

## CHAPTER II

### CONSTITUTIONAL SETTING

It was felt during national movement that the Constitution of independent India would be designed in such a way that the people's will gets reflected in the governance of the country. Under the inspiration of Mahatma Gandhi and other progressive leaders the national movement emphasised two important principles for achieving the goal of an egalitarian social order: (1) Adult suffrage, and (2) reservation of seats for depressed classes in representative bodies of the country.

A demand was also made that the deprived sections should have adequate representation in public services. During British raj certain number of posts were reserved for certain categories provided the candidates had fulfilled minimum prescribed qualifications. Religious communities and some other groups were given representation by the British authorities. After independence though we abolished communal representation both in Parliamentary institutions as well as in services, the problem of deprived sections remained.

The case for affirmative action was put succinctly by Ambedkar. They would have to use a method of seemingly unequal treatment to reach the goal of equality.<sup>1</sup> Ambedkar, in his note

to the Round Table Conference, wrote : "The Depressed Classes have suffered enormously at the hands of the high caste officers who have monopolized the Public Services by abusing law or by misusing the discretion vested in them in administering it to the prejudice of the Depressed Classes and to the advantage of the caste Hindus without any regard to justice, equality or good conscience. This mischief can only be avoided by destroying the monopoly of caste Hindus in the Public Services and by regulating the recruitment to them in such a manner that all communities including the Depressed Classes will have an adequate share in them".<sup>2</sup>

Jawaharlal Nehru, on the other hand, with his anti-imperialist approach, placed the demand for complete independence and thought any social reform movement would divert the main thrust of freedom movement. When Gandhiji launched his great untouchability campaign, Jawaharlal thought it would side line the main issue. Being influenced by Marxist philosophy he "tended to think of the problem of untouchability in and caste in terms of economic solutions".<sup>3</sup> He did not appreciate either Gandhiji's untouchability campaign or "Ambedkar's stress on the importance of social revolution as distinct from economic change".<sup>4</sup> He wrote in his Discovery of India: "Not only must equal opportunity be given to all, but special opportunities for educational, economic and cultural growth must be given to backward groups so as to

enable them to catch up with those who are ahead of them. Any such attempt to open the doors of opportunity to all in India will release enormous energy and ability and transform the country with amazing speed".<sup>5</sup>

Jawaharlal's insight was reflected in the Objectives Resolution which he had moved in the Constituent Assembly on 13 December 1946. The resolution inter alia stated that they would frame a constitution "wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes".<sup>6</sup>

## II

After the passage of Objectives Resolution the Constituent Assembly set up an Advisory Committee on Fundamental Rights, Minorities and Backward classes on 24 January 1947. Sardar Vallabhbhai Patel was elected its Chairman. The Committee formed a number of sub-committees of which one dealt with fundamental rights and another with the question of minorities. It was Advisory Committee which after considering the recommendations made by these two sub committees submitted its interim report that was accepted by the Constituent Assembly.

The principle of equality of opportunity in the matter of public employment was contained in the drafts submitted by

K.M. Munshi and Ambedkar. On 17 March 1947 K.M. Munshi submitted a note which contained several articles embodying the fundamental rights. One of his draft articles said: "All citizens are entitled to equal opportunity in the matter of public employment and office of power and honour".<sup>7</sup>

Ambedkar also prepared draft articles on the same subject. He proposed safeguards to be provided for protecting the rights of the depressed classes and ensuring their representation in the services under the State. He wanted at least one representative of each of the Scheduled Castes to sit on the State and Central Public Services Commissions.<sup>8</sup> Ambedkar treated Scheduled Castes a minority and wanted them to be provided with adequate safeguards.

K.T. Shah and Harman Singh also incorporated the principle of equality of opportunity in their respective drafts. When the Sub-Committee on Fundamental Rights discussed the subject on March 24, 1947, Shah pressed his view that the Constitution should guarantee non-discrimination, not only in "Public employment" but also "employment in any enterprise aided or assisted by the State".<sup>9</sup> The Sub-Committee rejected the suggestion and prepared its draft report to the advisory committee on April 3, 1947. When it considered this report, the Sub-Committee adopted Munshi's draft relating to equal opportunity in the matter of public employment. Its draft report contained a provision on equality of opportunity in public employment in sub-clause (1)(b) of Clause 5. When the sub-committee considered the sub-clause on April 14 and 15, 1947, Alladi Krishnaswami Ayyar referred to certain enactments like the Hindu Religious Endowments Act which restricted

certain appointments to Hindus and suggested that it was necessary to protect such provisions. The sub-committee accepted this suggestion and Clause 5(b)(1) was redrafted as an independent clause. It became 5(1) in the final report. It said : "There shall be equality of opportunity for all citizens — (i) in matters of public employment".<sup>10</sup>

