

## **CRITERIA FOR DETERMINATION OF BACKWARD CLASSES IN INDIA: A STUDY**

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### **I. Introduction**

Indian society has always been full of inequalities- it was a caste ridden stratified hierarchical society, and a particular segment of the society had been denied the bare human rights. Their educations, wages, living condition, social status were dictated by the whims of upper strata of society, reducing them to destitution. It is very difficult to gauge the extent and depth of social and economic exploitation that resulted in discrimination, misery, poverty and other disabilities for an appreciable large section of our population. The economic backwardness brought social backwardness which consequently made them down trodden and thus depriving them even of the dignity of life. In a society compartmentalized on caste basis, upper castes controlled the levers of power enabling them to run their whips, prejudicial to the interests of lower segment of the society. Lower castes had to serve the upper caste without having any say and grievance redressal mechanism<sup>2</sup>.

It was natural that the higher castes were able to exploit the lower ones. Members of lower castes always suffered from discrimination in all areas of life. One of the worst effects of caste system was that access to knowledge and learning was denied to the lower castes. Since the majority of Indian population was Hindu, the impact of this caste discrimination was severe and wide. In a society 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 group to the level of the forward or higher social groups. The trinity of the goal of the Constitution viz., socialism, secularism and democracy cannot be realized unless all sections of the society participate in the state power equally, irrespective of their caste, community, race, religion and sex and all discrimination in the sharing of the state power made in those grounds are eliminated by positive measures/actions.

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Identification of backwardness classes for the purpose of reservation necessarily raises the questions as to what are the criteria for identifying backwardness. The constitution nowhere defines the expression “backward classes”, nor even the debates in the Constituent Assembly give any guidance in the matter. The author in this research paper will study the basis for reservation for backward class and analyse the criteria as laid down by the second backward class commission for Other Backward Class, upon which the current policy of reservation is based. This study is confined only to the identification of Other Backward Classes in India.

## **II. Concept of Reservation**

The caste system had subjected a majority of the population, civil and even legal disabilities. The system was thought to be abolished legally and constitutionally. That is why the constitution made elaborate provisions to remove the disabilities arising from one's caste so as to enable a citizen to participate freely in the social, economic and political activities and attain fullest development of his personality. Equality, justice, liberty and fraternity are the chief objectives enshrined in the preamble to the constitution of India. Our founding father wished to build an edifice of democracy wherein those noble objectives might be materialized in regard to the entire Indian society which includes communities which had neither to remain disadvantaged and under- developed due to historical discrimination perpetrated in the name of caste, creed, race or the like. They therefore, designedly embodied certain provisions in the Constitution which conferred special favours and protection to the backward classes of citizens with a view to uplift them to the levels of equality with the rest of the society. The Indian Constitution embodied manifold concessions, preferences exemption and above all reservation as the means of achieving social justice. The backward of all sections viz. Scheduled Castes and Scheduled Tribes are provided reservation in central and state legislatures bodies as a manifestation of political justice whereas they are provided along with other backward classes' reservation and other special favour in numerous areas including in employment and admission in educational institutions as measures of social justice. Our Constitution has the unique distinction of outlining an extensive scheme for the advancement of the backward classes of citizens.

In pursuance of these assurances, Article 14, 15 and 16 have been enacted which embody certain fundamental rights guaranteed by the Constitution. Article 14 guarantees equality before law and equal protection of law to all persons. Clause (1) of Article 15 prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth. Clause (1) of Article 16 guaranteed equality of opportunity for all citizens in matter relating to employment or appointment to any office under the state.

Clause (2) of the said Article further lays down that no citizens shall on grounds only of religion, race, caste, sex descent, place of birth, religion or any of them be ineligible for, or discriminated against in respect of any employment or office under the state.

