2/14 |

In November, 1969, Tamil Nadu Government appointed a Backward Classes Commission under the Chairmanship of Shri A.N. Sattanathan and it gave its Report in November, 1970. Its main recommendations were :-

- (i) The existing list of Backward Classes contained several inconsistencies and the same should be rationalised;
- (ii) 33 percent of posts under the State Government should be reserved for the candidate of Other Backward Classes;

(iii) The above reservation should be followed in respect of admission to various professional and technical institutions also; and

(iv) Various educational concessions, special coaching facilities etc. should be provided to the students of other Backward Classes.

EITHER OTHER STATES :

Regarding the eight States and Union Territories which have notified lists of Other Backward Classes without ordering a formal inquiry into their conditions, the position is briefly as follows :-

Haryana has provided for 10 per cent reservation in Government services and 2 percent in professional and technical institutions for Other Backward Classes. Himachal Pradesh has reserved 5 percent of all posts for OBCs in Government services, but some reservation has been made in educational institutions. Rajasthan, Orissa, Meghalaya and Delhi have neither reserved any posts in Government services nor any seats in educational institutions for OBC candidates. They extent some marginal concessions regarding school fees, books, mid-day meals etc. to backward class students. In 1961, both Orissa and Delhi withdrew the lists of OBCs prepared on the basis of caste and adopted economic criterion for determining backwardness.

The States and Union Territories which have never prepared a list of OBCs or taken any separate action for their upliftment are : Andaman and Nicobar Island; Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli; Goa, Daman and Diu, Lakshadweep,

Madhya Pradesh, Manipur, Misoram, Nagaland, Sikkim, Tripura and West Bengal.

Government of West Bengal set up a Committee on August 1st, 1980, to study whether it was necessary to invoke the powers vested in the State Government under Articles 15(4), 16(4) and 29(2) read with Article 15(4) of the Constitution. In its report submitted on August 30th 1980, the Committee recommended the "Poverty and low levels of living standards rather than caste should, in our opinion, be the most important criteria for identifying backwardness". It also recommended the identification of occupational groups as backward and formulation of comprehensive programmes % "for the economic development and educational advancement of these groups who are below the poverty line....". The committee was against reservation of quotas in Government services for backward classes.

The report of the Committee has been accepted by the Government of West Bengal in toto.

SUMMARY OF THE REPORT :

Methodology and Date Base :

One serious defect noticed by the Government in the report of first Backward Classes Commission was that it had not formulated any objective criteria, for classifying Other Backward Classes. The need for field surveys and formulation of objective tests has also been repeatedly emphasised by the Supreme Court in several cases. In view of this, the Commission has taken special care to tap a number of independent sources for the collection of primary data. Some of the important measures taken in this conne-

ction were : seminar of sociologists on social backwardness issue of three sets of questionnaires to State Government, Central Government and the public; extensive touring of the country by the Commission, taking evidence of legislators, eminent publicmen, sociologists, etc. undertaking a country-wide socio-educational survey; preparation of reports on some important issues by specialised agencies, analysis of census data, etc. etc.

By adopting this multilateral approach the Commission was able to case its net far and wide and prepared a very firm and dependable data base for its Report.

Social Backwardness and Caste :

Castes are the building bricks of the Hindu social structure. They have kept Hindu society divided in a hierarchical order for centuries. This has resulted in a close linkage between the caste ranking of a person and his social, educational and economic status.

This manner of stratification of society gave the higher castes deep-rooted vested interests in the perpetuation of the system. The priestly castes evolved an elaborate and subtle scheme of scripture, ritual and mythology and perpetuate their supremacy and hold the lower castes in bondage for ages. Most of our Shastras uphold the four-fold Varna system and because of this religious sanction, caste system has lasted longer than most other social institutions based on inequality and inequity.

In view of the permanent stratification of society in hierarchical caste order, members of lower castes have always suffered from discrimination in all walks of life and this has

resulted in their social, educational and economic backwardness. In India, therefore, the low ritual caste status of a person has a direct bearing on his social backwardness.

Social Dynamics of Caste :

Caste system has been able to survive over the centuries because of its inherent resilience and its ability to adjust itself to the over changing social reality. The traditional view of caste system, as contained in chapter IV, is based more on Hindu Shastras than the actual state of social reality. Moreover, caste restrictions have loosened considerably as a result of the rule of law introduced by the British, urbanisation, industrialisation spread of mass education and, above all, the introduction of adult franchise after independence. But all the above changes mark only shift of emphasis and not any material alteration in the basis structure of caste.

It is generally agreed that whereas certain caste taboos have weakened as a result of the above changes, the importance of casteism in Indian politics is on the increase. This perhaps, was inevitable, Caste system provided the political leadership with readymade channels of communication and mobilisation and, in view of this, the importance of caste was bound to increase in Indian politics. As Rajni Kothari has observed, "those in India who complain of casteism in politics are really looking for a sort of politics which has no basis in society".

The pace of social mobility is no doubt increasing and some traditional features of caste system have inevitably weakened. But what caste has lost on the ritual front, it has

more than gained on the political front. In view of this it will be unrealistic to assume that the institution of caste will wither away in the foreseeable future.

Social Justice, Merit and Privilege :

Equality before the law is a basic Fundamental Right guaranteed under Article 14 of the Constitution. But the principle of "equality" is a double edged weapon. It places the strong and the handicapped on the same footing in the race of life. It is a dictum of social justice that there is equality only among equals. To treat unequals as equals is to perpetuate inequality. The humaneness of a society is determined by the degree of protection it provides to its weaker, handicapped and less gifted members.

"Equality of opportunity" and "equality of treatment" places the weak and the strong on par and, to that extent, it amounts to denial of results" which is the acid test of society's egalitarian pretensions. In a highly unequal society like ours, it is only by giving special protection and privileges to the under-privileged section of society that we can enable the weak to resist exploitation by the strong.

It was in view of these considerations that our Constitution makers made special provisions under Article 15(4), 16(4) and 46 etc. to protect the interests of SCs, STs and OBCs. Some people consider provisions like reservation of posts for backward classes, etc. as a violation of their Fundamental Right and denial of meritorious person's legitimate due. In fact, 'merit' itself is largely a product of favourable environmental

privileges and higher rating in an examination does not necessarily reflect higher intrinsic worth of the examinee. Children of socially and educationally backward parents coming from rural background cannot compete on an equal footing with children from-sell to do homes. In view of this 'merit' and 'equality' should be viewed in proper perspective and the element of privilege should be duly recognised and discounted for when 'unequals' are made to run the same race.

Social Justice, Constitution and the Law :

The element of conflict between the Fundamental Rights and the Directive Principles of State policy has been the subject matter of numerous Parliamentary debates and judicial pronouncements. In pursuance of Articles 15(4) and 16(4) a number of State Governments made reservations in Government services and educational institutions for OBCs and several petitions were filed before the High Courts and the Supreme Court against such orders. Gradually a sizeable body of case law has grown on the subject and a gist of it is given below.

Caste is an important factor in the identification of Other Backward Classes among Hindu Communities, Backwardness must be both social and educational and not either social or educational. Caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4). The further division of backward classes into 'backward' and 'most backward' is not warranted by

Article 15(4). The aggregate reservation of posts under Article 15(4) should be less than 50%. Objective criteria should be evolved on the basis of field survey, etc. for identifying OBCs.

North South Comparison of OBC Welfare :

Southern States have done much more for the welfare of Other Backward Classes than Northern States. Moreover, in the South the whole operation was conducted quite smoothly whereas in the North even modest welfare measures for OBCs have given rise to sharp resistance. The Commission approached Tata Institute of Social Science, Bombay, to prepare a comparative study of the 4 states of Tamil Nadu, Karnataka, Bihar and Uttar Pradesh, so as to have better appreciation of this phenomenon.

Tata Institute Study formulated a number of hypotheses in this regard. They are : Reservation Scheme had a much longer history in the South, Forward castes were more divided among themselves in the South, OBCs were not getting along very well with SCs/STs in the North and thus divided the backward classes movement, backward classes were more politicised in the South; reservation scheme was introduced too suddenly in the North, the capacity of backward classes to retaliate depends upon their numbers, political consciousness, dominance and perceived lack of alternative opportunities; more rapid expansion of tertiary sector gave opening to forward castes in the South which was not available to the same extent in the North, etc.

Tata Institute Study supports the above hypotheses by citing a number of examples and historical developments in the 4 States under consideration.

Evidence by the Public :

Nearly 2/3rd of the respondents to our questionnaire for General Public felt that no material changes have taken place in the country's caste structure, since Independence. Regarding criterion for identifying backwardness, nearly 3/4th of the respondents favoured castes. More than 3/4th of the respondents also complained of various disabilities suffered by backward classes and many felt that no concrete steps have been taken to remove them. They wanted job reservation quotas to be enhanced and more educational concessions to be given to the children of OBC. Ameliorative measures suggested for OBCs were; reservation in Government suggested for OBCs were; reservation in Government employment and educational institutions; grant of interest free loans, free distribution of agricultural land and house sites etc.

In their evidence before the commission, Members of Sixth and Seventh Lok Sabha also expressed view similar to those summarised above. Some MPs warned against malicious propaganda being carried on by vested interests to create conflict between OBCs and SCs and STs. Some stated that the Commission should adopt those criteria for determining backwardness which have been tested before the Courts. They also suggested that the lists of OBCs prepared by State Governments and accepted by the Courts should be adopted by the Commission in toto.

During the Commission's tour to various States, a large number of representations were received for including particular castes in the list of OBCs. Most of the other respondents expre-

ssed similar views on the criteris for identifying backward classes and measures to be taken for their upliftment as already indicated above.

Socio-Educational Field Survey-Criteris for Backwardness :

A Country-wide socio-educational survey covering 405 out of 407 Districts was conducted with the help of Bureau of Economics and Statistics of various states from February to June, 1980. Voluminous data gathered from the Survey was computerised and 31 primary tables were generated from this data in respect of each State and Union Territory. On the basis of these tables, 11 Indicators or Criteria for social and educational backwardness were derived and they were grouped under 3 broad heads, i.e. Social, Educational and Economic. In view of their relative importance, 3 points were assigned to each one of the Social Indicators, 2 to Educational Indicators and 1 to Economic Indicators. This added upto a total score of 22 points. All these 11 indicators were applied to each one of the castes, covered by the Survey in each State. Caste obtaining a minimum score of 11 points on this scale were listed as socially and educationally backward.

Schedules :

The experts' Panel had prepared the following four schedules for canvassing during the field survey :-

- i) Household Schedule (rural);
- ii) Household schedule (urban);
- iii) Village Schedule;
- iv) Town schedule.

Indicators (Criteria) for Social and Educational Backwardness :

The Commission evolved eleven 'Indicators' or 'Criteria' for determining social and educational backwardness these 11 'Indicators' were grouped under three broad heads, i.e. Social, Educational and Economic. They are :

A : Social :

- i) Castes/Classes considered as socially backward by others.
- ii) Castes/Classes which mainly depend on manual labour for their livelihood.
- iii) Castes/Classes where at least 25% females and 10% males above the State average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas.
- iv) Castes/Classes where participation of females in work is at least 25% above the State average.

B : Educational :

- i) Castes/Classes where the number of children in the age group of 5-15 years who never attend school is at least 25% above the State average.
- ii) Castes/Classes where the rate of student drop-out in the age group of 5-15 years is at least 25% above the State average.
- iii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.

C : Economic :

- i) Castes/Classes where the average value of family assets is at least 25% below the State average.
- ii) Castes/Classes where the number of families living in Kuccha house is at least 25% above the State average.
- iii) Castes/Classes where the source of drinking water is beyond half a kilometre for more than 50% of the households.
- iv) Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average.

The Commission has adopted a multiple approach for the preparation of comprehensive lists of Other Backward Classes for all the States and Union Territories. The main sources examined for the preparation of these lists were :-

- i) Socio-education field survey;
- ii) Census Report of 1961 (particularly for the identification of primitive tribes, aboriginal tribes, hill tribes, forest tribes and indigenous tribes);
- iii) personal knowledge gained through extensive touring of the country and receipt of voluminous public evidences as described in chapter X of this Report, and
- iv) Lists of OBCs notified by various State Governments.

After giving a good deal of thought to these difficulties the Commission has evolved the following rough and ready criteria for identifying non-Hindu OBCs :

- i) All untouchables converted to any non-Hindu religion;
- ii) Such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list of Hindu OBCs. (Examples - Dhobi, Teli, Dheemar, Nai, Gujar, Kumhar, Lohar, Darji, Dadhai etc.)