The Sub-Committee on Minorities considered the report of the Sub-Committee on Fundamental Rights on April 17, 1947. Sardar Ujjal Singh observed that the wording of Clause 5 would not debar "giving special consideration to minority communities in recruitment to Public Services".<sup>11</sup> The Sub-Committee on Minorities recommended the addition of a proviso to clause 5 in order "to meet the claims of minorities to special representation in the services".<sup>12</sup>

The Advisory Committee first discussed the draft clause along with the recommendations of the Minorities Sub-Committee on April 21, 1947. At the outset Alladi Krishnaswami Ayyar objected to the affirmative assertion in the first part of the clause on the ground that the claims of minorities could be adequately met without an additional sub-clause if the affirmative expression was changed into a negative one as in Section 298 of the 1935 Act.<sup>13</sup> Munshi, on the other hand, stressed the view of the sub-committee that the general principle regarding equality of opportunity to all must be asserted in the affirmative;

and if any exception was to be provided in favour of backward communities, that should be done by incorporating a separate sub-clause to that effect.<sup>14</sup>

Ambedkar pointed out that the members of the same minority must be provided with guaranteeing of equality of opportunity. He favoured the addition of a proviso which would enable the Government to reserve a certain number of posts for the minorities in the services. K.M. Panikkar observed that in many Indian States and Provinces there was a well established policy of giving preference to local people in public employment. The clause as drafted declared such preference illegal in the matter of public employment. He thought that "to provide that there shall be equality of opportunity in the matter of public employment whether in the Unit or in the Union without reference to local conditions is utterly impracticable".<sup>15</sup> Rajagopalachari observed that the clause would arouse all round resentment if it was going to mean that there would be no reservation made in favour of the people of any particular Unit.<sup>16</sup> Ambedkar felt that the clause as it stood did not prevent any unit from prescribing additional conditions for employment.<sup>17</sup> It was finally referred to the ad hoc committee for redrafting which was appointed earlier for considering the clause.

The clause as redrafted came before the Advisory Committee on April 22, 1947. It read: "Nothing herein contained shall prevent

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the State from making provision for reservations in favour of classes not adequately represented in the Public services".<sup>18</sup>

The discussion on the redrafted clause was resumed. Ambedkar suggested the deletion of all the words after the word "reservations" and in their place the insertion of the words "in public services in favour of classes as may be prescribed by the State".<sup>19</sup> Munshi suggested the use of the words "classes which in the opinion of the State are not adequately represented".<sup>20</sup> Other members favoured the insertion of expressions like "minorities", "minorities and classes", "minorities and backward classes", and "classes including minorities" in place of the expression "classes" used by the ad hoc committee. The Chairman clarified that minority was included in classes and that the clause as redrafted was satisfactory.

Thus the idea of reservations for classes not adequately represented in the services under the State evolved in the course of discussions held in the sub-committees on fundamental rights and minorities and the Advisory Committee from February to April 1947. The Advisory Committee submitted its interim report to the Constituent Assembly on 23 April, 1947 which recognised that the equality provision must contain safeguards for classes not adequately represented in the public services. The provision was :

There shall be equality of opportunity for all citizens in matters of Public employment .....

Nothing herein contained shall prevent the State from making provision for reservation in favour of classes who in the opinion of the State, are not adequately represented in the Public services.<sup>21</sup>

The report of the Advisory Committee was discussed by the Constituent Assembly in April, May and August 1947 and was adopted with slight modifications. It was explained that the provisions would be drafted and incorporated in the draft Constitution on the basis of the decisions of the Constituent Assembly. The clause was reframed as:

There shall be equality of opportunity for all citizens in matters of employment .... Nothing in this section shall prevent the State from making provision for the reservation in favour of any particular classes of citizens who, in the opinion of the State, are not adequately represented in the services under the State.<sup>22</sup>

The clause as accepted by the Constituent Assembly was reproduced in the Constitutional Adviser's Draft Constitution of October 1947 as clause 12 without any substantial alterations and appeared as article 10 of the Draft Constitution prepared by the Drafting Committee with one important modification : instead of the words "in favour of any particular class of citizens" the words "in favour of any backward class of citizens"

were inserted.<sup>23</sup> Draft article 10 then read as follows:

(1) There shall be equality of opportunity for all citizens in matters of employment under the State.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.

### III

When the draft article 10 came up for consideration before the Constituent Assembly on November 10, 1948, several amendments were moved.