Although clause (1) of Article 16 guaranteed equality of opportunity to all citizens alike, it would be meaningless to those for whom offices of position and dignity have been out of bounds for centuries and they are so crippled by the circumstances in which they are placed that such office are beyond their reach if they are left to themselves. In India, we have been faced with inequalities, which are mainly due to social injustice perpetuated for centuries by the upper castes of those belonging to the lower castes by denying them a proper social status and opportunity for their betterment. At the same time our founding fathers were not oblivious of the socio economic backwardness of many segment of our society and were convinced that mere guarantee against discrimination was not sufficient. The social backward classes needed to be brought at par with others by giving them special push through positives states action. Since independence there has been a special concern not only to promote the interest of all the groups in the country, but also to provide for protective status to certain groups or people in the society specially Scheduled Castes, Scheduled Tribes and the backward classes. So it was specially provided under Article 16(4) of the constitution that nothing shall prevent the state from making any provision for the reservation of appointment of post in favour of any backward classes of citizens which in the opinion of the state is not adequately represented in the services under the state.

Unlike Article 16(4) which specially provided for reservation of jobs, there was no provision in the constitution which permitted reservation of seats in educational institutions. In pursuance to the directive embodied in Article 46 to promote with special care the educational and economic interest of the weaker sections of the people various state governments started making reservation of seats on the technical and medical institutions such a reservation was held as invalid and violated of Article 15(1) and 29(2) in *State of Madras v. Smt. Champakam Dorairajan*<sup>3</sup>. While examining the underlying social policy the court found that except for reservation in service, the framers did not contemplate giving any special treatment to the backward classes. The basis of the conclusion was found in the express provision in Article 16(4) for the reservation of seats in public service for backward classes and the absence of such a provision in Article 29(2) and Article 15. The court recognized the obligation of the states under Article 46

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<sup>3</sup> A I R 1951 S C 226, wherein the court struck down the government order which allocated seats in educational institutions to the various communities in proportion to the population they bore to the total numbers of seats.

to promote the welfare and interest of the weaker section of the people but considered the underlying object of Article 16 and 29 (2) so sacrosanct that the promotion of welfare of such classes was not to be by way of undermining it. To overcome such difficulty the constitution (First Amendment) Act, 1951 was passed which added a new clause to Article 15. The clause reads as under:

“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.”

### **III. Problem of Identification of Backward Classes**

The principal problem in affirmative action is that of determining the target group of the benefits package. Those who are designated as the beneficiaries become entitled to certain advantages and position and in that sense get an edge over others not similarly designated. The Constitutional mandate for affirmative action designates these target groups as backward classes. Some of these identified as Scheduled Castes and Scheduled Tribes and other it leaves in nominate. The rationale for this distinction is largely historical to ensure the protection of backward classes of citizen so the power was given to the state to provide for reservation for such designated groups. States have determined as to which caste, community or groups is backward or inadequately represented in services in the state. This was clear in the mind of Dr. B.R Ambedkar and he raised his voice for representation in state services way back in 1930. He realized that unless the backward classes have share in the power, their interest cannot be protected. While addressing the all India depressed classes Congress at Poona in august 1930 he asserted that “the best guarantee for the protection of your own interest consists in having the power of control in your own hands, so that you may yourselves be in position not only to punish when mischief to your interest is done but to keep a watch over your interests from day to day and prevent possible mischief from arising. The safest remedy for the protection of yours interest seem to me to lie in securing control over the future exclusive in self governing India in your own hand and that you can have only a means of adequate representation in the legislature of the country. It is by this means alone that we can keep a day to day watch upon the doings of executive and thereby ensure our safety and our progress”. These ideas of Dr. Ambedkar might have been the motivating force behind the reservation for backward classes. The Constitution permits protective discrimination in the form of reservation in the three specific areas:

- (1) Reservation of seats in the Legislature,

- (2) Reservation in the services of states and
- (3) Reservation of seats in the Educational Institutions.

In order to create a politically homogeneous society, the framers of the Constitution rejected the system of communal representation and separate electorate and instead opted for universal adult franchise and joint electorate. Articles 330 and 332 of the Indian Constitution provide for the reservation of seats for the Scheduled Castes and Scheduled Tribes in the house of the people (Lok Sabha) and the legislative assemblies of the state. These special provisions for the reservation of seats in the legislature were provided purely as a transitory measure. Initially the reservation was for a period of ten years. However, this arrangement was extended up for further years by various Constitutional Amendments as it was felt that the Scheduled Castes and the Scheduled Tribes needed reservation for a longer period. The policy of legislative reservation, no doubt a bold imperative of equality and social justice, adopted at the time of framing of the Constitution, and its continuation by periodical extension demand a critical social enquiry.