Percentage Distribution of Indian Population by Caste and Religious Groups.

| Sl.No | Group Name | Percentage of total population |
|--|--|--------------------------------|
| I. Scheduled Castes and Scheduled Tribes | | |
| A - 1 | Scheduled Castes | 15.05 |
| A - 2 | Scheduled Tribes | 7.51 |
| | | Total of 'A' 22.56 |
| II. Non-Hindu Communities, Religious Groups etc. | | |
| B - 1 | Muslims (other than STs) | 11.19(0.02)* |
| B - 2 | Christians (other than STs) | 2.16(0.44)* |
| B - 3 | Sikhs (other than SCs & STs) | 1.67(0.22)* |
| B - 4 | Buddhist (other than STs) | 0.67(0.03)* |
| B - 5 | Jains | 0.47 |
| | | Total of 'B' 16.16 |
| III. Forward Hindu Castes & Communities. | | |
| C - 1 | Brahmins (includingBhuminars) | 5.52 |
| C - 2 | Rajput | 3.90 |
| C - 3 | Marathas | 2.21 |
| C - 4 | Jats | 1.00 |
| C - 5 | Vaishyas-Bania, etc. | 1.88 |
| C - 6 | Kayasthas | 1.07 |
| C - 7 | Other forward Hindu Castes groups | 2.00 |
| | | Total of 'C' 17.58 |
| Total of 'A', 'B' & 'C' | | 56.30 |
| IV. Backward Hindu Castes & Communities | | |
| D. | Ramining Hindu Castes/groups which come in the category of 'Other Backward Castes' | 43.70 |

V. Backward non-Hindu Communities

- E. 52% of religious groups under Section B may also be treated as OBCs. 8.40
- F. The approximate derived population of Other Backward Classes including Non-Hindu Communities. 52%
(Aggregate of D & E, rounded)

* Figures in brackets give the population of S.C. & S.T. among these Non-Hindu Communities.

EVIDENCE BY CENTRAL AND STATE GOVERNMENT :

Questionnaire for the State Government :

The questionnaire for the State Government, etc. contained 86 questions, divided into 7 sections i.e. (i) Criteria (ii) Safeguards, Reservations etc. (iii) Census, (iv) Social, (v) Educational, (vi) Welfare, and (vii) Employment. This questionnaire was despatched to the State Governments and Union Territories on April 11th, 1979 and it took more than one year to get their replies.

i) Criteria :

This section contains questions pertaining to various aspects of the problems of identifying Other Backward Classes. Assam, Andhra Pradesh, Bihar, Gujrat, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Uttar Pradesh have recommended caste as one of the criteria for identifying backwardness. Delhi, Dadra and Nagar Haveli, Haryana, Himachal Pradesh and Madhya Pradesh have stated that caste should not be made a criterion of backwardness. Bihar, Gujrat, Himachal Pradesh, Kerala, Punjab, Rajasthan and U.P. have suggested low economic status as one of the significant tests, while Delhi, Dadra and Nagar Haveli and Haryana have desired the economic factor to be the sole determinant of backwardness.

ii) Safeguards, Reservations etc. :

Chapter II of this Report contains particulars of the welfare measures taken by eighteen State Govt. and Union Territories for the welfare of Other Backward Classes, Quantum of reservation in Govt. employment and educational institutions has also been indicated in that Chapter. The remaining 13 States and Union Territories i.e. Andaman and Nicobar Islands : Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Goa, Daman & Diu; Lakshadweep, Madhya Pradesh, Manipur, Mizoram, Nagaland, Sikkim, Tripura and West Bengal have so far neither identified Other Backward Classes nor taken any steps for their upliftment. Even among the 18 States who have done so, quite a few have provided only token relief to OBCs. For instance, Assam, Pondicherry, Rajasthan, Orissa, Meghalaya and Delhi have not made any reservation in services or education institutions and Gujrat, Haryana, Himachal Pradesh and Punjab have done so only nominally. In U.P. even 15% reservation for OBCs has been set aside by Allahabad High Court and the matter is pending in appeal in the Supreme Court.

iii) Census :

The comparison of lists of Other Backward Classes notified by various State Govt. and those prepared by Kaka Kalekar Commission shows wide variations in most of the cases; as will be seen from the following table :

| Sl. No. | Name of the States | No. of Castes included in Kaka Kalekar Commission Report. | No. of Castes notified by State Government |
|---------|--------------------|---|--|
| 1. | Andhra Pradesh | 124 | 95 |
| 2. | Assam | 44 | 119 |
| 3. | Haryana | 88 | 64 |
| 4. | Himachal Pradesh | 27 | 48 |
| 5. | Karnataka | 64 | 181 |
| 6. | Kerala | 48 | 76 |
| 7. | Maharashtra | 160 | 196 |
| 8. | Orissa | 148(list withdrawn) | 111 |
| 9. | Punjab | 88 | 62 |
| 10. | Tamil Nadu | 156 | 124 |
| 11. | Uttar Pradesh | 120 | 56 |

The main reason for this disparity is that whereas State Government prepared their lists on the basis of some sort of field survey and investigation, Kaka Kalekar Commission had mostly borrowed the lists prepared by the Ministry of Education for the award of post-Matric Scholarships. Secondly, the pressure of field situation and local factors may have also influenced the judgement of State Government in the preparation of these lists.

v) Educational :

No State Government could furnish figures regarding the level of literacy and education amount Other Backward Classes. Regarding the special measures adopted for the promotion of education among OBC, the position is as follows :

Assam :- Award of post-Matric Scholarships, grants for purchase of books, study tours, reservation of seats in education institutions and holding of adult literacy classes in backward areas of the States.

Andhra Pradesh :- Exemption of tuition fees, pre-Matric and post-Matric scholarships, hostel facilities, free supply of clothes and text-books, 20 per cent reservation of seats in educational institutions, 5 per cent relaxation in minimum qualifying marks at the time of admission etc.

Gujrat :- Exemption of examination fees, Scholarships, free supply of clothes, running of coaching centres, reservation of 10 per cent seats ineducationalisations and implementation of adult literacy programme throughout the State. One special Asram School started exclusively for OBC students.

Haryana :- Award of pre-Matric and post-matric scholarships, reservation of 2 per cent seats in educational institutions and 5 per cent relaxation in marks at the time of admission to various colleges etc. and examination of fees where parental incomes is below Rs.4,200 per month

Jammu & Kashmir :- Establishment of 80 mobile schools for Gujjars and Bakarwals, special hostel facilities, aware of scholarships, free supply of books and uniforms, reservation of seats for various categories of backward classes in educational institutions and opening of 1,100 adult literacy centres.

Karnataka :- Exemption of school fees, award of scholarships, hostel facilities, free training in workshops with free uniforms, reservation of 50 per cent seats in educatio-

nal institutions and running of adult literacy centres.

Kerala :- Exemption of tuition and examination fees, special stipends, reservation of 5 per cent seats in post-graduate courses and 25 per cent seats in technical institutions and 5 per cent relaxation in marks for admission to various colleges etc.

Maharashtra :- Running of non-formal education programmes for tribals and 10 adult literacy centres and reservation of 10 per cent seats in educational institutions. Exemption of tuition fees for all OBC students whose parental income is below Rs.4,800 per month.

Punjab :- Tuition fee concessions, stipends, running of adult literacy classes and reservation of 5 per cent seats in educational institutions.

Tamil Nadu :- Free education upto higher secondary level, educational concessions for higher studies and 50 per cent reservation in educational institutions.

Regarding OBC representation in University Senates, Syndicates, Academic Councils, Boards of Appointments etc. Only Karnataka and Maharashtra have reported making of special provision for backward classes in their respective University Acts.

vii) Employment :

Regarding the specific steps taken to improve the lot of landless agricultural labours, most of the States have listed the following measures :-

- 1) Passing and enforcement of Minimum Wages Acts for agricultural labourers;
- 2) Allotment of surplus land, mostly accruing from land ceiling laws; and
- 3) Allotment of houses sites.

The case of West Bengal for effective implementation of Minimum Wages Act merits special mention.

Regarding the protection of Other Backward Classes from exploitation by money-lenders, various States have reported the following position :-

Assam :- Extension of financial assistance to OBCs by State Development Corporation for Other Backward Classes.

Gujrat :- Financial assistance for starting cottage industries, small trades etc. and supply of milk cattle and poultry, Vigilance under the Money Lenders Act to prevent charging of exorbitant interest rates.

Haryana :- Grant of small mid-term loans from mini banks, nationalised banks, co-operative societies, etc. for starting small scale industries and trades. Under Haryana Relief of Agricultural Indebtedness Act, 1976, debts in respect of certain categories of agricultural labourers, rural artisans etc. have been discharged or sealed down.

Himachal Pradesh :- Vigilance over interest rates charged by private money-lenders and grant of credit facilities from various financial institutions.

Jammu & Kashmir :- District Consultative Committees set up to oversee availability of credit to the weaker sections. The Distressed Debtors Relief Act and the Usurers Loans Act have also helped backward classes debtors.

Karnataka :- Under the Karnataka Debt Relief Act, 1976 debtors belonging to weaker sections with annual income below Rs.2,400 are entitled to treat their debt wholly discharged.

Maharashtra :- Protection given under the Money Lenders Act.

Orissa :- Amended Orissa Money Lenders Act, 1939 provides adequate protection to weaker sections and heavy penalties to money-lenders for breach of any provision.

Questionnaire for Central Government Offices etc. :

Replies to the above questionnaire were furnished by 30 Central Ministeries/Departments, 31 Attached and Subordinate Offices and public sector undertakings under the administrative control of 14 Ministers. Break-up of the information furnished by all these agencies is given in Annexure - 8, Volume II. The following table gives a summary of the over-all employment position in this behalf.

| Category of Employees | Total No. of employees | Percentage of SC/ST | Percentage of OBC |
|-----------------------|------------------------|---------------------|-------------------|
| Class I | 1,74,043 | 5.68 | 4.69 |
| Class II | 9,12,786 | 18.18 | 10.63 |
| Class III & IV | 4,84,646 | 24.40 | 24.40 |
| All Classes | 15,71,475 | 18.71 | 12.55 |

RECOMMENDATIONS :

Reservation for SCs and STs is in proportion to their population, i.e. 22.5%. But as there is a legal obligation to keep reservations under Articles 15(4) and 16(4) of the Constitution below 50%. The Commission recommends a reservation of 27% for OBCs. This reservation should apply to all Government services as well as technical and professional institutions, both in the Centre and the State.

Special educational facilities designed at upgrading the cultural environment of the students should be created in a phased manner in selected areas containing high concentration of OBCs. Special emphasis should be placed on vocational training. Separate coaching facilities should be provided in technical and professional institutions to OBCs students to enable them to catch up with students from open quota.

Special programmes for upgrading the skills of village artisans should be prepared and subsidised loans from financial institutions granted to them for setting up small scale industries. To promote the participation of OBCs in the industrial and business life of the country, a separate network of financial and technical institutions should be created by all State Governments.

Under the existing scheme of production-relations, Backward Classes comprising mainly small land holders, tenants, agricultural labour, village artisans, etc. are heavily dependent on the rich peasantry for their sustenance. In view of this, OBCs

continue to remain in mental and material bondage of the dominant castes and classes. Unless these production-relation are radically altered through structural changes and progressive land reforms implemented vigorously all over the country, OBCs will never become truly independent. In view of this, highest priority should be given to radical land reforms by all the States.

At present no Central assistance is available to any State for implementing any welfare measures for Other Backward Classes. Several State Governments expressed helplessness in undertaking more purposeful development programmes for backward classes in view of lack of resources. It is, therefore, recommended that welfare programmes specially designed for OBCs should be financed by the Central Government in the same manner and to the same extent as done in the case of SCs and STs.

With the above general recommendation regarding the quantum of reservation, the Commission proposes the following over-all scheme of reservation for OBCs :-

1. Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27%.
2. The above reservation should also be made applicable to promotion quota at all levels.
3. Reserved quota remaining unfilled should be carried forward for a period of three years and deserved there after.

4. Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner as done in case of SCs & STs.
5. A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of SC and ST candidates.

Educational Concessions :

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

Financial Assistance :

Votational communities following hereditary occupations have suffered heavily as a result of industrialisation. Mechanical production and introduction of symthetic materials has robbed the village potter oil crusher, blacs-smith, carpenter etc. of their traditional means of livelihood and the pauperisation of these classes is well known phenomenon in the country side.

Of course, most State Governments have created various financial and technical agencies for the promotion of small and medium scale industries. But it is well known that only the more

influential members of the community are able to derive benefits from these agencies. In view of this, it is very essential that separate financial institutions for providing financial and technical assistance are established for the backward classes. Some States Governments like Karnataka and Andhra Pradesh have already set up separate financial corporations etc. for OBCs.

8.2 MANDAL COMMISSION CASE, 1992 :

Article 16(4) the words "backward class" are used with a wider connotation and without any qualification or explanation. Therefore, it must be construed in the wider perspective. Though the OMs speak of social and educational backwardness of a class, the primary consideration in identifying a class and in ascertaining the inadequate representation of that class in the services under the State under Article 16(4) is the social backwardness which result in educational backwardness, both of which culminate in economic backwardness. The degree of importance to be attached to social backwardness is much more than the importance to be given to the educational backwardness and the economic backwardness, because in identifying the classifying a section of people as a backward class within the meaning of Article 16(4) for the reservation of appointments or posts, the "social backwardness" plays a predominant role.