Loknath Misra (Orissa; General) suggested that the clause (3) be deleted. To him, clause (3) which referred to reservation of appointments to backward classes was unnecessary as it put "a premium on backwardness and inefficiency".<sup>24</sup> He said that it was not a fundamental right for any citizen to claim State employment on any other consideration apart from merit alone. Damodar Swarup Seth (United Provinces; General) also proposed the deletion of clause (3) altogether. He said that though the clause appeared to be just and reasonable, it was wrong in principle. According to him, reservation of posts in services for the backward classes meant "the very negation of efficiency and good government".<sup>25</sup>

Moreover, the term 'backward' was not easy to define nor was it "easy to find a suitable criterion for testing the backwardness of a community or class".<sup>26</sup> He pointed out that if the clause was accepted, it would give rise to casteism and favouritism which should not find a place in a secular State. While the backward classes should be given necessary facilities and concessions for improving their educational qualifications and raising general level of their uplift, appointments or posts should be made only on merit and qualifications and no concession should be allowed to any class on the plea that the same happened to be backward.

While Loknath Misra and Damodar Swarup Seth suggested deletion of clause (3), the other members favoured the retention of the clause.

Pandit Hirday Nath Kunzru (United Provinces ; General) proposed that in clause (3) of draft article 10 the words "shall prevent the State from making any provision for the reservation" be substituted by the words "shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation".<sup>27</sup> He observed that the term 'backward' was not defined anywhere in the Constitution. He suggested that whether any class was backward or not, should be left to the law courts to decide. Therefore, the term 'backward' should be defined by the House so that there could be no dispute in future as regards its meaning. He said that it was not desirable

that any special provisions granting protection to communities should operate indefinitely. In his view the operation of special provisions for backward classes should come under review from time to time so that it could be seen that "whether the State had taken such steps as were necessary in order to lift these classes from their present condition and enable them to compete in terms of equality with the other classes".<sup>28</sup>

Aziz Ahmad Khan (United Provinces : Muslim) proposed that in clause (3) the word 'backward' should be omitted. He pointed out that at the time when the Minority Report was submitted before the House, the word 'backward' was not present and it was finally decided that "it was unnecessary to include the word backward".<sup>29</sup> He said that if the proposed amendment was not accepted, the draft articles 296 and 299 would become opposed to article 10. The draft articles 296 and 299 correspond to articles 335 and 338 of the Constitution. Article 335 safeguards the claims of the members of the Scheduled educationally and economically backward. Article 338 makes provisions for a special officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President. In the opinion of Mr Khan, only those people required protection who had misgivings that in case protection was not given, their rights would not be preserved. He said that if State services were monopolised by one particular class, others might think that their existence had been ignored. This very idea, he thought, would

"become a source of creating unpleasantness in the country".<sup>30</sup> In his view, in the new set up which would be made in the country, "we should neither create nor multiply differences".<sup>31</sup> To him, safeguards should be provided for the minorities because they required protection due to changes which would be introduced in the country.

Ari Bahadur Gurung (West Bengal : General) raised the question as to whether the word 'backward' included three categories of people, namely, Scheduled Castes and Tribals and one particular class which was not included so far, under the term 'backward' although it was educationally and economically backward.<sup>32</sup> He pleaded that the Gurkhas who were domiciled in India were "educationally and economically backward" and they "should have the same privilege as the other backward communities in India".<sup>33</sup> He assured the House that the Gurkhas who played their part in the preservation of the independence of India and had an opportunity to serve in the British Army owed their full allegiance to the Government of India and not to the Government of Nepal.

#### IV

Members belonging to the backward classes, who were given an opportunity to express their views, favoured the provision in clause (3). Majority of them expressed their apprehension as regards the scope of the words 'backward'. R.M. Nalavade (Bombay: General) supported the clause (3) of draft article 10. He, however,

argued that the words 'Scheduled Castes' might have been used in the place of 'backward classes' in the clause to make it easier for the depressed classes to get adequate representation in the services. In his view, "the words 'backward classes' are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced".<sup>34</sup> He referred to bitter experience in the provinces where the depressed classes were not given chances of employment though they were educated and qualified. He, therefore, supported the clause (3) because according to this clause, depressed classes could be adequately represented in the provincial as well as the Central services.

Dharam Prakash (United Provinces : General) said that 'backward class' had not been defined so far and "there is no possibility of its being defined in the near future".<sup>35</sup> According to him, there was no community which did not have a section of people which was backward whether economically or educationally or socially. He believed that if there was to be any reservation for backward classes in the services it was very necessary to see as to what was the present position and what was to be the future of a particular class which had been backward for centuries, whether religiously or economically or socially. Mr Prakash proposed that the words 'backward class' be substituted by 'depressed classes' or 'Scheduled class' because of the definite

meaning of the latter. He said that among the Scheduled Castes had been included a number of those classes which were supported by all to be backward. In free India it would not be "proper to make reservation for Hindus, Muslims, Christians and Sikhs on the ground that they are minorities".<sup>36</sup> But in so far as that section of Hindus was concerned who were called Harijans, and they were really backward, it appeared to be appropriate that there should be reservation. He, however, said that there should be reservation for backward classes for some time and reservation must be opposed when they reached the same level of culture as other sections of the population had.