The Constitution of India permits reservation for three categories of groups (a) Scheduled Castes (b) Scheduled Tribes and (c) Other Backward Classes. The Constitution itself does not define these groups nor does it provide any standard by which they may be determined. In the case of Scheduled Castes and Scheduled Tribes the President is empowered to specify, after consulting with the governor of a state, those castes, race or tribes or parts groups within castes race and tribes which shall for purpose of this constitution be deemed to be Scheduled Caste in relation to that state. He may similarly specify tribes and tribal communities or part of groups within tribe's communities as Scheduled Tribes.

The word "Backward" as used in the Constitution of India is nowhere defined. Article 15(4) uses the word socially and educationally backward classes and the Scheduled Castes and Scheduled Tribes. Article 16(4) uses the word 'backward'. The word backward under Article 16(4) includes the Scheduled Castes, Scheduled Tribes and the Other Backward Classes. The ascertainment of the Scheduled Castes and Scheduled Tribes does not pose major problems. The geographical and cultural factors make the identification of the SCs / STs fairly simple but the question as to who are deemed to be the Other Backward Classes and what criteria should be adopted in determining their backwardness for the purpose of reservation in jobs and educational institutions give rise to serious difficulties. The question of backwardness has also become a subject matter of considerable litigation. No doubt the judiciary has over the years made numerous attempts to evolve a secular, scientific and rational formula for adjudging backwardness yet the judicial attempt in this direction have not resulted in

concretizing any well-defined principle that could find an application in every case. The identification of backward classes had been left to the states. States and Union Territories adopted different criteria of backwardness, several of which have been subjected to judicial review. The judicial verdicts have thrown up several guidelines for the identification of backward classes. The demand for determining as to who the OBCs are, was made several times in parliament. The clamor ultimately led to the appointment of the several backward class commissions.

#### **IV. Who are the Other Backward Classes? Criteria for Determination of Backward Classes**

The term Backward Class has neither been defined nor there is any provision empowering the president to specify such classes. One does not find parallel Articles in the constitution for backward classes. No doubt, Scheduled Castes and Scheduled Tribes are backward classes, but there may be other classes of people who may be equally or less backward classes of citizens for whom special provisions have been made by Article 15(4) and 16(4) treated as being similar to the Scheduled Castes and Scheduled Tribes, which were defined and were known to be backward and for whom it was felt that special provision should be made for their advancement<sup>4</sup>. The position of the OBCs is not clearly mentioned in the Constitution. Their position was not defined in specific terms until recently. If we go to the Caste System which was the common feature of Indian society prior to the Constitution, the society was divided among four castes viz, *Brahmins*, *Kshatriyas*, *Vaisyas* and *Sudras*. The *Sudras* were the lowest among the caste hierarchy and were suffered social disabilities from very ancient time and were also discriminated by the three upper castes. The *Sudras* are generally designated as Other Backward Classes. The *Ati-Sudra* among the *Sudras* were designated as *Dalit* or *Scheduled Castes*. Officially defined in terms of caste and occupation, the OBCs would comprise intermediate agricultural and functional (clean) castes they are higher than the Scheduled Castes or *Dalits* in the caste hierarchy<sup>5</sup>. Compared to the upper castes, they are behind in the economic and educational sphere. There are also increased inequalities between different categories of backward classes and even within the same category. The OBCs, as compared with SCs and STs, have been successful in registering their political presence strongly in recent time. Andre Beteille<sup>6</sup> considers peasant castes the core of the OBCs. They are at a lower rung in the castes hierarchy. They have certainly been far behind the

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<sup>4</sup> Harpal Kaur Khehra, *Job Reservations Versus Efficiency in Administration*. C I L Q, 1990. p.34.