Ray, J in Jayashree is of the view that "Social backwardness can contribute to educational backwardness and educational backwardness may perpetuate social backwardness. Both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition".

In M.R.Balaji V.State of Mysore at page 454 Gajendragadkar, J observed that "economic backwardness might have contributed to social backwardness.....". This observation tends to show that Gajendragadkar, J was of the view that economic backwardness may contribute to social backwardness.

Desai, J in Vasanth Kumar has expressed a similar view that "if economic criterion for compensatory discrimination or affirmative action is accepted it would strike at the root cause of 'social and educational backwardness'...." there by holding that only criterion which can be devised is the 'economic backwardness' for identifying 'socially and educationally backward classes' ignoring the predominance of social backwardness.

"INDICATORS (CRITERIA) FOR SOCIAL AND EDUCATIONAL BACKWARDNESS"

As a result of the above exercise, the Commission evolved eleven "Indicators" or "Criteria" for determining social and educational backwardness. These 11 "Indicators" were grouped under three broad headers i.e. Social, Educational and Economic. They are :

A : Social :

- i) Castes/Classes considered as socially backward by others.
- ii) Castes/Classes which mainly depend on manual labour for their livelihood.
- iii) Castes/Classes where at least 25% females and 10% males above the State average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas.
- iv) Castes/Classes where participation of females in work is at least 25% above the State average.

B : Educational :

- v) Castes/Classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the State average.
- vi) Castes/Classes where the rate of student drop-out in the age group of 5-15 years is at least 25% above the State average.
- vii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.

C : Economic :

- viii) Castes/Classes where the average value of family assets is at least 25% below the State average.
- ix) Castes/Classes where the number of families living in Kuccha houses is at least 25% above the State average.
- x) Castes/Classes where the source of drinking water is beyond half a kilometre for more than 50% of the households.
- xi) Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average.

Criticism levelled against Mandal Commission Report :

Taking pot-shots at the Mandal Report recommending exclusive reservation for SEBCs, the belligerent anti-reservationists denigrate the report by making scathing criticism and indiscriminately trigger off a volley of bullets against the Report. The first attack against the Report is that it is

perpetuating the evils of caste system and accentuating caste consciousness besides impeding the doctrine of secularism, the net effect of which would be dangerous and disastrous for the rapid development of the Indian society as a whole marching towards the goal of the welfare State. According to them, the identification of SEBCs by the Commission on the basis of caste system is bizarre and barren of force, muchless exposing hollowness. Therefore, the OMs issued on the strength of the Mandal Report which is solely based on the caste criterion are violative of article 16(2).

Hence, it has to be straightaway rejected as unmeritorious since that Report is not actually based solely on caste criteria but on the anvil of various factors grouped under three heads i.e. social, educational and economic backwardness but giving more importance - rightly too - to the social backwardness as having a direct consequence of caste status.

Firstly, if the above argument is accepted it will result in negation of the just claim of the SEBCs to avail the benefit of Article 16(4) which is a fundamental right.

Secondly, this attack is based on a misconception. A perusal of the Report would indicate that the 1931 census does not have even a remote connection with the identification of OBCs. But on the other hand, they are identified only on the basis of the countrywide socio-educational field survey and the census report of 1961 particularly for the identification of primitive tribes, aboriginal tribes, hill tribes, forest tribes

and indigenous tribes and personal knowledge gained through extensive touring and receipt of voluminous public evidence and lists of OBCs notified by various States. It was only after the identification of OBCs, the Commission was faced with the task of determining their population percentage and at that stage 1931 census became relevant. It is to be further noted after 1931 census, no caste-wise statistics had been collected. In fact, the identification of classes by the Commission was based on the relativity prevailing in 1980 and not in 1931. It is brought to our notice that the same method had already been adopted in Section 5 of the Scheduled Castes and Scheduled Tribes Order (Amendment) Act.

Thirdly, the Commission cannot be said to have ignored this factual position and found fault with for relying on 1931 census.

1. Article 16(4) of the Constitution is neither an exception nor a provision to article 16(1). It is exhaustive of all reservations that can be made in favour of backward class of citizens. It has an overriding effect on Article 16(1) and (2).

2. No reservation can be made under Article 16(4) for classes other than backward classes. But under Article 16(1), reservation can be made for classes, not covered by Article 16(4).

3. The expression, "backward class of citizens" occurring in Article 16(4) is neither defined nor explained in the Constitution. However the backward class or classes can certainly be

identified in Hindu Society with reference to castes along with other criteria such as traditional occupational, poverty, place of residence, lack of education etc. and in communities where caste is not recognised by the above recognised and accepted criteria except caste criterion.

4. In the process of identification of backward class of citizens under Article 16(4) among Hindus, caste is a primary criterion or a dominant factor though it is not the sole criterion.

5. 'Any provision' under Article 16(4) is not necessarily to be made by the Parliament or Legislature. Such a provision could also be made by an Executive order.

6. The power conferred on the State under Article 16(4) is one coupled with a duty and, therefore, the State has to exercise that power for the benefit of all those, namely, backward class for whom it is intended.

7. The provision for reservation of appointment or posts in favour of any backward class of citizens is a matter of policy of the Government, of course subject to the constitutional parameters and well settled principles of judicial review.

8. The expression "poorer sections" mentioned in para 2(i) of the ammended Office Memorandum of 1991 denotes a division among SEBCs on economic criterion. Therefore, no division or sub-classification as "~~poorer~~ sections" and other backward class (non poorer sections) out of the identified SEBCs can be made by application of "means test" based on economic criterion. Such a

division in the same identified and ascertained unit consisting of SEBCs having common characteristics and attributes, the primary characteristic or attribute being the social backwardness is violative of class (4) of Article 16 of the Constitution. Hence, the division of the SEBCs as "poorer sections" and others, brought out in para 2(i) of the impugned amended Office Memorandum dated 25th September, 1991 is constitutionally invalid and impermissible. Accordingly, para 2(i) of the said amended Office Memorandum is struck down.

9. No maximum ceiling of reservation can be fixed under Article 16(4) of the Constitution for reservation of appointments or posts in favour of any backward classes of citizens "in the services under the State". The decision fixing the percentage of reservation only upto the maximum of 50% are unsustainable.

10. As regards the reservation in the matter of promotion under Article 16(4). I am in agreement with conclusion No.(7) made in paragraph 859 in Part VII of the judgement of my learned brother B.P.Jeevan Reddy, J.

11. I also agree with conclusion No.(8) of paragraph 859 of the judgement of my learned brother B.P.Jeevan Reddy, J qua the exception to the rule of reservation to certain services and posts.

12. The reservation of 10% of the vacancies in vicil posts and services in favour of other economically backward sections of the people who are not covered by any other scheme of the reservation as mentioned in para 2(ii) of the impugned amended Office

Memorandum dated 25th September, 1991 is constitutionally invalid and it is accordingly struck down. In this regard, I am also in agreement with conclusion No.(11) of paragraph 859 of the judgement of my learned brother B.P.Jeevan Reddy, J(SCC infra p.para 859).

13. No section of SEBCs can be excluded on the ground of creamy layer till the Government - Central and State - takes a decision in this regard on a review on the recommendations of a Commission or a Commission to be appointed by the Government.

14. Para 2(i) and (ii) of the amended Office Memorandum dated 25th September, 1991 for the reasons given in my judgement and the conclusions drawn above, are struck down as being violative of Article 16(4).

15. The impugned Office Memorandum dated 13th August, 1990 is held valid and enforceable. So there is no legal impediment in immediately enforcing and implementing this first Office Memorandum of 1990.

16. In Writ Petition No.1094 of 1991 (Sreenarayana Dharma Paripalana Yogma V Union of India), there is a prayer (prayer 'b'), inter alia, for issuance of a writ of mandamus directing the respondent to implement the impugned unamended Office Memorandum dated 13th August, 1990. In the light of my conclusions, striking down the amended Office Memorandum dated 25th September, 1991, I direct the Union of India to immediately implement the unamended Office Memorandum dated 13th August, 1990.

17. The Government of India and the State Governments have

to create a permanent machinery either by way of a Commission or a Committee within a reasonable time for examining the requests of inclusion or exclusion of any caste, community or group of persons on the advice of such Commission or Committee, as the case may be, and also for examining the exclusion of any pseudo community if smuggled into the list of OBCs. The creation of such a machinery in the form of a Commission or Committee does not stand in the way of immediate implementation of the Office Memorandum dated 13th August, 1990 and the purpose of creating such machinery is for future guidance.

18. It is also of the same view of learned Brother B.P. Jeevan Reddy, J that it is not necessary to send the matters back to the Constitution Bench of five Judges.

The concept of reservation :

Dr. Ambedkar stated :

".....firstly that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a 'proper lock-in' so to say into the administration ---- Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity --- Therefore the seats to be reserved, if the reservations is to be consistent with sub-classes (1), of Article

10, must be confined to a minority of seats. It is then only that the first principle could find its place in the constitution and effective in operation we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State....." Constituent Assembly Debates, Vol,7, pp 701-702 (1948-1949). (emphasis supplied).

Reservation is meant to remedy the handicap of prior discrimination impeding the access of classes of people to public administration. It is for the State to determine whether the civil effects of inequities stemming from prior discrimination against classes of people have resulted in their being reduced to positions of backwardness and consequent under representation in public administration. Reservation is a remedy or a cure for the ill effects of historical discrimination.

Reservation under the Constitution :

The Constitution seeks to secure to all its citizens Justice, Liberty, Equality and Fraternity. These are the basic pillars on which the grand concept of India as a Sovereign Socialist Secular Democratic Republic rests. This splendour that is India rests on these magnificent concepts, each of which, supporting the other, upholds the dignity and freedom of the individual and secures the integrity and unity of the nation.

Conclusions :

A. The validity of the impugned Government Order providing for reservation of posts depends on convincing proof of

proper identification of backward classes of citizens by recourse to relevant criteria, such as poverty, illiteracy, disease, unhygienic living conditions, low caste and consequential isolation, and in accordance with correct principles, i.e. with reference to the continuing ill effects of historical discrimination resulting in social and educational backwardness comparable to that of the Scheduled Castes or the Scheduled Tribes, and inadequate representation of such classes of citizens in the services under the State, but subject to the overriding condition that all those persons whose means have exceeded a predetermined economic level shall be denied reservation. Amongst the aforementioned backward classes of citizens correctly identified to be qualified for reservation, preference may be legitimately extended to the comparatively poorer or more disadvantaged sections.

B. Reservation of seats of posts solely on the basis of economic backwardness, i.e. without regard to evidence of historical discrimination, as aforeside, finds no justification in the Constitution.

C. Reservation of seats or posts for backward classes of citizens, including those for the Scheduled Castes and the Scheduled Tribes, must remain well below 50% of the total seats or posts.

D. Reservation is confirmed to initial appointment to a post and has no application to promotion.

E. It is open to the State to adopt any valid affirmative action programme, otherwise than by reservation, for amelioration of the disabilities of all disadvantaged persons, including backward classes of citizens.

Neither the impugned orders of the Government of India [O.M.No. 36012/31/90-Estt(SCT), dated August 13, 1990 and O.M.No. 36012/31/90-Estt(SCT) dated September 25, 1991] nor the material relied upon by it nor the affidavits filled in support of the said orders disclose proper application of mind by the concerned authorities to the principles stated above for valid identification of the backward classes of citizens qualified for reservation in terms of Article 16 of the Constitution of India. The impugned order are, therefore, unsustainable. The respondent-Government is accordingly directed to reconsider the question of reservation contemplated by Article 16(4) in the light of the aforesaid principles and pass appropriate orders.

To deal with the following issues in seriatim :

- A. Whether "class" in Article 16(4) of the Constitution means "caste" ? Can caste be adopted as a collectively to identify the backward classes for the purposes of Article 16(4).
- B. Whether the expression "any backward class of citizens" in Article 16(4) means "socially and educationally backward classes" as it is in Article 15(4) ?
- C. What is meant by the expression "any backward class of citizens ...not adequately represented in the services under

the State" in Article 16(4) ?

- D. Whether Article 16(4) permits reservation of appointments or posts at the stage of initial entry into government services or even in the process of promotion ?
- E. Whether Article 16(4) is exhaustive of the State power to provide job reservations ?
- F. If Article 16(1) does not permit job reservations, can protective discrimination as a compensatory measure permissible, in any other form under Article 16(1) ?
- G. To what extent reservations are permissible under Article 16(4) ? Below 50% or to any extent ?
- H. When a "backward class" has been identified, can a means-test be applied to skim-off the affluent section of the "backward class" ?
- I. Can poverty be the sole criterion for identifying the "backward class" under Article 16(4).
- J. Is it mandatory to provide reservations by a legislative Act or it can be done by the State in exercise of its executive power ?
- K. Whether the identification of 3743 castes as a "backward class" by Mandal Commission is constitutionally valid ?