Chandrika Ram (Bihar : General) favoured the insertion of the words 'Scheduled Castes' after the words 'backward classes'. He said that the question of reservation for Depressed Classes and Scheduled Castes was discussed by the Advisory Committee but it was lost by a single vote. Otherwise there would have been legally binding provisions for reservations in services for the Harijans.<sup>37</sup> He informed the other members of the House that the expression 'backward class' had been defined in the Census reports of 1921 and 1931. According to these reports, our society is divided into three sections — the highest consisting of that section of our society what is known as 'Caste Hindus' and the lowest of the section known as 'Scheduled Castes' or Harijans, while the third occupying a middle position between these two and

consisting of a large portion of our people is what may be termed as Backward Class.<sup>38</sup> Disapproving the amendments suggested by Seth Damodar Swarup and Pandit Loknath Misra seeking deletion of the word 'backward class' he observed that those who were of the opinion that no backward class existed in the country were "blind to the facts of the history of our country, to the progressive society of today and to the conditions obtaining at present."<sup>39</sup>

P. Kakkan (Madras : General) also supported the draft article 10. He said that the poor Harijan candidates hitherto did not get proper appointments in Government services. The higher officers selected only their own people, but not the Harijans.<sup>40</sup> Even in the matter of promotions they did not get justice. He observed that the Government could "expect necessary qualifications or personality from the Harijans, but not merit".<sup>41</sup> If merit alone was taken into account, the Harijans could not come forward. He suggested that "the Government must take special steps for reservation of appointments for the Harijans for some years".<sup>42</sup> To him, the Harijans must be given more jobs and be encouraged by the Government.

V.I. Muniswamy Pillay (Madras : General) pointed out that the word 'backward' had not been defined properly. He was in confusion whether the communities — specially the Scheduled

Castes -- that were left out in the administration for their due share had been provided for. He made it clear that unless there was an assurance that the Scheduled Castes would at all times be taken into account and given enough chances in appointments, their uplift would stand over. He felt that the argument advanced by some members of the House that reservation was not necessary was "uncholesome thinking".<sup>43</sup> This was so because so long as the communal canker remained in the body politics, there would be communities coming up for reservation. He, however, pleaded the case of the Scheduled Castes "because they have been left in the lurch and due to their lack of social, economic and educational advancement for years".<sup>44</sup> He said that they must get justice at all times. At the same time he told the House that it was "not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever".<sup>45</sup> But they must be given protection so long as they remained backward in getting admission into the services.

T. Channiah (Mysore) also supported the retention of the word 'backward' in clause (3) of draft article 10. He pointed out that though the word 'backward' had not been specifically defined in the Draft Constitution, it was known that in North India, among Hindus there were classes of people engaged in agriculture and artisan works who belonged to backward class. In South India, the term 'backward class' was very distinct. The backward classes in South India were either socially backward or educationally

backward. The only classes which did not fit in clause (3) of article 10 were those who were economically forward. He said that in Mysore, there were two classes of vacancies — A and B classes. Both the Brahmins and the non-Brahmins were competent to apply for the A class vacancies whereas for the B class vacancies, only the backward classes were entitled to compete. He felt that these backward communities suffered from two disabilities, namely, social and educational disabilities. It was from these two points of view that the Mysore Government had specifically provided the appointments in the B class. Therefore, it was right that the word 'backward' appearing in clause (3) of article 10 should be retained. He also urged that reservation for a period of 10 years suggested by Pandit Kunzru be extended to 150 years which had been the period during which opportunities had been denied to them.

Santanu Kumar Dass (Orissa : General) also favoured the retention of the draft article. He was of the opinion that due to "evil effects of foreign rule in our country", it was not possible to immediately delete "all provisions relating to reservations from our country".<sup>46</sup> He felt that so long as these conditions continued in our country there would be demand for reservations in services for the Harijans and the Scheduled Castes who were covered by the term 'backward class'.