<sup>5</sup> Dinesh Chandra Bhattacharya, *Sociology*, Vijaya publishing house, 106 Vivekananda Road, Kolkata, 2004. P.382

<sup>6</sup> *Ibid*

upper castes in education, profession and Government j The Constitution permits reservations of jobs in terms of Article 16(4) only if two conditions are satisfied, viz (a) the class of citizens is backward and (b) that class is not adequately represented in the services under the state. Both conditions must be fulfilled. Article 16(4) cannot be invoked merely because a class of citizens is not adequately represented in services. If that was so, “it would really exclude the backward classes from the benefit of Article 16(4) and confer the benefit only on a class of citizens who though rich and cultured, have taken to other avocations of life<sup>7</sup>. The expression backward class in clause (4) of Article 16 has the same meaning as the expression “socially and educationally backward class” in clause (4) of Article 15<sup>8</sup>.

In *Triloki Nath Tiku v. State of Jammu and Kashmir*,<sup>9</sup> the court pointed out that, though the caste of a group of citizens might be a relevant circumstance in ascertaining their social backwardness, it could not be the sole or the dominant fact in that behalf. This court accepted the criteria adopted by the Mysore Government for ascertaining the backwardness of a class. The argument advanced on behalf of the state, namely, that the difference in the phraseology used in Article 15(4) and Article 16(4) namely, socially and educationally backward classes in the former and backward classes in the latter, leads to the incredible conclusion that backward classes of citizens in Article 16(4), are only such classes of citizen who are not adequately represented in the services of the state does not appeal to us. The sole test of backwardness under Article 16(4), the argument proceeds is the inadequacy of representation in the services under the state that is to say, however, advances a particular class of citizens, socially and educationally, may be, if that class is not adequately represented in the services under the state, it is a backward class. This contention, if accepted, would exclude the really backward classes from the benefit of the provision and confer the benefit only on a class of citizens who, though rich and cultured, have taken to other avocation of life. It is therefore, necessary to satisfy two conditions to attract class (4) of Article 16, namely, (i) *class of citizens is backward, i.e., Socially and educationally, in the sense explained in Balaji case and (ii) the said class is not adequately represented in the services under the state.* In *T. Devadasan v. Union of India*,<sup>10</sup> it was held that reservation under clause 4 of Article 16 must be in favour of any backward class of citizens: “Backward class” is not defined, whether a particular class is backward or not is a

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<sup>7</sup> T.N. Shall. *Dynamics of Reservation Policy Under Indian Constitution: A Working Paper*, in D. N. Saraf (ed). Social Policy, Law and Protection of Weaker Sections of Society, Eastern Book Company, Kasmere Gate, Delhi-6, 1986.

<sup>8</sup> S. M .N. Raina, *Reservation with Justice*, C L L Q 1990. p.5.

<sup>9</sup> A I R 1967 S C 1283.

<sup>10</sup> A I R 1964 SC 179.

question of fact in each case and it must satisfy certain objective lists, but it is admitted in this case that the scheduled caste and the Scheduled Tribes one backward classes. The second condition is that, in the opinion of the state they are not adequately represented in the services under it. Once a class is a backward class, the question whether it is adequately represented or not is left to the subjective satisfaction of the state. The result of the analysis of the Article is that to in role clause (4), (i) there shall be a backward class of citizens, and (ii) the said class, in the opinion of the state is not adequately represented is the service of the state. If these two conditions are complied with, the state is at liberty to make any provision for the reservation of appointments or posts in favor of the said class of citizens.

Article 16(4) uses the term “backward classes” as compared with the word socially and educationally backward classes of citizens or the Scheduled Castes and Scheduled Tribes” used in Article 15(4). This difference in terminology raises two questions: Firstly, whether Article 16(4) covers Scheduled Castes and Scheduled Tribes or not. Secondly, whether the term ‘backward classes in to be understood in the same sense as in Article 15(4), i.e., socially and educationally backward classes. As it has been held in several cases that the term backward classes under Article 16(4) covers Scheduled Castes and Scheduled Tribes,<sup>11</sup> and also the term is identical with any socially and educationally backward classes,” i.e., there is no difference between Art. 15(4) and 16(4) as far as the definition of backward classes goes.<sup>12</sup>