The identification of 3743 castes as the "beneficiary Class" for job reservations under Article 16(4) is wholly unconstitutional, invalid and cannot be acted upon. The reasons for holding so are as under :

(i) The terms of reference required the Commission "to

determine the criterial for defining the socially and educationally backward classes". Assume that Mandal has done so. The reference and the Mandal Commission's investigation is based on the legal fallacy that the expression "backward class of citizens" means the same thing as "socially and educationally backward classes of citizens" in Article 15(4). That is why the Commission was asked to identify socially and educationally backward classes. We have held that two expressions in Articles 16(4) and 15(4) do not mean the same thing. The classes to be identified under Article 16(4) cannot be confined only to social and educational backwardness. The definition therein is much wider and is not limited as under Article 15(4). It is thus, evident that the identification of the "backward classes" under Article 16(4) cannot be based only on the criteria of social and educational backwardness. Other classes which could have been identified on the basis of occupation, economic standards, environments, backward area residence, etc. etc. have been left out of consideration. The identification done by Mandal is thus violative of Article 16(4) and as such cannot be sustained.

(ii) It has been held by me that the backward classes for the purpose of Article 16(4) are the backward sections of the classes who are inadequately represented in the State Services. Admittedly, this exercise was not done. Mandal identified the castes on the criteria, of social and educational backwardness.

(iii) The Terms of Reference further required the Commission "to examine the desirability or otherwise of making provision for

the reservation of appointments or tests.... in public services". This most vital part of the Terms of Reference was wholly ignored by the Commission. Before making its recommendations the Commission was bound, by the Terms of Reference, to determine the desirability or otherwise of such reservations. The Commission did not at all investigate this essential part of the Terms of Reference.

(iv) Mandal has not done any survey to find out as to whether 3743 castes which according to him are the backward classes, under Article 16(4) had inadequate representation in the State services. There is no material on the record to show that 3743 castes identified by Mandal are not adequately represented in the State services. The condition of inadequacy is a condition precedent under Article 16(4) of the Constitution. This having not been established, the identification of the so-called "backward classes", is wholly unconstitutional and inoperative.

(v) The report indicates that the list of backward castes was prepared from the following sources :

1. Socio-educational field survey;
2. Census report of 1961;
3. Personal knowledge gained through extensive touring and from the evidence; and
4. Lists of Other Backward Classes notified by various State Governments.

The so-called "socio-educational field survey" was an eye-wash. Only two villages and one urban block in each

district of the country was taken into consideration. According to the petitioners only .06% of the total villages in the country were surveyed. Mr. Venugopal relied on a chart showing the sources from which the list of castes was prepared by the Mandal Commission. The contents of chart were not disputed before us by the Union of India. Mr. Venugopal pointed out that out of 3743 castes only 406 were subjected to the socio-educational field survey. To be precise the chart shows that only 10.85% castes were subjected to survey and the remaining castes were picked up from other sources. The commission set up for the purposes of identifying backward classes is under an obligation to conduct comprehensive survey. A backward class, identified on the sole test of caste and that also with only 10.85% socio-educational survey, cannot be constitutionally valid under Article 16(4).

Large number of castes were picked up by the Mandal Commission from the State lists. It was illustrated before us that out of 260 castes identified from the Union Territory of Pondicherry only 14 were subjected to socio-educational survey. One was identified on personal assessment of the Commission and the the remaining 245 castes were picked up from the State list. These facts are not denied by the Union of India in the affidavit filed in Writ Petition No. 930 of 1990. Similarly large number of castes wre taken from the lists of other backward classes operating in the States. It was wholly illegal for the Commission to adopt the State lists without any investigation and survey. It is not disputed that no Commission was ever set up in

Pondicherry to identify the backward classes. There is nothing in the Mandal Report to show that the State lists which were adopted were ever prepared as a result of any survey, investigation or scrutiny, Mandal Report in paras 263 and 264 specifically states that Haryana, Himachal Pradesh, Assam, Pondicherry, Rajasthan, Orissa, Meghalaya and Delhi have notified lists of Other Backward Classes without their being any enquiry into their conditions. In para 265 it is mentioned that Andaman and Nicobar, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Goa Daman and Diu, Lakshadweep, Madhya Pradesh, Manipur, Mizoram, Nagaland, Sikkim, Tripura and West Bengal have never prepared a list of OBCs. If the State lists were to be declared as Other Backward Classes by the Central Government then no Commission under Article 340 was required -an Administrator could do the job, when 90% of the castes selected were not subjected to the socio-educational survey it is impermissible to treat the said castes as backward classes.

The 1961 census was also taken as a source for preparing the list of backward castes. There is nothing on the record to show as to why Mandal relied on 1961 census when the 1971 census was available. A statement filed by Mr. Venugopal after examining the government records shows that the castes were also picked up from the Kaka Kalelkar Commission Report. In para 1.13 Mandal condemns Kaka Kalelkar's report, even otherwise the said record was rejected by the Government of India in 1955 but still Mandal adopts castes from the said Report.

It is, thus, obvious that hardly any investigation was done by the Mandal Commission to find out the backward classes for the purpose of Article 16(4). A collection of so-called backward castes by a clerical act based on drawing-room investigation cannot be the backward classes envisaged under Article 16(4). If the castes enlisted by Mandal are permitted to avail the benefit of job reservations, thereby depriving half the country's population of its right under Article 16(1) the result would be nothing but a fraud on the Constitution.

(vi) The Mandal Report virtually re-writes Article 16(4) by substituting caste for class. The caste has been made the sole and exclusive test for determining the backward classes. Every other test economic or non-economic - has been wholly rejected. Para 1.21 of the Mandal Report states "the substitution of caste by economic tests will amount to ignoring the genesis of social backwardness in the Indian society". Paras 11.5 and 11.25 of the Mandal Report indicate that the caste was taken as a collectivity for the purposes of socio-educational survey. The "indicators" for determining social and educational backwardness were also applied to the castes alone. Every single piece of evidence and other material adverted to by the Commission was only for the purpose of determining whether a caste was backward. There was no investigation at all to find out whether a member or family in the caste was backward. The "indicators" invoked to determine backwardness were invariably applied to the castes and not to the individuals. What emerges is that in the first instance only a

caste was taken as a collectivity. Thereafter no individual or a family of that caste was subjected to the "indicators". Only the castes were tested through the "indicators" and the result obtained. Thus the caste has been made the sole, paramount, overriding and decisive factor. The methodology based on caste alone is unconstitutional as it violates Articles 16(2) and 16(4) of the Constitution of India.

(vii)The Mandal Report invents castes even for non-Hindus. The obsession with casteism and the desire to apply the same yardstick to all Indians impelled the Commission to identify backward classes among non-Hindus also by the exclusive test of caste (paras 12.11 to 12.18) regardless of the fact that caste is anathema to Christianity, Islam and Sikhism. There are various other denominations and religions in the country like Buddhist, Jains, Arya Samajis, Lingayats etc. who do not believe in casteism. The net-result is that almost 25% of the population was not taken into consideration by the Mandal Commission. The approach was anti-secular and against the basic features of the X Constitution.

(viii)The Mandal Commission has estimated the population of other backward classes in the country as 52%. To say the least the exercise to reach the figure of 52% is wholly imaginary. It is in the realm of conjecture. The conclusion arrived at in para 12.22 of the Mandal Report to the effect that backward classes constitute nearly 52% of the Indian population is based on 1931 census. It is wholly arbitrary to count the population of backwa-

rd classes in the country on the basis of census which took place fifty years before the report was submitted. In order to reach the conclusion of 52% Mandal has added up the population of Scheduled Castes, Scheduled Tribes, Non-Hindu communities (Muslims, Christians, Sikhs, Buddhists, Jains) and the forward Hindu castes and communities (Brahmins, Rajputs, Marathas, Jats, Vaishya-Baniyas etc. Kayasthas, other forward Hindu caste/groups) which make 56.30% of the total population. Mandal has assumed that the residual population of 43.70% (100 minus 56.30% equivalent to 43.70%) consists of backward classes. It is difficult to imagine how anybody can accept such an illusory and wholly arbitrary calculations. It is pity that half of the country is being deprived of their fundamental right under Article 16(4) on the basis of the census exhumed from a sixty-year old grave and the calculations which are unknown to logic and fair play. Mandal further assumed, erroneously, that relative population growth of various communities at the time of Mandal Report was the same as at the time of 1931 census. It is absurd to thing that there was no change in their population growth during the long period of 50 years. It is pertinent to observe that India of 1931 comprised of present India, Pakisthan, Bangladesh, Burma and SriLanka and as such it would be wholly erroneous to relate the caste-based population situation of 1931 to that oif 1980.

(ix) According to Mandal Commission's own showing the materials before the Commission were woefully inadequate. Essential data was non-existent. "Hardly any State was able to give the

desired information"(para 9.4). As regards representation of OBCs in government services, the information received by the Commission was "too sketchy and Scrappy for any meaningful inference which may be valid for the country as a whole "(para 9.14)." No State Government could furnish figures regarding the level of literacy and education amongst other backward class"(para 9.30)." No lists of OBCs is maintained by the Central Government, nor their particulars are separately compiled in Government Offices".

Based on the reasoning and the conclusions reached by in paras "A" to "K" of the judgement direct as under :

(i) The identificatin of 3743 castes as a "backward class" by Mandal Commission is constitutionally invalid and cannot be acted upon.

(ii) Office Memorandum dated August 13, 1990 issued by the Government of India is unconstitutional, non est and as such cannot be enforced.

(iii) Para 2(i) of the Office Memorandum dated September 25, 1991 adopts the means-test. The adoption of means-test by the Government of India in principle is upheld. Since para 2(i) is applicable to the 3743 castes identified by the Mandal Commission, the said para shall not operate till the time "backward classes" for the purposes of Articles 16(4) are identified by the Government of India in accordance with the law laid down in this judgement.

(iv) Para 2(ii) of the Office Memorandum dated September 25, 1991 is upheld, Since this para is integral para of the two

Memoranda dated August, 13, 1990 and September 25, 1991, it cannot operate independently. I, however, hold that the Government of India can make reservations solely based on economic criterion by a separate order.

Philosophy and Objectives of Reservations :

The aim of any civilised society should be to secure dignity to every individual. There cannot be dignity without equality to status and opportunity. The absence of equal opportunities in any walk of social life is a denial of equal status and equal participation in the affairs of the society and, therefore, of its equal membership. The dignity of the individual is denied in direct proportion to his deprivation of the equal access to social means. The democratic foundation are missing when equal opportunity to grow, govern, and give one's best to the society is denied to a sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithals to avail of them are denied. Nevertheless, the consequences are as potent.

Under Article 16(4), the reservation in the State employment is to be provided for a "class of people" which must be "backward" and "in the opinion of the State" is "not adequately represented" in the services of the State. Under Article 46, the State is required to "promote with special care" the "educational and economic interests" of the "weaker sections" of the people and "in particular" of the Scheduled Castes and Scheduled Tribes, and "to protect" them from "social injustice" and

"all forms of exploitation". Since in the present case, we are not concerned with the reservations in favour of the SCs/STs, it is not necessary to refer to Article 335, except to point out that, it is in terms provided there that the claims of SCs/STs in the services are to be taken into consideration, consistently with the maintenance of efficiency of administration. It must, therefore, mean that the claims of other backward class of citizens and weaker sections must also be considered consistently with the maintenance of the efficiency of administration. For, whomsoever, therefore, reservation is made, the efficiency of administration is not to be sacrificed, whatever the efficiency may mean. That is the mandate of the Constitution itself.

The various provisions in the Constitution relating to reservation, therefore, acknowledge that reservation is an integral part of the principle of equality where inequalities exist. Further they accept the reality of inequalities and of the existence of unequal social groups in the Indian society. They are described variously as "socially and educationally" backward classes"(Article 15(4) and Article 340), "backward class" (Article 16(4) and weaker sections of the people"(Article 46). The provisions of the Constitution also direct that the unequal representation in the services be remedied by taking measures aimed at providing employment to the discriminated class, by whatever different expressions the said class is described. How does one identify the discriminated class is a question of methodology. But once it is identified, the fact that it happens to be

a caste, race, or occupational group, is irrelevant. If the social group has hitherto been denied opportunity on the basis of caste, the basis of the remedial reservation has also to be the caste. Any other basis of reservation may perpetuate the status quo and may be inappropriate and unjustified for remedying the discrimination. When, in such circumstance, provision is made for reservation, for example, on the basis of caste, it is not a reservation in favour of the caste as a "caste" but in favour of a class or social group which has been discriminated against, which discrimination cannot be eliminated, otherwise. What the Constitution forbids is discrimination "only" on the basis of caste, race etc. However, when the caste also happens to be a social group which is "backward" or "socially and educationally backward" or a "weaker section", this discriminatory treatment in its favour, is not only on the basis of the caste.