H. J. Khandekar (C.P & Bihar : General) also supported article 10. He congratulated the friend of the drafting committee who had inserted the word 'backward' in article 10(3). In his view if the word 'backward' had not been defined, the purpose of the Scheduled Castes would not have been served as it should be.<sup>47</sup> He said that the conditions of the Scheduled Castes were so deplorable that though the candidates of the Scheduled Castes applied for certain Government posts, they were not selected for the posts because the people who selected the candidates did not belong to that community or that section. Though the Scheduled Caste people were qualified, they did not get "opportunity and fair treatment in the services".<sup>48</sup> If the qualifications for the Harijan candidates, he thought, were not relaxed, they would not be able to compete with the candidates belonging to the Brahmin community or the so-called Sarvarna Hindus. Mr Khandekar supported the amendment proposed by Muniswamy Pillay that the words 'Scheduled Caste' be inserted after 'backward class'. He disagreed with Chandrika Ram that the term 'backward' had been defined in the census reports. He said that the word 'Scheduled Caste' and not the word 'backward' had been defined there.

There were some members who, on the other hand, favoured the deletion of the word 'backward' because they were of the view that its scope was likely to be misconstrued by the state which might adversely affect the claims of the minority groups seeking adequate representation in the services. Thus, Mohamed Ismail Sahib

(Madras: General) pointed out that though the word 'backward' had not been defined at all anywhere in the Constitution, it had got a definite and technical meaning in Madras. In Madras, there were a number of castes and sub castes called the backward communities. The Government of Madras had scheduled more than 150 of these classes who constituted the majority of the population of that province, and everyone of these communities came from the majority community of Hindus. The Scheduled castes were not included in the list and if they were included, "all of them put together" would "form decidedly the majority of the whole population of that province".<sup>49</sup> He raised the question as to whether the word 'backward' inserted in clause (3) of draft article 10 meant the same backward classes as the Madras Government meant. To him, there were backward people amongst the non-majority people as well. The Christians and the Muslims were backward in minorities. They should not be "excluded from the purview of this clause".<sup>50</sup>

Mohamed Ismail was opposed to the amendment moved by Pandit Kunzru that the reservation should continue for a period of ten years. He felt that "the measure or yardstick in any such matter should not be the period of time".<sup>51</sup> The backwardness of the people was the result of conditions which had been in existence for several centuries and these would not die off easily. So the steps should be taken "to liquidate that backward condition"<sup>52</sup> when the backward people advanced and had "come forward

as much as any other community in the land, then these very reservations would automatically disappear".<sup>53</sup>

V

K.M. Munshi now replied to the criticisms levelled against the draft article 10. As regards the fears voiced by members who belonged to the Scheduled Castes he observed : "I can not imagine for the life of me how, after an experience of a year and a half of the Constituent Assembly any honourable Member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I can not also imagine a time when there is any backward class in India which does not include the Scheduled caste".<sup>54</sup> He assured the Scheduled Caste members that the House would not make a distinction or discriminate against them. He pointed out that two things would be achieved by the clause — the highest efficiency in the state services would be achieved and at the same time it would be seen that the backward classes should be given scope in the services of the State which gave a status and an opportunity to serve the country and this opportunity should be given to every community, even among the backward people. He thought that "the word 'backward' was the best possible term".<sup>55</sup> The word 'backward' would include that class of people who were so backward that special protection was required in the services.

K.M. Munshi made it clear that under Article 301 a Commission would be appointed in order to investigate what were backward classes. He pointed out that in the Province of Bombay, there had been a definition of backward classes which included not only Scheduled Castes and Scheduled Tribes but also backward classes who were economically, educationally and socially backward. Therefore, there was no need to "define or restrict the scope of the word 'backward' to a particular community".<sup>56</sup>

T.T. Krishnamachari, who spoke after K.M. Munshi, referred to draft article 10 "as a piece of loose drafting"<sup>57</sup> which should not, in his view, find a place in the Chapter on Fundamental Rights. Referring to clause (3) he asked who the backward class of citizens were. It did not apply to a backward caste or Scheduled Caste or any particular community. Further he enquired what would be the basis for determining who were backward. He suggested the basis of literacy and raised the question that "if the basis of division is literacy, 80 per cent of our people fall into backward class of citizens, who is going to give the ultimate award? Perhaps the Supreme Court"<sup>58</sup> The Court would have to find out the intention of the framers of the Constitution as to "who should come under the category of backward class".<sup>59</sup> He raised the question whether it was a class which was "based on grounds of economic status or on grounds of literacy or on grounds of birth".<sup>60</sup> However, he was confident that the word 'backward' would ultimately

be interpreted by the Supreme Court on some basis — "Caste, community, religion, literacy or economic status".<sup>61</sup> Thus the Drafting Committee, he thought, had produced a "paradise for Lawyers".<sup>62</sup>