Though *Balaji*<sup>13</sup>, case was not a case arising under Article 16(4), what it said about Article 15(4) came to be accepted as equally good and valid for the purpose of Article 16(4). The formulations enunciated with respect to Article 15(4) were, without question, applied and adopted in cases arising under Article 16(4). It is held by the court that in dealing with the question as to whether any class of citizens is socially backward or not, it may not be relevant; its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the caste themselves. The court further proceeded to hold if the caste of the group of citizens was made the sole basis of determining the social backwardness of the said group, the task would inevitably break down in relation to many sections of Indian society which do not recognize castes in the conventional sense known to Hindu society. How is are going to decide whether Muslims, Christians or list of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups in

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<sup>11</sup> General Manager, S. Railway v. Rangachari, A I R 1962 S C 36

<sup>12</sup> *Triloki Nath v. State of Jammu & Kashmir*, A I R 1967 S C 1283

<sup>13</sup> *M.R. Balaji v. State of Mysore*, A I R 1963 S C 649.

to form the operation of Article 15(4). It is not unlikely that in some states some Muslims or Christians or Jains forming groups may be socially backward. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste of which the poor citizens may belong, but not only shows the relevance of both caste and poverty in determining the backwardness of citizens. The learned today stressed the part played by the occupation, conventional beliefs and place of habitation in determining the social backwardness.

In *Janki Prasad Parimoo v. State of Jammu and Kashmir*<sup>14</sup>, the court held that Article 15(4) speaks about “socially and educationally backward classes of citizens while Article 16(4) speaks only of any backward classes of citizens. However, it is now settled that the expression backward class of citizens in Article 16(4) means the same thing as the expression “any socially and educationally backward class of citizens in Article 15(4). In order to qualify for being called a backward class citizen he must be a member of a socially and educationally backward class. It is social and educational backwardness of a class which is material for the purposes of both Article 15(4) and 16(4). In India social and educational backwardness is further associated with economic backwardness and it is observed in *Balaji*<sup>15</sup>, case that backwardness, socially and educationally, is ultimately and primarily due to poverty. But if poverty is the exclusive list, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservation are made only on ground of economic considerations, an untenable situation many arise because even in sectors which are recognized as socially and educationally advanced there are large pockets of poverty. The court further held that in identifying backward classes, therefore, one has to guard oneself against including therein sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated. In this connection it must also be remembered that state resources are not unlimited and, further the protection given by special reservation must be balanced against the constitutional right of every citizen to demand equal opportunity. Moreover, where appointments and promotions to responsible public offices are made, greater circumspection would be required in making reservations for the benefit of any backward class because efficiency and public interest must always remain paramount.

In *State of U. P. v. Pradip Tandon*<sup>16</sup>, reservations in favor of rural areas was held to be unsustainable on the ground that it cannot be said as a general proposition that rural areas represents socially and educationally

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<sup>14</sup> A I R 1973 S C 930.

<sup>15</sup> A I R 1963 S C 649.

<sup>16</sup> A I R 1975 S C 563.

backward classes of citizens. Poverty in rural areas can not be the basis of classification to support reservation for rural areas.

In *Kumari K. S. Jayashree v. State of Kerala*<sup>17</sup>, it was held that the problem of determining who are socially and educationally backward classes is undoubtedly not simple. Dealing with the question whether caste can by itself be a basis for determining social and educational backwardness, the court observed that it may not be irrelevant to consider the caste of group of citizens cleaning to be socially and educationally backward. Occupations, place of habitation may also be relevant factors in determining who are socially and educationally backward classes?

In *K. C. Vasanth Kumar v. State of Karnataka*<sup>18</sup>, the court observed that the means list, that is to say, the list of economic backwardness ought to be made applicable even to the Scheduled Castes and Scheduled Tribes. After 2000 A.D. it is essential that the privileged section of the underprivileged society should not be permitted to monopolies preferential benefits for an indefinite period of time. In so far as the other backward classes are concerned two lists should be conjunctively applied for identifying them for the purpose of reservations in employment and education: One, that they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness; and two, that they should satisfy the means list such as a state Government may law down in the context of prevailing economic conditions.