As has been pointed out earlier, our Constitution itself spells out the important objectives of the State Policy. There cannot be more compelling goal than to achieve the unity of the country by integration of different social groups. Social integration cannot be achieved without equal status to all. The administration of the country cannot also be carried on impartially and efficiently without the representation in it of all the social groups and interests, and without the aid and assistance of all the views and social experiences. Neither democracy nor unity will become real, unless all sections of the society have an equal and effective voice in the affairs and the governance of

the country.

In a society such as ours where there exist forward and backward, higher and lower social groups, the first step to achieve social integration is to bring the lower or backward social groups to the level of the forward or higher social groups. Unless all social groups are brought on an equal cultural plane, social intercourse among the groups will be an impossibility. Intermarriage as a matter of course and without inhibitions is by far the most potent means of effecting social integration. Intermarriages between different social groups would not be possible unless all groups attain the same cultural level. Even in the same social group, marriages take place only between individuals who are on the same cultural plane. Culture is a cumulative product of economic and educational attainments leading to social accomplishment and refinement of mind, morals and taste. Employment and particularly the governmental employment promotes economic and social advancement which in turn also leads to educational advancement of the group. Though it is true that economic and educational advancement is not necessarily accompanied by cultural growth, it is also equally true that without them, cultural advancement is difficult. Employment is thus an important aid for cultural growth. To achieve total unity and integration of the nation reservations in employment, are, therefore, imperative, in the present state of our society.

Under the Constitution, the reservations in employment in favour of backward classes are not intended either to be

indiscriminate or permanent. Article 16(4) which provides for reservations, also at the same time prescribes their limits and conditions. In the first place, the reservations are not to be kept in favour of every backward class of citizens. It is only that backward class of citizens which, in the opinion of the State, is "not adequately represented" in the services under the State, which is entitled to the benefit of the reservations. Secondly, and this follows from the first even that backward class of citizens would cease to be the beneficiary of the reservation policy, the moment the State comes to the conclusion that it is adequately represented in the services.

We may now proceed to deal with the specific questions raised before us :

Question No. I : Whether Article 16(4) is an exception to Article 16(1) and would be exhaustive of the right to reservation of posts in services under the State?

Question No. II : What would be the content of the phrase "Backward Class" in Article 16(4) of the Constitution and whether caste by itself could constitute a class whether economic criterion by itself could identify a class for Article 16(4) and whether "Backward Classes" in Article 16(4) would include the "weaker sections" mentioned in Article 46 as well?

Question No. III : If economic criterion by itself could not constitute a Backward Class under Article 16(4), whether reservation of posts in services under the

State, based exclusively on economic criterion would be covered by Article 16(1) of the Constitution?

Question No. IV : Can the extent of reservation of posts in the services under the State under Article 16(4) or, if permitted under Article 16(1) and 16(4) together, exceed 50% of the posts in a cadre or service under the State or exceed 50% of appointments in a cadre or service in any particular year and can such extent of reservation be determined without determining the inadequacy or representation of each class in the different categories and grades of Services under the State?

Question No. V : Does Article 16(4) permit the classification of "Backward Classes" into Backward Classes and Most Backward Classes or permit classification among them based on economic or other considerations?

Question No. VI : Would making "any provision" under Article 16(4) for reservation "by the State" necessarily have to be by law made by the legislatures of the State or by law made by Parliament? Or could such provisions be made by an executive order?

Question No. VII : Will extent of judicial review be limited or restricted in regard to the identification of Backward Classes and the percentage of reservations made for such classes, to a demonstrably perverse identification or a demonstrably unreasonable percentage?

Question No. VIII : Would reservation of appointments or posts

"in favour of any Backward Class" be restricted to the initial appointment to the post or would it extend to promotions as well?

Question No. IX : Whether the matter should be sent back to the five Judge Bench?

The answers to the questions may now be summarised as follows :

Question No. 1 :

Class (4) of Article 16 is not an exception to clause (1) thereof. It only carves out a section of the society, viz. the Backward Class of citizens for whom the reservations in services may be kept. The said clause is exhaustive of the reservations of posts in the services so far as the Backward Class of citizens is concerned. It is not exhaustive of all the reservations in the services that may be kept. The reservations of posts in the services for the Other sections of the society can be kept under clause (1) of that Article.

Question No. 2 :

The backward class of citizens referred to in Article 16(4) is the socially backward class of citizens whose educational and economic backwardness is on account of their social backwardness. A caste by itself may constitute a class. However, in order to constitute a Backward Class the caste concerned must be socially backward and its educational and economic backwardness must be on account of its social backwardness.

The economic criterion by itself cannot identify a

class as backward unless the economic backwardness of the class is on account of its social backwardness.

The weaker sections mentioned in Article 46 are a genus of which backward class of citizens mentioned in Article 16(4) constitute a species. Article 16(4) refers to backward classes which are a part of the weaker sections of the society and it is only for the Backward Classes who are not adequately represented in the services, and not for all the weaker sections that the reservations in services are provided under Article 16(4).

Question No. 3 :

No reservations of posts can be kept in services under the State based exclusively on economic criterion either under Article 16(4) or under Article 16(1).

Question No. 4 :

Ordinarily, the reservations kept both under Article 16(1) and 16(4) together should not exceed 50 per cent of the appointments in a grade, cadre or service in any particular year. It is only for extraordinary reasons that this percentage may exceeded. However, every excess over 50 per cent will have to be justified on valid ground which grounds will have to be specifically made out.

The adequacy of representation is not to be determined merely on the basis of the over all numerical strength of the Backward Classes in the services. For determining the adequacy, there representation at different levels of administration and in different grades has to be taken into consideration. It is the

effective voice in the administration and not the total number which determines the adequacy of representation.

Question No. 5 :

Article 16(4) permits classification of Backward Classes into backward and more or most Backward Classes. However, this classification is permitted only on the basis of the degrees of social backwardness and not on the basis of the economic consideration alone.

If backward classes are classified into backward and more or most Backward Classes, separate quotas of reservations will have to kept for each of such classes. In the absence of such separate quotas, there servations will be illegal.

It is not permissible to classify backward classes or backward class social group into an advanced section and a backward section either on economic or any other consideration. The test of advancement lies in the capacity to compete with the forward classes. If the advanced section in the backward class is so advanced as to be able to compete with the forward classes, the advanced section from the backward class no longer belongs to the backward class and should case to be considered so and denied the benefit of reservations under Article 16(4).

Question No. 6 :

The provisions for reservations in the services under Article 16(4) can be made by an executive order.

Question No. 7 :

There is no special law of judicial review when the

reservation under Article 16(4) are scrutiny. The judicial review will be available only in the cases of demonstrably perverse identification of the backward classes and in the cases of unreasonable percentage of reservations made for them.

Question No. 8 :

It is not necessary to answer the question since it does not arise in the present case. However, if it has to be answered, the answer is as follows :

The reservations in the promotions in the services are unconstitutional as they are inconsistent with the maintenance of efficiency of administration.

However, the backward classes may be provided with relaxations, exemptions, concessions and facilities etc. to enable them to compete for the promotional posts with other where ever the promotions are based on selection or merit-cum-seniority basis.

Further, the committee or both entrusted with the task of selection must be representative and manned by suitable persons including those from the backward classes to make an impartial assessment of the merits.

To ensure adequate "representation of the backward classes which means representation at all levels and in all grades in the service, the rules of recruitment must ensure that there is direct recruitment at all levels and in all grades in the services.

Question No. 9 :

The matter should not be referred back to the five Judge Bench since almost all the relevant questions have been answered by the Bench. The grivance about the excessive, and about the wrong inclusion and exclusion of social groups in and from the lista of backward classes and be examined by a new Committee which may be set up for the purpose.

CONCLUSIONS :

Both the impugned orders issued by the respective governments in 1990 and 1991 reserving appointments and posts for socially and educationally backward classes of citizens, without discharging their constitutional obligation of examining if the identification of backward class by the Commission was in consonance with constitutional principle and philosophy of the basis feature of the Constitution and if the group or collectivity so identified was adequately represented or not which is the sine quanon for the exercise of the power under Article 16(4), are declared to be unenforceable.

1. Reservation in public services either by legislative or executive action is neither a matter of policy nor a political issue. The higher Courts in the country are constitutionally obliged to exercise the power of judicial review in every matter which is constitutional in nature or has potential of constitutional repercussions.

2. a) Constitutional bar under Article 16(2) against State for not discriminating on race, religion or caste is as much

applicable to Article 16(4) as to Article 16(1) as they are part of same scheme and serve the same constitutional purpose of ensuring equality. Identification of backward class by caste is against the Constitution.

b) The prohibition is not mitigated by using the word, 'only' in Article 16(2) as a cover and evolving certain socio economic indicators and then applying it to caste as the identification then suffers from the same vice. Such identification is apt to become arbitrary as well as the indicators evolved and applied to one community may be equally applicable to other community which is excluded and the backward class of which is denied similar benefit.

Identification of a group or collectivity by any criteria other than caste, such as, occupation-cum-social-cum-educational-cum-economic criteria ending in caste may not be invalid.

c) Social and educational backward class under Article 340 being narrower in import than backward class in Article 16(4) it has to be construed in restricted manner. And the words educationally backward in this Article cannot be disregarded while determining backwardness.

3. Reservation under Article 16(4) being for any class of citizens and citizen having been defined in Chapter II of the Constitution includes not only Hindus but Muslims, Christians, Sikhs, Buddhists, Jains etc. the principle of identification has to be of universal application so as to extend to every community

and not only to those who are either converts from Hinduism or some of who carry on the same occupation as some of the Hindus.

4. Reservation being an extreme form of protective measure or affirmative action it should be confined to minority of seats. Even though the Constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation, of any manner, not to exceed 50 per cent.

5. Article 16(4) being part of the scheme of equality doctrine it is exhaustive reservation, therefore, no reservation can be made under Article 16(1).

6. Reservation in promotion is constitutionally impermissible as, once the advantaged and disadvantaged are made equal and are brought in one class or group then any further benefit extended for promotion on the inequality existing prior to be brought in group would be treating equals unequally. It would not be cradicting the effects of past discrimination but perpetuating it.

7. Economic backwardness may give jurisdiction to State to reserve provided it can find out a mechanism to ascertain inadequacy of representation of such class. But such group or collectivity does not fall under Article 16(1).

8. Creamy layer amongst backward class of citizens must be excluded by fixation of proper income, property or status criteria.

In Legal Thesaurus (Regular Edition) the following meanings are given to the word "class". :

"Assortment, bracket, branch, brand, bread, caste, category, classification, classes, denomination, designation, division.....; gradation, grade, group, grouping, hierarchy..... sect, social rank, social status....."

The following meanings are given to the word "caste" in Webster's English Dictionary :

"(1) a race, stock, or breed of men or animals; (2) One of the hereditary classes into which the society of India is divided in accordance with a system fundamental to Hinduism, reaching back into distant antiquity and dictating to every orthodox hindu the rules and restrictions of all social intercourse and of which each has a name of its own and special customs that restrict that occupation of its members and their intercourse with the members of the other classes (3) (a) : a division or class of society comprised of persons within a separate and exclusive order based variously upon difference of wealth, inherited rank or privilege, profession, occupation.....(b) the position conferred by caste standing (4) a system of social satisfaction more rigid than a class and characterised by hereditary status endogamy and social barriers rigidly sanctioned by customs, law or religion."

Venkataramiah, J also defined "caste" in practically the same terms. He said (SCC p.786, para 110).

"A caste is an association of families which practises

the customs of endogamy i.e. which permits marriages amongst the members belonging to such families only. Castes rules prohibit its members from marrying outside their caste A caste is based on various factors, sometimes it may be a class, a race or a racial unit. A caste has nothing to do with wealth. The caste of a person is governed by his birth in a family. Certain ideas of ceremonial purity are peculiar to each caste..... Even the choice of occupation of members of caste was predetermined in many cases, and the members of a particular castes were prohibited from engaging themselves in other types of callings, professions or occupations. Certain occupations were considered to be degrading or impure."

8.3 REPORT OF THE BACKWARD CLASSES COMMISSION

A SUMMARY OF CASES UNDER ARTICLE 15(4) :

R. Chitralekha : Vs : State of Mysore (A.I.R. 1964 SC 1823

Facts :

In the Mysore High Court in *D.G.Vishwanath : VS : Government of Mysore (A.I.R. 1964 Mys. 132)* involving the validity of the same order Hegde J. held that as the order had altogether ignored "caste" and "residence" basis, it did not benefit the really backward classes among the Hindus. The Supreme Court had stated in *Balaji* that caste in relation to Hindus was a relevant factor in determining the social backwardness of groups or classes or citizens.