In reply to the criticisms against the draft article 10(3) B.R. Ambedkar justified the inclusion of the word 'backward'. He pointed out that the Drafting Committee had to reconcile three opposing points of view — first, "there shall be equality of opportunity for all citizens"<sup>63</sup>, second, "there ought to be no reservations of any sort for any class or community at all"<sup>64</sup>, and third, there must be "a provision made for the entry of certain communities which have so far been outside the administration".<sup>65</sup> Keeping these facts in mind, he said, it was seen that "no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution".<sup>66</sup> He further pointed out that if "some such qualifying phrase" as 'backward' was not used, "the exception made in favour of reservation will ultimately eat up the rule altogether"<sup>67</sup> That, he thought, justified the introduction of the word 'backward' by the Drafting Committee. He admitted that the word 'backward' "did not originally find a place in the fundamental right in the way in which it was passed by this Assembly".<sup>68</sup>

Finally, Ambedkar referred to two questions which had been raised during the debate in the Constituent Assembly viz. definition

of backward community and justiciability of clause (3) of the draft article. As regards the former he said : "Anyone who reads the language of the draft itself will find that we have left it to be determined by each local Government".<sup>69</sup> To him, "a backward community is a community which is backward in the opinion of the Government".<sup>70</sup> As regards the latter he stated : "It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter".<sup>71</sup>

When the article was put to vote, all the amendments made relating to clause (3) were negatived by the Assembly and it was added to the Constitution without any alternation. It was, however, renumbered as article 16(4).

## VI

### Article 37

Article 37 of the Draft Constitution, which was subsequently renumbered as article 46, provides :

"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".

When the article came up for consideration of the Constituent Assembly on 23 November, 1948, amendments were moved by Sardar Hukum Singh (East Punjab: Sikh) and A.V. Thakkar (United States of Kathiawar : Saurashtra).

Sardar Hukum Singh proposed that the words 'Scheduled Castes' be substituted by 'Backward communities of whatever class or religion'. He pointed out that 'Scheduled Castes' had been defined in article 303 of the Draft Constitution "as castes and races specified in the Government of India (Scheduled Castes) Order, 1936" which had described "most of the tribes, castes and sub castes" and included "Bawaria, Chamar, Chuhra, Balmiki, Od, Sansi, Sirviband and Ramdasis".<sup>72</sup> He alleged that though the Sikh Ramdasis, Ods, Balmiki and Chamars were backward classes, they had been kept out of the benefits provided for Scheduled Castes. He supported the underlying idea of the uplift of backward communities so that they might be able to "make equal contribution in the national interests".<sup>73</sup> But he thought that as 'weaker sections' had not been defined anywhere in the Constitution, the whole attention would be directed to the 'Scheduled Castes'. Even the article laid the whole stress on the 'Scheduled Castes' by centralising through the words 'in particular of the Scheduled Castes'.<sup>74</sup> He observed that discrimination was shown against the Sikhs because 'Scheduled castes' "have been understood by the general masses to exclude the members of the same castes possessing Sikh religion".<sup>75</sup> He suggested that educational and economic interests should be sought for "all backward classes,

and not for persons professing this or that particular religion or belief".<sup>76</sup>

A.V. Thakkar moved an amendment to include 'backward castes' among Hindus and Muslims.

B.R. Ambedkar in his reply to the criticisms levelled against the draft article 37 justified the retention of the words 'Scheduled Castes' there and suggested that the amendments made relating to the article be postponed. Then Sardar Hukum Singh and A.V. Thakkar had withdrawn their amendments. The article was then put to vote and stood part of the Constitution without any alternation.

## VII

### Article 301

Article 301 of the draft Constitution which was corresponded by article 340 of the Constitution provides:

1. The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose <sup>or</sup> by the Union/any State and the conditions subject to which such

grants should be given, and the order appointing such commission shall define the procedure to be followed by the Commission.

2. A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

3. The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before the Parliament.

When the draft article came up for consideration of the Constituent Assembly on 16th June, 1949, various amendments were suggested.

H.V. Kamath offered three amendments for clause (1) of the draft article. First, he favoured the deletion of the words 'consisting of such persons as he thinks fit'. In his judgement these words were "wholly superfluous".<sup>77</sup> He said that they had "caste a reflection upon the wisdom of the President".<sup>78</sup> It was "absolutely pointless and purposeless to say" that he might "appoint a Commission consisting of such persons as he thinks fit".<sup>79</sup> He thought that the words after 'appoint a Commission' should be stopped. Second, he suggested that the words 'grants should be given' be substituted by 'grants should be made'. Third, he proposed that the word 'and' be substituted by 'as well as'.

However, he left the second and third amendments to the collective wisdom of the drafting committee.