## V. The Constituent Assembly Debates

In the Constituent assembly<sup>19</sup>, the word backward, however did not occur in Article 10(3) as originally proposed by the constituent Assembly in April-May 1947. The original clause (clauses 3) reads:

“Nothing herein contained shall prevent the slats from making provision for reservation in favour of classes, who is the opinion of the slate are not adequately represented in the public services<sup>20</sup>,”

B.R. Ambedkar proposed a change in the clause as follows:

“Nothing herein contained shall prevent the state from making provision for reservation in public services in favour of classes as may be prescribed by the state”.

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<sup>17</sup> A I R 1976 S C 2381.

<sup>18</sup> A I R 1985 S C 1495.

<sup>19</sup> Constitution Assembly Debate, Lok Sabha Secretariate, Official Report, New Delhi.1999

<sup>20</sup> Ibid

As we shall see, the entire trend of the debate changed when the drafting committee finally decided to confine the policy of reservation only for the backward classes and not for as religious or linguistic minority. Hence the word 'Backward' before the word 'classes' was added by the drafting committee in the draft Constitution. Article 10 (3) of the draft constitution provided:

“Nothing in this Article shall prevent the state from making any provision for the reservation of appointment of posts in favour of any backward classes of citizens who in the opinion of the state are not adequately represented in the services under the state<sup>21</sup>”.

That expression “backward class” as used in draft Article 10(3) Article 16(4) covered not only the Scheduled Castes and Scheduled Tribes but also other socially, educationally and economically backward classes was further clarified by Munshi by reading this Article with Article 301, it became clear beyond doubt that the term “backward” signified that class of people—does not matter whether you call them untouchables or touchables, belonging to this community or that a class of people who are so backward that special protection is required in the services and I can see no reason by any member should be apprehensive of regard (sic) to the word backward”.

Soon after the commencement of the constitution a lacuna was found in the provision of reservation and that had to be remedied by an amendment of the constitution. Article 15(4) was added by First Amendment in 1951 as a result of the decision of the supreme Court in *Champakam*<sup>22</sup>

## **VI. Views of the National Backward Class Commissions**

To facilitate the task of identifying the backward classes and laying down criteria for this purpose, Article 340 authorizes the president to appoint a commission to investigate the conditions of the backward classes. Article 340 provides that the president may by order appoint a commission to investigate the conditions of socially and educationally backward classes within the territory of India. In order to identify such classes attempts have been made through various commissions, committees constituted for the purpose by the centre and states as well as by the judiciary. In pursuance to this Article, the president appointed the backward classes commission under the chairmanship of Kaka Saheb Kalelkar in January 1953, which submitted its report on March 31, 1955, under the chairmanship of Kaka Saheb Kalelkar, this commission prepared a list of 2399 communities as socially

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<sup>21</sup> Ibid

<sup>22</sup> Ibid

and educationally backward and recommended reservation varying from 25 to 40 per cent for them in all four classes in Government services. Having considered several criteria relevant in determination of backward classes, it ultimately decided to treat the status of caste as an important factor for that. On that basis it proceeded to make a list of backward communities. According to the commission, the relevant factors to consider in classifying such classes, would be their traditional occupation or profession, the percentage of literacy or the general educational advancement made by them, the estimated population of the various communities throughout the state or their concentration in certain areas. The report, however, was not accepted by the Government as it did not apply any objective tests for identifying backward classes and opposed the adoption of castes as one of the criteria for backwardness<sup>23</sup>.

The Second Commission was set up in 1979 under the chairmanship of Mr. B. P. Mandal to probe the conditions of socially and educationally backward classes. The report submitted on December 31, 1980 listed 3743 castes as backward classes on the basis of caste based set of indicators as criteria evolved by it according to chairperson, the backwardness in India had got institutionalized as a result of the caste system and social organization.