The matter came on appeal to the Supreme Court in the *Chitralekha* case.

Issues :

- i) What the relevance of "caste" in determining social and educational backwardness?
- ii) Is "caste" and "class" synonymous?

Extracts :

Under Article 341 :

"The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution deemed to be Scheduled

Castes in relation to that State or Union Territory, as the case may be."

Holding :

- i) "Caste" is one of the relevant factors in determining social and educational backwardness;
- ii) "Caste" and "Class" are not synonymous.

Gurindar Paul Singh : VS : State of Punjab(A.I.R. 1974 Punj.125)

Facts :

A challenge to the government orders making reservation in favour of Scheduled Castes, Scheduled Tribes, backward classes and residents of backward areas and other classified categories for admission to medical colleges against 50% seats. The quantum of reservations was :

| | |
|--|-----|
| i) Scheduled Castes/Tribes | 20% |
| ii) Backward Classes | 2% |
| iii) Backward areas | 10% |
| iv) Sportsmen/women | 2% |
| v) Central Government nominees including from J & K | 6% |
| vi) Women candidates | 1% |
| vii) Candidates from border areas of Punjab | 5% |
| viii) Children of political sufferers of the freedom struggle with Punjab domicile | 2% |
| ix) a) Children of defence personnel who have lost their lives. | |
| b) Children of defence personnel disabled. | |
| c) Children of the personnel of the Border Security Force killed/disabled. | 2% |
| d) Children of the ex-Servicemen of Indian Armed Forces. | |

Issues :

- i) Is economic condition of a family relevant for making reservation in favour of backward classes for admission to medical college?
- ii) Is reservation for residents of backward areas constitutional?

Extracts :

Regarding backward area candidates the following conditions have been laid down :

"Backward Area Candidates :

Candidates claiming admission from backward areas of the State should submit along with their applications a certificate from Deputy Commissioner/General Assistant to Deputy Commissioner, Sub-divisional Officer(Civil) of the District concerned that the claim of the candidate falls under one of the following categories as given in Punjab Government letter No. 15595-WG 56/4174, dated the 7th September, 1956 from the Chief Secretary to the Government of Punjab :-

- a) A person who with the family members has been residing in a particular village or town constantly for a period of ten years, or more and is likely to continue to reside there.
- b) A person who has been residing in a village or town for a period of less than ten years, but is likely to reside there of account of the fact that he has obtained gainful employment or settled there after retirement, would also be termed as permanent resident, if the stay is for not less than five years.

- c) In the case of a person who has been residing in a village or town in the said area, the total period of his stay at both places will be counted towards his residence in that area".

Holding :

- i) Economic condition of a family was a relevant factor in determining backwardness.
- ii) Reservation for residents of backward areas was held to be unconstitutional.

Shameem : VS : Medical College, Trivandrum(A.I.R. 1975 Ker.131)

Facts :

The petitioners who belonged to communities which are socially and educationally backward challenged the constitutionality of the restriction imposed in G.D.P. 108/66/End. dated 2nd May, 1966 of the Kerala Government which stipulated that only applicants who are members of families whose aggregate annual income is below Rs. 6,000/- would be entitled to admission to the seats reserved for students belonging to the backward classes. The petitioners who had applied for admission to the First Year M.B.B.S. Course 1974-75 were denied admission. The Government order was passed consequent upon the report of the Kumars Pillai Commission which recommended a ceiling of Rs. 4,200/- as income limit.

Issues :

- i) Whether exclusion of persons belonging to socially and educationally backward class on ground of higher income valid under article 15(4), in other words, the sub-

division of the Backward Classes on the basis of income permissible?

ii) Whether the ceiling limit of Rs.6000/- arbitrary?

Holding (Single Judge K.K.Narandran J).

i) Exclusion of persons belonging to socially and educationally backward classes on the basis of higher income was not warranted under Article 16(4).

ii) The ceiling limit of Rs.6000/- in the instant case was held to be arbitrary and irrational.

Extracts :

Govindan Nair, C.J.

In the case of the major communities like Ezhavas and Muslims which form sizeable portions of the population of the State the Commission found it difficult at the time of its report to classify these communities wholly, or even by the large, as socially and educationally backward. The anomaly of including all the members of such castes as socially and educationally backward was not noticed by this Court in the Full Bench decision in Hariharan Pillai : VS : State of Kerala 1967 KLT 266.

Holding :

Reversed the decision of Single Bench in Shammen Case.

On appeal to the Supreme Court, the Court in K.S. Jayasree : VS : State of Kerala(A.I.R. 1976 S.C. 3281) upheld the decision of the Kerala High Court in Krishna Kumari's case.

Caste and poverty are both relevant for determining backwardness. Application of the test of economic means to the members of castes listed by the Commission to determine their social and educational backwardness was upheld by the Court.

SUPREME COURT AND HIGH COURT CASES

Venkatarama : VS : State of Madras and another(A.I.R. 1951 SC 229).

Facts :

The petitioner applied under Article 32, alleging infringement of his fundamental right to employment in the State service.

Issues :

Whether the Madras Communal G.O. by which reservation of posts in the State Services was made for various communities (not coming within the category of backward classes) according to their race, caste and religion infringed the fundamental right guaranteed under Article 16 ?

Judgement :

A seven-judge Bench comprising Kania C.J., Fazl Ali, Patanjali Sastri, Mahajan, B.K. Mukherjee, G.R. Das and Bose J., held that the Communal G.O. was repugnant to Article 16 and therefore void and illegal.

The Court's decision was based on the following grounds :

- i) Equality of opportunity in public employment was guaranteed by Article 16(1) while Article 16(2) further guaranteed that there should be no discrimination as regards this matter only on the grounds or religion, race, caste, sex, descent, place of birth or residence. Article 16(3)-(5) provided the exceptions to this guarantee.
- ii) Ineligibility for a post only on the ground that a

person belonged to a particular caste, religion, etc. contravened Article 16(2).

iii) Article 16(4) expressly permitted reservation of posts for backward classes, who were in the opinion of the State not adequately represented in the State services. It did not permit reservation for those persons who did not belong to this category nor did it enable the State to reserve posts on Communal basis. Any distribution of posts amongst communities having a fixed ratio infringed Article 16(1) and (2).

The Court concluded with the following words :

"This ineligibility created by the communal G.O. does not appear to us to be sanctioned by Cl.(4) of Article 16 and it is an infringement of the fundamental right guaranteed to the petitioner as an individual citizen under Article 16(1) and (2). This Communal G.O. in our opinion, is repugnant to the provisions of Article 16 and is as much void and illegal."

Proposition laid down :

The Government cannot make reservations for posts under it amongst the "various communities and coming in the category of backward classes".

General Manager, S. Railway : VS : Rangachari (AIR - 1962 SC 36)

Facts :

The respondent L.K.Rangachari filled a writ petition in the Madras High Court under Article 226 of the Constitution. The High Court issued a writ of mandamus restraining the appellants

i.e. G.M.Southern Railway and Personnel Officer(Reservation) Southern Railway from giving effect to directions of the Railway Board, ordering reservation of selection posts in Class III of the Railway service in favour of Scheduled Castes and Tribes from persons already holding posts of Court Inspectors in Class III, one of which was held by the respondent. Following the issue of the writ, the appellant applied for and was granted a certificate under Article 132(1) by the High Court as it involved a substantial question of law, namely scope of Article 16(4).

Issues :

- i) Whether the reservation under Article 16(4) could be made in the case of promotions or only at the stage of appointment only.
- ii) Article 16(4) speaks of only "backward classes". Whether the term "backward classes" included Scheduled Castes and Tribes as well. The High Court on this matter had taken the view that the term did include Scheduled Castes and Scheduled Tribes. There was no dispute about this before the Supreme Courte.
- iii) Whether retrospective operation could be given to an order of reservation.

Majority Judgement :

The Court by a majority of three to two reserved the decision of the Madras High Court and held that the reservation did not exceed the limit of Article 16(4) and was accordingly valid.

The majority was of the view that the term "matters of

employment" in Article 16(1) covered not only initial appointment but also promotions and such other matters as salary and periodical increments and terms of leave, gratuity, pension and age of superannuation. Article 16(4) was an exception to Article 16(1).

Minority Judgement :

The minority view of Wanchoo and Ayyanger JJ, however held the reservation to be outside the limit of Article 16(4) and as such they were of the view that the appeal should be dismissed. Propositions laid down : Article 16(4) covered both initial appointments and promotions. The reservation can be made both retrospectively and prospectively.

T.Devadasan : VS : India (AIR 1964 SC 179)

Facts :

The appeal was brought by the petitioner under Article 32 of the Constitution challenging the instructions issued by the Government of India which in effect resulted in the carry forward rule which resulted in reservation of more than 50% vacancies being made in a particular year

The contentions of the petitioner were :

- 1) The percentage of marks secured by him was 61 whereas some of 29 Scheduled Castes and Tribes candidates secured as low as 35. He pleaded that the U.P.S.C. was not competent to prescribe one qualifying standard for them and another for the rest of the candidates.
- 2) If the Government of India and the U.P.S.C. had adhered to 17% quota reservation for them, he would have stood

a fair chance to get selected. However, the reservation made in fact amounted to 65 per cent and was thus far in excess of that stated in the U.P.S.C. notification. A reservation limitation of 17½% would have meant that only 8 vacancies could be filled by members of Scheduled Castes and Tribes, the remainder to other candidates by merit.

- 3) The "carry forward rule" relied upon by the U.P.S.C. and Government of India was unconstitutional.

Issues :

1. The main question was whether the carry forward rule as modified in 1955 was unconstitutional as violative of article 16(1) or article 14 of the Constitution.
2. The question also arose for consideration whether the impugned provision of reservation of posts for Scheduled Castes and Tribes offends article 16(4).

Minority decision :

In his view Article 335 had no bearing in construing Article 16(4). It was, therefore, necessary to fall back upon Art. 16(4) alone to ascertain validity of the provisions made by Government.

Article 14 laid down the general rule of equality. Art. 16 was an instance of its application with special reference to opportunity of appointments under the State. In his view Art 16(4) was not an exception to art. 16(1). He observed : "If it stood alone all the backward communities would go to the wall in a society of uneven basis structure..... They would not have any

chance if they were made to enter the open field of competition without adventitious aids till such time when they could stand on their own legs. That is why the makers of the Constitution introduced Cl.(4) of Art. 16. The expression 'nothing in this article' is a legislative device to express its intention in a most emphatic way that the power conferred there under is not linked in any way by the main provision but falls outside it. It has not really carved out an exception, but has preserved a power untrammelled by the other provisions of the Articles."

Proposition laid down :

Even if reservations standing by itself in a particular year may not be unconstitutional on account of the reservations being not excessive (not more than 50%), but if such reservations added by the reserved seats under a carry forward formula results in making the reservations excessive in a particular year, they would become unconstitutional.

INTRODUCTION :

The Problem and Hypotheses

Hypothesis 1 :

if the communal reservation scheme has had a long history, relation by the forward castes is likely to be absent.

The historical timing of the introduction of the scheme has tremendous bearing on the reaction of the groups adversely affected by such schemes. If the reservation schemes come to existence at a time when the levels of political organisation and mobilization of the groups are low, they are likely to be accepted as a kind of fait accompli. The groups kept out of

the reservation schemes are likely to learn to live with the disadvantage and try to overcome them in various ways. But if the reservation schemes are introduced at a time when the levels of political mobilization and organisation are very high, then such groups are likely to resort to resistance.

Hypothesis 2 :

If the forward castes are divided against themselves the chances of relation are less.

Obviously, cohesion or unity on the part of the forward castes, which are kept out by the reservation schemes, increases their capacity for relation. If such forward castes themselves are divided politically or by the reservation scheme itself, their capacity to mount resistance and relation will be less. If a reservation scheme divides the forward castes along the subcaste lines and includes some within the purview of reservation and excludes the others, the unity of such castes is tremendously affected. In other words, the fact whether the whole clusters of castes have been taken into account for forward/backward classification or their subcastes, have been taken into account for forward/backward classification is a crucial one.

Hypothesis 3 :

If the backward and Scheduled Castes are not getting on well together, the retaliation on the part of forward castes is likely to be high.

It has been discussed above how the various kinds of cleavages have, affected the emergence and the nature of the backward class movements in different parts of the country. If

the intermediate castes can make a common cause with the Scheduled Castes and Scheduled Tribes and forge a common and united political phalan, then the backward class movement is likely to be very strong. If for some reasons, the Scheduled Castes and Scheduled Tribes and other minor artisan castes like the potters, the weavers, the carpenters etc. feel threatened by the intermediate castes, the backward class movement will be considerably-weaked. There are many states in India where the weaker landless minority artisan castes and the Scheduled Castes look to the upper castes and not to the artisan castes and the Scheduled Castes feel that the operation of the democratic processes in the last 30 years had benefited the intermediate castes, they are likely to be less enthusiastic in joining hands with the intermediate castes in the backward class movement and agitation for supporting the reservation schemes.