For clause (2) Kamath proposed the substitution of the words 'a report setting out the facts as found by them and' by the words 'a report there on'. He favoured the deletion of the words 'together with a memorandum explaining the action taken there on' and the addition of the words 'for such further action as may be necessary' at the end of clause (3).

Kamath referred to his amendment for clause (3) as "a drafting amendment, plus an amendment of substance".<sup>80</sup> There were two parts of it. The first related to the manner in which the President should cause a copy of the report to be laid before Parliament. The clause, as it stood, made "it incumbent upon the President to affix a memorandum to the copy of the report to be laid before Parliament".<sup>81</sup> He suggested that "he must add a memorandum to the report".<sup>82</sup> The second part of his amendment for clause (3) related "to the sequel to the submission to the Parliament by the President of this report by the Commission".<sup>83</sup> Kamath thought that Parliament should have "a definite say, a substantial voice"<sup>84</sup> in the policy to be adopted or action taken for the welfare of the socially and educationally backward classes. Parliament would be entitled to ask that any action taken for the welfare of the backward classes must be in conformity with the policy that would be formulated by it. He further suggested that when the report would come before the Parliament, "further action

should be taken by Parliament and not by the President".<sup>85</sup> The President, if needed be, "would communicate to Parliament his own reactions to the report, but should not be final authority to take action thereon".<sup>86</sup> Parliament must have the word on action to be taken on that report.<sup>87</sup>

B.R. Ambedkar moved his amendment asking for the substitution of the word 'Parliament' by 'each House of Parliament'.

Pandit Thakur Das Bhargava considered the draft article 301 as the most important article of the constitution. He called it "the soul of the Constitution".<sup>88</sup> To him, so far as the depressed classes were concerned, the article sought "to complete the process of bringing them upto the normal standards".<sup>89</sup> The article placed "upon the entire nation the obligation of seeing that all the disabilities and difficulties of the Depressed Classes" were removed and therefore, it was "really a Charter of the liberties of the Backward classes".<sup>90</sup> He alleged that while reservation was given to some backward classes, it was denied to other classes who were really backward. He, therefore, demanded "a register to be made of all backward classes including the present Depressed classes".<sup>91</sup> He said that so far as backward classes were concerned, it should be seen that they did not continue in the category of backward classes after they had reached normal standards so that their backwardness was not "crystalized or perpetuated".<sup>92</sup>

Bhargava favoured the word 'shall' in stead of 'May' in clause (1) in order to make the President obliged to appoint a Commission for investigating the conditions of socially and educationally backward classes. He observed that the article 301 did not refer to the obligations of the Parliament as regards backward classes, and no safeguards were provided for minorities like the Muslims and Sikhs. The Scheduled castes and backward classes were the only responsibility of the Parliament. He suggested that in regard to these classes, special officers should be appointed to see whether the fundamental rights which had been given to them under the Constitution and the special facilities which were sought to be provided for them after the investigation of the Commission were enjoyed by them or not. These classes should be "not only the responsibility of the Central Parliament but of the State Legislature as well".<sup>93</sup> There should, however, be the special obligation of the Parliament as regards backward classes. He further suggested that there should be a provision in article 301 that reservation would also extend to the communities for whom reservation had not been made though they were backward.

Prof. Shibban Lal Saksena had supported the draft article 301. He pointed out that as soon as the Constitution came into existence, the President should "appoint the Commission to investigate into the conditions of the socially, educationally and culturally backward classes and then make its report how to remove their backwardness".<sup>94</sup> He said that though the expression 'backward

classes' had been used in several places in the Constitution, they had not been defined anywhere in the Constitution. He, however, hoped that the Commission, which would investigate the conditions of the backward classes, would define the terms "backward classes" and "depressed classes" in its report to the Parliament. He supported the amendment moved by Kamath for the inclusion of the words 'for such further action as may be necessary' at the end of clause (3). Such amendment, he thought, was necessary because when the report was made, "the House must consider the ways and means of removing the backwardness of these people".<sup>95</sup>

The amendments moved by different members as regards the draft article 301 were put to vote. All the amendments with the exception of B.R. Ambedkar's amendment substituting the word 'Parliament' by 'each House of Parliament' were negatived. The draft article 301 was renumbered as article 340 and was added to the Constitution.

### VIII

The following points emerge from the Constituent Assembly debates:

- (1) The drafting committee had incorporated the clause (4) of article 16 in the Constitution for protecting the interests of the backward classes by securing representation in the serives. Such protection was necessitated by the conditions which prevailed

them in several provinces in the country.

(2) While a few members of the Constituent Assembly opposed reservation provisions on the grounds of merit and efficiency, others supported these provisions on the ground that the backward castes had suffered from discrimination for centuries.

(3) Those who supported reservation were of the view that reservation should not continue indefinitely. Reservation would disappear when the backward castes would come at par with the other advanced communities.