#### **VI.I. Indicators (Criteria) for Social and Educational Backwardness:<sup>24</sup>**

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 heads, i.e., Social, Educational and Economic. They are:-

##### **(i) Social**

- (i) Castes<sup>25</sup>/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 110% 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.

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<sup>23</sup> Ibid at 34.

<sup>24</sup> Ibid

<sup>25</sup> The concept of Caste is not confined to castes among Hindus. It extends to castes, castes wherever they obtain as a fact, irrespective of religious sanction for such practices. (Second Backward Commission Report, Mandal Case, AIR 1993 S C 477)

- (iv) Castes/Classes where participation of females in work is at least 25 % above the State average.

**(ii) 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 5-5 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.

**(iii) 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 kilometer 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.

As the above three groups are not of equal importance for our purpose, separate weight was given to 'Indicators' in each group. All the Social 'Indicators' were given a weight age of 3 point each, Educational 'Indicators' a weight age of 2 points each and Economic 'Indicators' a weight age of one point each. Economic, in addition to Social and Educational Indicators, were considered important as they directly flowed from social and educational backwardness. This also helped to highlight the fact that socially and educationally backward classes economically backward also.

It will be seen that from the values given to each, Indicator, the total score adds up to 22. All these 11 Indicators were applied to all the castes covered by the survey for a particular State. As a result of this application, all castes which have score of 50 per cent (i.e., 11 points) or' above were listed as society and educationally backward and the rest were treated as 'advanced', It is a sheer coincidence that the number of indicators minimum point score for backwardness, both happen to be eleven. Further, in case the number of household covered by the survey for any particular caste were below 20, it was left out consideration, as the sample was considered too small for any dependable inference.

Thus in *Indra Sawhney* case<sup>26</sup>, the Court upheld the methodology adopted by the Mandal Commission in identifying backward classes on the basis of caste. The majority judges were however unconvinced that caste may ever be a valid criterion in view of express prohibition against any discrimination based on caste. In the words of Sahai, J., “Caste is a reality. Undoubtedly so are religion and race”. “If caste is treated as a valid criterion”, the learned judge cautioned “then tomorrow the identification of backward classes among other communities, where caste does not exist, on race or religion coupled with these very considerations cannot be avoided”.

## VII. Conclusion

Caste is an important feature of Indian society and played an important role in determining the backwardness of a people. The constitution nowhere defines the caste. Caste has always been used as a criticism for identifying backwardness of a class. In various cases, the apex court has accepted caste as a relevant factor for asserting caste as the sole or dominant criterion. Backwardness of certain castes and communities has been attributed to the Indian social structure in which rigid endogamous groups inherently sustain the inequality due to traditional values and taboos. Whatever might have been true in traditional India, in examining today whether caste as a whole can be treated as backward or whether caste and class are synonymous, one should not lose sight of the present day sociological realities. Today there is no necessary correspondence between caste-status and socio-economic status. Education and occupation are now relatively open to everyone regardless of one’s caste, religion or race. Some sociological studies have revealed that upward mobility among the lower-status castes is increasing with gradual disappearance of social status based upon ritual-rack-ordering. Instead of status based upon ritual status being the criteria of mobility-new criteria of occupation, education, wealth, political influence and leadership positions are instrumental in reducing the positive relationship between caste status and achieved (education, income, occupation) status and thus creating the possibilities of changing the status summation characteristics of India society with these changes in the profile of social stratification in India ‘caste’ can no longer be characterized as homogeneous and non-competitive. Today there is a great amount of differentiation among the members of a caste group in terms of income, occupation and status and therefore it is no longer accurate to talk of caste as class.

Caste criteria are unreliable because the social and economic backwardness may easily become confused with low ritual status. The caste-status which is determined by birth, of an individual is static or immutable

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<sup>26</sup> A I R 1993 S C 477

out the social, economic and educational attainment which is achievable is dynamic and it is questionable how a static factor (caste) can determine a dynamic factor (backwardness). Moreover the non-discriminatory provision of the Indian constitution also rejects the caste of social organization and envisions a new egalitarian and secular society. As the constitution prevents discrimination on the basis of caste, the caste as a factor to determine backwardness is something reviving the caste discrimination in the society.