Hypothesis 4 :

If the backward classes are also politicized not organised, the retaliation on the part of the lowered castes is less likely.

Either of the following conditions is necessary for the viability and success of a reservation scheme. In the first place the Government has to fully back it and standby the commitments. This happened, for example, in the case of the Madras Presidency and the Princely Mysore State. The British Governors, executive councillors and ICS Officers of the Madras Presidency were fully persuaded that the Brahmin domination in the services and the professions must be reduced. They were sympathetic to the cause

of the Justice party from the begging. Similarly, the then Maharaja of Mysore was also inclined in favour of giving the non-Brahmins a fairer deal. In the absence of such support from the top, a second condition has to be fulfilled. If the backward classes have fully penetrated into the dominant party and the various corridors of power and have been politicized and organized, they are in a position, or they have the potential to mount a counter retaliation in case the disaffected forward castes agitate against a reservation scheme.

Hypothesis 5 :

If the upper castes are suddenly faced with the prospect of losing their political and economic position, i.e. if a reservation scheme is likely to bring about a sudden rank disequilibrium, then the chances of retaliation on the part of such castes are very high.

In the United States much of the white backlash against the protective discrimination and other facilities given to the blacks has been spearheaded by those poor whites who were faced the threat of a sudden loss of status and prestige. Similarly in India, if the upper castes face a similar sudden threat to their position, they will be tempted to amount resistance and retaliation. If for some reasons the upper castes continue to maintain their mobility and status in some other ways and avenues, they are likely to feel less threatened by the reservation schemes favouring the intermediate and the backward classes. It is quite possible that in a couple of states under study the upper castes felt that the intermediate castes which have been

included in the backward classes list are getting prosperous economically and also will have the added advantage of job and professional opportunities. In such a situation of rank disequilibrium, they are likely to retaliate against the reservation schemes.

Hypothesis 6 :

If the forward subcastes persons can pass off as backward castes persons, the likelihood of retaliation is less.

On the fact of it, this hypothesis may sound implausible. No matter what a person does, he can not shake off his caste label. But, if the OBC classification takes into account the subcastes of the various major caste categories and classifies some as forward and some others as backward, it will be relatively casier for a person belonging to a forward subcaste to pass off as one belonging to a backward subcastes. While, in the rural areas the village officers or the tahsildars may identify a person's subcaste accurately and place him as either forward or backward, in the urban areas it become very difficult for the government officers to disprove that a person does not belong to one subcaste and prove that he actually belongs to another subcaste. Particularly in the South Indian States of Tamil Nadu and Karnataka it is said that many applicants for jobs can manage to obtain any kind of certificate.

Hypothesis 7 :

If the State as a whole has experienced a kind of revivalism, or is mobilized against outside symbols, the backward class movement against the wordard castes is likely to be less powerful.

As discussed in the oretical sections of this Chapter an appropriate cleavage between the upper castes and lower castes is a necessary precondition for the mobilization of the lower castes into a backward class movement. It is quite possible that historically speaking such cleavages may appear first. But they are likely to be blurred if a sub-nationalist revivalistic movement developes in that area. These cleavages between the upper castes and lower castes need not be very durable once. As some non-Brahmin castes get the advantage of reservation and political power they may improve their social and economic position considerably. We then should expect a new cleavage to appear i.e. between those who have not gained from the reservation and those who have gained. But this cleavage may be prevented from surfacing if any kind of a sub-nationalist or revivalistic movement distracts the energies, attention and the sense of relative deprivation of the really disadvantaged lower castes.

Hypothesis 8 :

The capacity on the part of the backward castes to retaliate is a function of (a) their numbers; (b) political consciousness; (c) dominance, and (d) pereceived lack of alternative opportunities.

It stands to reason that if the castes which have been classified as forward have considerable numerical support and are possessing a high degree of political consciousness then their capacity to retaliate is likely to be high. Similarly, if they are dominant economically and politically and are in control of the various positions of power, patronage and economic surplus, they are in a better position to resist the introduction of

reservation schemes. Again, if the members of these castes feel that they have no other alternative employment and occupational opportunities than the government jobs, they are likely to feel driven to the wall and will engage themselves in resistance. But, if they perceive that they can go out of the stage of pursue other job opportunities their frustration will less and they are less likely to mount retaliation.

Hypothesis 9 :

If the non-government tertiary sector is expanding, the relation on the part of the forward castes is less likely.

This hypothesis is organically related to the preceding one. If in a State and non-governmental sector is expanding, the members of those castes classified as forward may turn to such sectors. If the economy of the state is growing slowly and if the government is the only or the predominant employer of the young graduates, then the members of the castes classified as forward will feel deeply threatened and will be disposed in retaliate.

8.4 COMPENSATORY DISCRIMINATION :

(Reservation - A Burning National Issue)

Background :

When, on the achievement of the independence, the national leadership took up the task of framing the constitution, it was inspired by the concepts of equality and social justice. So our Constitution made special provisions for the advancement of the Scheduled Castes and Scheduled Tribes. The demand for similar provisions was raised soon after by castes which, though not considered 'untouchables', were extremely backward and socially oppressed. The Southern States, with long history of backward castes movements, took lead in the matter. They made special provision for 'other Backward Classes' in respect of reservations for them in government services and professional institutions. Some states of the north, particularly Gujrat, Bihar and Madhya Pradesh, followed suit.

There was nothing wrong with the principle of reservation. Without it the formidable task of removing the glaring disparities and socially inequalities in our diverse society could not be accomplished. But what was, in fact, meant to be a concession on the ground of economic upliftment has become a votecatching instrument at the hands of the ruling parties.

The principle was blantly distorted by the rulers of the country who did not care even for the Supreme Court ceiling of 50% reservations for all categories of beneficiaries. The unusually high percentage of reservations (upto the extent of

78%) in Gujrat, Bihar, Karnataka, Andhra Pradesh etc. led to anti-reservation agitations. These agitations not only showed the height of opportunism the politicians could scale but also involved huge lessons in men and money. Both the Press and the politician criticised the pampering of Backward Castes with unending and ever expanding reservations. Not a few were critical of the system on the ground that it accentuates and perpetuates castes differences. Reservation remain a national burning issue as before.

Reservation under the Current Arrangements :

Under the current arrangements, there are reservations for Scheduled Castes, Scheduled Tribes and 'Other Backward Classes'. Preferences are of three basis types. First, there are reservations which allot or facilitate access to valued positions or resources. The most important are reserved seats in legislatures, reservations of posts in government service, and reservation of places in academic institutions (particularly in the medical, engineering and professional colleges). To a lesser extent, the reservation device is also used in the distribution of land allotments, housing and other scarce resources. Second, there are programmes involving expenditure or provision of services -- for the beneficiary groups. Third, there are special protections to protect the Backward Castes from being exploited and victimized. According to some critics, India's system of official discrimination in favour of the most 'backward' sections of her population is unique in the world, both in the range of benefits involved and in the magnitude of the groups eligible for

them (Lelah Dushkin).

The reservations for the Scheduled Castes and Scheduled Tribes were supposed to be abolished after 10 years (untill 1960). But such is our system that they still continue after 40 years (2) and so far as one can foreseen, have become a permanent and unalterable feature of the Constitution. Besides, reservations are not limited to the stage of initial recruitment; there are reservations for promotion also irrespective of merit. The incidence of reservation and the effectiveness with which they are implemented tends to vary from one setting to another. It means that system of reservation is not uniform among the states.

Main Criticism of the Reservation System :

1. Both the reservation system and the policy of reservation have come under strong criticism. According to sociologists like late Prof. I.P. Desai, Upendra Baxi, and Andre Beteille, reservation is a must; but it should be on the basis of economic class instead of caste. Caste-based reservation is against the basis sprit of our Constitution which promises equality, non-casteist and non-communal secularism and a non-obscurantist society. Caste-based reservation is an impediment to progress and social change. (3)

2. To many, the use of caste groups to identify the beneficiaries of compensatory discrimination is responsible for perpetuating the caste system, accentuating caste consciousness and injecting caste into politics. It is indeed a very peculiar method of ensuring the unity of India by eliminating caste

system. No where is such a reservation specifically enjoyed by the constitution even in the caste of Scheduled Castes and Scheduled Tribes.

3. The principle of reservation has come to be discredited as inimical to 'merit' because it enables incompetent to sneak from behind and deprive brilliant and deserving youth of college seats and jobs, thus destroying the nation's prospects of achievement greatness.
(4)

4. Reservations are based on the theory that by the certain members of a particular caste holding public offices, the level of the whole caste will be raised; this theory has proved to be false. Individual members of the caste getting government employment on a preferential basis has had little effect on raising community standards. What has happened instead is that, as the reservation is on the basis of birth and not on that of economic deprivation, the majority of the people who take advantage of these reservations are those who are already affluent. There has developed a class among these favoured sections of society who monopolise the benefits of reservations while the rest of the members of the caste or tribe remain exactly where they were. Highly critical of the attitude of the elite group in the Scheduled Castes and Scheduled Tribes, Justice V.R.Krishna Iyar said "the 120 M.P.S representing them should be loyal to their impoverished voters rather than to the parties they belong to."

5. Critical observations have been made both by the

Supreme Court and senior political leaders on reservations. For example, the Supreme Court, in one of its judgements, remarked : "excessive zeal for the depressed classes was a fraud on the constitution which could destroy the ideal of supremacy of merit, efficiency of the services and absence of discrimination". Even Jagjivan Ram, the eminent leader of the Scheduled Castes, once said "Privilege could not be permanent feature of life and that reservations in perpetuity would make people think that the beneficiaries were, a community of incompetent and inferior people."

6. Conceived as a progressive measure to benefit the backward sections of the Indian society, the policy of reservation has been turned into an instrument of party politics over the year. The politicians are cynically exploiting for narrow elector purposes what was originally meant to be a short-term expedient. The reckless extension of relevant provisions has bred further group hostility. After the states of Gujrat, Madhya Pradesh, Bihar and Andhra Pradesh have been rocked by the anti-reservation agitations the anti-reservationists are threatening similar agitations in other states.

7. Apart from creating a vested interest, the reservation policy has promoted many more caste-groups to demand inclusion in the original list.

8. There is no justification for omnibus reservations and meaningless quotas at all levels, from primary education to professional colleges. These preferences place an unfair handicap

on individuals who are deprived of opportunities they deserve on merit.

9. According to Marc Galanter, preferences subject these groups (S.C, S.T and OBC) to manipulation by others aggravate their dependency, and undermine their sense of dignity, pride, self-sufficiency, and personal efficiency. (6)

Arguments in Favour of Reservations :

The criticisms of reservations system notwithstanding, there are equally cogent arguments in its favour. Marc Glanter, D.L.Seth and many others have not only justified the system by have also favoured the continuance of caste-based preferences for years to come. Their arguments in this regard use as under.

i) By affording opportunities for participation and well being, preferences promote feelings of belonging and loyalty among the beneficiaries, thereby promoting the social and political integration of these groups into Indian society. The preference programmes are thus integrative.

ii) Preference compensate from the help to offset the accumulated disablements resulting from past deprivation of advantages and opportunities.

iii) By reducing tangible disparities among groups and directing attention to mundane rather than ritual standing, preferences promote the development of a secular society.

iv) Compensatory programmes provide the basis for personal achievements and enlarge the beneficiaries' capacity to shape their own lives. But in other ways the programmes curtail

their autonomy. The promise of good position offers a powerful incentive for individual effort. With the boost given by compensatory discrimination a section of the Scheduled Castes and Scheduled Tribes have secured entry into the modern class populating the organised sector. There is a reason to believe that the system has had some notable success, and the members of the affected groups are playing more prominent role in public life now.

v) Preferences provide a direct flow of valuable resources to beneficiaries in larger measure than they would otherwise enjoy. Reserved seats, for example, provide an important legislative presence and swell the flow of patronage, attention, and favourable policy to Scheduled Castes and Scheduled Tribes. The reservation of jobs has been to a sizeable portion of the beneficiary groups earning, as well as security, information, patronage and prestige that go with government employment.

(7)

vi) The policy of reservation should be judged on the ground of prevailing realities of Indian society without colouring our mind either by merit or by caste. Caste being a fundamental reality of Indian society and a terrifying force of stability, the strategy of social action for changing our social system must be caste-based. To quote D.L.Seth, 'There is no sanction in the Constitution for applying economic criteria, either exclusively or primarily, for reservations and there seems to be no escape from using caste as a primary criterion for reservation.'