(4) Since the word 'backward' had not been defined anywhere in the Constitution, it proved controversial. Its inclusion was, however, justified by Ambedkar, Chariman of the drafting committee who pointed out that if "some such qualifying phrase" as 'backward' was not used, "the exception made in favour of reservation will ultimately eat up the rule altogether". The members of the Constituent Assembly were not unanimous as regards the criteria to be adopted in determining backwardness. They left the matter to the State governments with ultimate review by the courts. While one or two members expressed the view that the case of backwardness might be literacy and occupation, etc., the other view was expressed that the term 'backward classes' covered Scheduled castes.

## IX

Analysis of the Debates in Parliament on Clause (4) of article 15.

In Champakam Dorairajan<sup>96</sup> the Supreme Court in 1950 struck down the quotas in Madras educational institutions which were granted to the OBCs and the Scheduled Castes as a result of the non-Brahmin movement in 1927 and later increased by the Communal G.O. in 1947. Ramaswamy Naicker and his Party, Dravidar Kazhagam, launched such an agitation throughout the State against the quashing of the communal G.O. that the Central Government under the leadership of Jawaharlal Nehru, within two months of the agitation, moved the First Amendment to the Constitution empowering the states to make special provisions for the advancement of the socially and educationally backward classes of citizens. A new clause — Clause (4) — was incorporated in article 15.

In the debate on the amendment to clause (4) of article 15 most of the members agreed that the momentum for the amendment was given by the political agitation in Madras. In this regard Jawaharlal Nehru remarked that "this particular matter in this particular shape arose because of certain happenings in Madras".<sup>97</sup> Shankaraiya, however, pointed out that "it is not only the Madras Government that is concerned with this but the whole of South India — the State of Mysore, Travancore-Cochin and even Bombay".<sup>98</sup> Desmukh said that "the problem was not confined to Madras but was bound to arise elsewhere as soon as the backward classes became more aware and assertive".<sup>99</sup>

The debates on the amendment revolved around the desirability of providing educational preferences to the members of backward classes, and it related in part to the question of identification of backward classes. After some discussion the bill was referred to a Select Committee on May 16, 1951. Further debate on the Clause (4) of article 15 took place on May 18, 29, 30, 31 and June 1 and 2. The clause was passed on June 1 and the entire bill on June 2.

The original draft of article 15(4) would have added to article 15(3) which authorised special provision for women and children, the words : "or for the educational, economic or social advancement of any backward class of citizens".<sup>100</sup> Nehru explained that the Select Committee chose these words of article 15(4) because they already occurred in article 340. Thus the language of article 15(4) is on the lines of article 340.

The issue whether the determination of backward classes by the Backward Classes Commission to be set up under article 340 and later by the President would be final agitated the members. While some members such as Thakur Das Bhargava and M.A. Ayyangar favoured the final phrasing because, they thought, it confined backward classes to those to be determined by the President after the recommendation of the Commission, others, such as Hukum Singh and S.P. Mookerjee raised objection that they were not so confined. Some others like Seth Govind Das and Venkataraman felt that the

backward classes should be identified by the state governments who they thought might be trusted to do this job well.

The debates on the amendment showed that whatever might be the criteria for identification of backward classes and by whomsoever they were to be identified as such, they were to be a list of castes and communities. Ambedkar, the then Law Minister, frankly observed that backward classes were "nothing else but a collection of certain castes".<sup>101</sup> Nehru, however, did not refer to caste system as such. He stressed the need for measures to wipe out all inequalities associated with the social structure.

K.T. Shah favoured adding the word 'economically' in stead of 'classes' to qualify the term backward classes because he felt that the backwardness to be remedied was economic. Though Nehru had no objection to adding the word 'economically' but he felt that to do so would make it different from the language used in article 340. He observed : "Socially is a much wider word including many things and certainly including economically".<sup>102</sup>

#### X

The following points arise from the debates on the amendment to Clause (4) of article 15:

(1) The language of article 15(4) should be identical to that used in article 340(1). As Clause (1) of article 340 did not

refer to the word 'economically', the same did not find its place in Clause (4) of article 15 though a few members emphasised economic backwardness in the identification of backward classes.

(ii) It was not clear whether 'caste' would be the sole criterion in the identification of backward classes, though Ambedkar specifically pointed out that backward classes were "nothing else than a collection of certain castes".

(iii) The members intended that the listing of backward classes by the President on recommendations of the Backward Classes Commission would not be final. The state governments would also identify backward classes.

## XI

### Present Constitutional position

#### Article 15(4)

Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

#### Article 16(4)

Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Article 46

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 340

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and 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, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament .

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