(8)

vii) The policy of reservation is one of the weapons to fight against casteism rather than a plan to improve economic condition of certain castes. It is a preparation for bigger structural changes in the country which cannot be accomplished unless a cultural revolution succeeds prior to that. This country needs a vigorous social mobility so that the existing social structure is demolished for the emergence of a new society based on equality.
(9)

viii) The need for preferential treatment has assumed more urgency under the dispensation of new economic policy. Had economic planning been oriented towards jobs for all, the problem would have been less acute.
(10)

Summing up :

The caste-based policy of reservation, with all its criticism, has enough to command in its favour. It is common knowledge that these castes are, by the large, yet to catch up with other castes notwithstanding all that the Government has done for them. Not very long ago, Mr. Eduardo Felerio, Minister of State of Finance, said that the banking sector was a notorious defaulter in the matter of filling the reserved posts for the Scheduled Castes and the Scheduled Tribes. Similar complaints have come from most public sector undertakings. Most of the jobs recruitment remain out of bounds for the Scheduled Castes and the Scheduled Tribes. And the UPSC's annual report has pointed out

that the Ministeries of the Government are the worst offenders in the matter of properly notifying the vacancies and reporting to the UPSC the action taken to fill them. But, in view of the rising expectations of the common people and the government's failure to meet them, and the consequent outburst of anti-reservation movements from time to time in the states, there is a need of national consensus on this issue. To look for parameters for a possible national policy on reservations, the Prime Minister should convene a conference of Chief Minister and party leaders. An indepth discussion of the various aspects of the problem can help evolving the outlines of a national policy.

So far the central government has had conflicting advice on this. The first high-powered commission headed by Kaka Kalelkar went to the extent of lamenting that the "remedies (it sought to suggest) were worse than the evils." Nor has the experience in the states been of any help. Tamil Nadu and Karnataka have managed to live peacefully with more than 65 per cent of the seats in professional colleges and the jobs in government offices earmarked for the deprived segments of the population. But bloody riots rocked Bihar in the mid-seventies and later Gujrat after their Governments decided to increase the reservation quota albeit on a much lower scale than in the two southern States. A national consensus cannot emerge given this uneven social response in the country as a whole.

(11)

Critical Assesment :

i) While there is some evidence to suggest that certain

middle castes in North India, notably the Jats in Western Uttar Pradesh, Haryana and Rajasthan, and the Yadavs in Uttar Pradesh and Bihar, have moved out of the orbit of the Congress(I) and into the Lok Dal, it is an over-simplification to believe that this movement is permanent and not dependent on other political exigencies, Barring 1980, when Charan Singh's Janata(S) captured a substantial number of parliamentary seats in Uttar Pradesh and Haryana, there has been no other instance of the middle castes being out of step with the national mood.

The co-relation between caste and electoral politics has often been mechanically overstated. All elections since 1971 have been characterised by certain distinctive common trends. First, there has been a tremendous increase in what is often called 'voter volatility'. This means that the electorate is less responsive to pre-existing constraints such as caste, family allegiance and loyalty to a political party while exercising its preference.

ii) In an amendment to the Representation of People Act in 1961, the Government of India had enlarged the scope of "corrupt practices" by including the following sentence to its Section 123, "The promotion of feelings of enmity and hatred between different classes of citizens on the grounds of religion, race, castes, community or language as a corrupt practice and an electoral offence." In his path-breaking judgement Mr. Justice S.P. Bharucha of the Bombay High Court has, recently set aside the election of a Shiv Sena MLA on the ground that he was guilty of

corrupt practices in "using religion" to appeal to the electorate. Earlier, the Supreme Court's judgement had set aside the election of Akali MLA in Punjab for his use of a hukamnama to influence Sikh voters.

Arguments against the Reservation Policy :

The anti-reservationists argue that the reservations must be on the basis of economic conditions and not on the caste basis. They argue that when the government is emphasising on social welfare, it is right to deny a job to a first class graduate from the so-called 'high caste' and offer it to a third class graduate from the backward community ? Pilloo Mody in one of his interviews observed that the reservation itself has become a principal instrument of discrimination. To avail himself of facilities a man will have to declare himself a Harijan and therefore be dubbed a 'Harijan'. As long as he maintains the identity he cannot claim equality. The following arguments are advanced against the reservation policy.

1. Reservations create a vested interest in perpetuating backwardness, it becomes a convenient tag where by more and more section of the community try to corner concessions available.

2. The benefits do not percolate down to the broad masses of SC/ST people and other backward communities. A tiny elite only, therefore, is created, this tiny elite, in tune, creates a gap between it and the less fortunate sections of its own community, and apes the manners and life styles of the

forward communities the process referred to by sociologists as 'Sanskritisation'.

3. In the vary nature of things, reservations cannot continue in perpetuity. The whole rational of reservations is that over a period of time, the backward communities should be given an opportunity to come up at par with their more advanced brethern.

4. Under a system of reservations, injustice is caused to many meritorious candidates, whose only disqualification is that they belong to forward communities.

Many people have began questioning the appropriateness of the very idea of reservation. The wonder whether the policy of reservation has helped at all in solving the real problems of the backward classes, more especially of SCs and STs. They have serious misgivings that the reservation policy may have contributed to the growing feeling of separateness amongst these classes as also in the minds of the rest of society. Continuing the policy indefinitely might, it is feared, widen the gulf irretrievably and thus do more harm than good in the long run.

Arguments in support of Reservation Policy :

The pro-reservationists argue that the superiority of the Brahmins and the other upper castes and the low social ranking of the backward castes and the Shudras are ideas rooted in the Hindu scriptures. They point out how even to-day, a poor Brahmin enjoys a higher status socially than a rich man belonging to one of the backward castes. They, therefore, feel that caste

is a relevant criterion in the determination of backwardness. They want to compensate members of the backward castes for their age old social handicap by giving them better representation, better opportunities and better facilities.

It is suggested that the reservation policy as a whole is meant to fulfil a larger social purpose than merely to benefit a few individuals. That larger purpose is 'to elevate individuals from historically disadvantaged and exploited communities to levels of high visibility where they serve as symbols of hope and of a new order'.

They further argue that ritual status is a predominant criterion of social stratification and that the acquisition of economic and political power does not in itself assure the upward movement of a social group on the social ladder. Further, they point out how, of economic backwardness is everything, the framers of the Constitution would not have taken the trouble of using the word 'socially and educationally backward classes' in Article 15(4). They would have been quite brief and used just the word "economically backward."

Refuting the criticism of anti-reservation on the nomenclature of 'castes' and 'classes' they claim that backward castes are also backward classes. Mandal Commission in its micro-study of a number of villages finds that, by and large, there is close correspondence between the caste hierarchy and class hierarchy. Further, the pro-reservationists allege that 80 per cent of the population in India. In support of the policy of

reservation. Devraj Urs once argued that casteism of one hue could be fought only by casteism of another hue. Why should it be said that if the lower castes and the under-privileged fought for their share in the Government, it was tantamount to casteism ? Urs added that, after all, the social structure in which one grows up was basically an unequal one. And unless the state intervened, that set up would continue for all time. Ram Monohar Lohia observed that if merit were to be the sole criterion for selection or appointments, the high castes with their 5,000 year old tradition of specialisation in mental pursuits would be unbeatable.

Further, the pro-reservationists argue that to run the administration efficiently one does not need to be a genius, common intelligence is sufficient if it is coupled with a high degree of honesty and a capacity to take decisions. According to them one's merit is a product of the socio-economic conditions of one's family. The children of socially superior and prosperous parents do well in education and in the job-market. The socio-economic conditions of the backward castes have not improved. They are, therefore, entitled to reservation. Reservation, they declare, does not lead to any decline in administrative efficiency. On the other hand, it integrates the political and social systems and ensures social equality. It strengthens the faith of the backward classes in the political system. This is its true promoter of national integration.

(16)

Politics of Reservation :

With the introduction of adult franchise and

competitive politics these SCs and STs elites specially the political elites have been successfully subservient to the causes of the ruling party. And the ruling parties with their time tested minorities' welfare programme have left no stone unturned to mobilize the numerical and so legislative strength of these few communities to make it available for the former's sectional interest. However, the political mobilization of these deprived groups is by no means an entirely new phenomenon, they have indeed formed part of the electoral arithmetic right from the beginning.

At the practical level the Congress party leaders especially Mrs. Gandhi understood the importance of the numerical strength of the Scheduled Castes as they held the balancing force in most of the states in 1967 Assembly Elections. Therefore, in 1971 mid-term parliamentary elections, Mrs. Gandhi relied on SCs and STs to win election. She lost some of their support in 1977 parliamentary elections due to compulsory sterilization programme as the SCs and STs were its main victim. Moreover, the resignation of Jag Jivan Ram from the Congress alienated her from the SCs and STs and as a result she lost the election.

The Janata Party came into power by was dominated by the Upper Caste and middle caste peasantry that became dominant in north India. They led lose reign of terror on the SCs and STs for example the Parasbhiga and Belchi carnage. Mrs. Gandhi came back to power by highlighting the atrocities on SCs and STs and at once she became a rallying point for these castes. Her victory

in parliamentary elections was based on their support mainly. Rajiv Gandhi's sudden declaration that all posts reserved for SCs and STs must be filled by August 31, 1989 signals the beginning of yet another attempt to reduce the Indian voter as elections draw nearer. The 1989 verdict has, however, signalled the coming to power of intermediary caste and the policy of reservation is extended in favour of OBCs (other backward castes). Thus, we can conclude --

1. The ruling party, like Britishers, used the reservation facilities to secure power in the democratic framework.
2. The present reservation policy created at both horizontal articulation of political conflict between Backward Castes and Upper castes on one hand and between SCs and Backward Castes on the other. It has also created vertical articulation of political conflict among the SCs reducing them at the small fragments.
3. The patronage has certainly created the political consciousness among the reservation beneficiaries but it is created at the cost of killing revolutionary potentials among them.
4. In the last, these reservations have led to the division between the Scheduled Castes elites and masses once again like Britishers, completing the division between the elite culture and mass culture.

POLICY ALTERNATIVES

The reservation quotes have not been fully utilised anywhere, including Gujarat. A government of Gujarat publication has admitted that "the unutilised reserved seats have been utilised by non-backward students of merit, which shows that 89 per cent seats in medical faculty and 84 percent in engineering faculty have gone to non-reserved students."

The Sixth Report of the Commission for Scheduled Castes and Scheduled Tribes candidly observes: "The overall position regarding the representation of Scheduled Castes and Scheduled Tribes in services in eight States and Union Territories is discouraging. In case of Scheduled Castes, their representation in class I and II posts is far below the prescribed quota in the respective States/UTs. In class III posts also the desired quota for Scheduled Castes has not been achieved in any of the States/UTs."

The progress of Scheduled Castes and Scheduled Tribes in group B and C (Class II and III services) has been good, But as far as Group A (Class I) service is concerned - with which goes both status and power -- the position is still extremely unsatisfactory. They still have a considerable distance to cover.

It is repeatedly said that reservation, while causing resentment all round, has not made any impression on the poverty of the SCs, STs and OBCs. This is wrong argument. Since government service and employment in public sector undertakings is only one outlet, better access to it could not be expected to make an

impact on the economic condition of a large mass of people. It is as poor an argument as ranging that adult franchise and liberty have not solved the problem of bread effectively. The purpose of reservation policy was not to solve the economic problem. Its purpose was to give the depressed section a stake in the state, a feeling of power and equal rights.

The backwardness of certain groups arises from their inability to compete in a modern competitive society, either because their religious and social environment has impeded, this, ability or because they have been too poor to take advantage of the facilities for advancement that modern India offers. The solution then is to create an environment for a large a number as possible of these deprived sections, where they will have from infancy the same advantages as only the rich enjoy today so the by the time they grow up, they will be able to compete on their merits with anybody else.

The concrete solution we have to offer is that the state should establish residential schools of the standard of the best public schools -- the products of which start with an enormous advantage in all fields and not only in the public services -- in every district of the country. Admission to these should be limited to the economically disadvantaged people, the vast majority of whom belong to the backward and landless sections of the community. All costs should be borne completely by the state. It is obvious that the I.O. of a child belonging to no matter how suppressed and backward a caste is as high as that

of a child of the upper castes; the distribution of natural talent has nothing whatever to do with the caste into which one is born.

The upper castes have an advantage because of their economic position and their traditions of learning, if the same conditions are given to children of the backward castes, there is absolutely no reason why the product should not equal that of the best of the privileged classes. If we had vision enough originally to foresee this situation, we could have solved this problem, that still bothers us and divides us for all time to come in the course of one generation. There would probably have been more members of the Scheduled Castes and Scheduled Tribes and backward classes in the government services than there are at present with all the reservations to back them up and they would undoubtedly have been of greater competence.

Now we have lived with reservations for the four decades and saw the entire controversy in the light of experience, Reservations should no longer be based on the criteria of caste alone, it should be linked to the factor of economic backwardness. It is also proposed that the children of those who have benefited by reservation should be disqualified, so as to spread the benefits to a larger state amongst SCs/STs.

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