

**SOCIETY, STATE AND POSITIVE DISCRIMINATION :
INSTITUTIONAL INTERFACE WITH MANDAL COMMISSION**

**A THESIS
SUBMITTED FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY**

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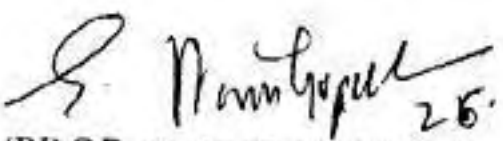
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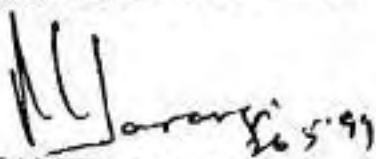
CERTIFICATE

This is to certify that I, S. Laxman Rao, have carried out the research, under the supervision of Prof. G. Haragopal, embodied in the present thesis entitled, *Society, State and Positive Discrimination: Institutional interface with Mandal Commission*, for the full period prescribed under the Ph.D. ordinances of the University of Hyderabad.

I declare to the best of my knowledge that this thesis constitutes my original work and the same has not been submitted, in part or full, for the award of any degree or diploma to any other University or institution.

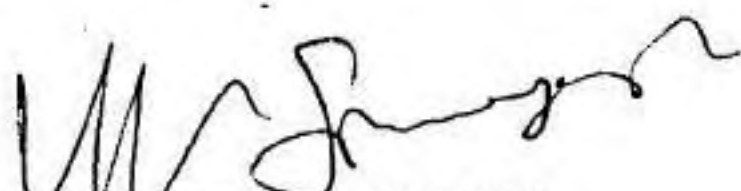

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MY ETERNAL SOURCE OF INSPIRATION

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P R E F A C E

The historic "institutional crisis" triggered by the partial acceptance of Mandal Commission recommendations was arguably the most "defining" chain of events of the post-Independence period. The compensatory discrimination policy based on Mandal Commission had started changing the very configuration of Indian polity and society and the nation is still experiencing the impact of the policy. The momentous policy had brought about a "second partition" dividing the country into two rival camps "backward" and "forward". But surprisingly, these unprecedented developments somehow escaped the scholarly attention. Of course, there have been some occasional efforts to address some dimensions of the historic interface between the state and society which focus essentially on the anti-reservation agitation and the nexus between caste and politics. So most of the literature on caste and reservation deals with the fairly outdated pro and anti-reservation debate. There are no studies that deal with the unparalleled developments in a holistic and integrated manner.

Therefore, I made up my mind to tackle the historic institutional confrontation that unfolded in the wake of the centralization of job reservations for the Other Backward Classes. So I found that there are seven institutions that formed the state-society interplay; and the institutions can be classified under the larger phenomena of state and society. When I discussed the scope and nature of this study with my teachers and colleagues, I encountered the comments, "too vast", "unmanageable", "unwieldy" and "ambitious". Some of my teachers even suggested that I better focus on one or two institutions like judiciary and/or caste. But somehow I was convinced that the institutions selected are integral parts of the rare institutional conflict that engendered the interaction between state and society and the study of a couple of institutions would not do justice to any systematic examination of the larger and fundamental issues of state, society and public policy.

This study is a modest venture in that direction. One of the basic purposes of this investigation is also to generate further debate on the most controversial policy of modern India. And it would continue to be controverted in the foreseeable future. So it is the conflict and controversy that reveals the underlying contradictions and leads to fresh

controversies and debates. Therefore, it is hoped that this work would form part of that scholarly cycle and provide a fresh basis for further scholarly exploration.

This work is also an effort to reconstruct the unparalleled developments of vital importance in order to capture the contradictions—that unfolded in the wake of the momentous policy based on the Mandal Report—as authentically as possible. Therefore, wherever necessary the relevant material is quoted directly instead of paraphrasing them in "dry prose": like the statements and opinions of party leaders and the Supreme Court Judges and the verbatim discussion of the relevant portions of Parliamentary debates. The concluding section of each Chapter presents an integrated analysis of the material.

Reservation policy is a subject of everyday discussion and argument (private and public), often emotional, with most Indians. In fact, I am also a beneficiary of such discussions (rather arguments) I had with people from all walks of life. Moreover, compensatory discrimination policies are not only an instrumental mechanism but also a medium through which the Indians who devise, apply, evade, and attack them express their understanding of their own society. So there cannot be a lost word on this ever-controversial policy. For there is a direct co-relation between the policy and the unfolding reality.

Any "objective" analysis of positive discrimination must deal with the roles played by different castes, classes or communities in a socio-economic and political context. So it is perhaps unreasonable to think that such an analysis defames or belittles certain castes or communities. Given the scope of this work and the non-availability of integrated and holistic studies, I had to glean bits and pieces of data from a variety of odd sources. So this study gives only a select bibliography in view of the constraints of space.

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Research in Social Sciences is basically a solitary exercise. My friends, too many to thank individually, have always stood by me with all conceivable help—emotional, intellectual and material. My experiences and encounters with them during my long stay on the campus are unforgettable. I am very indebted to them.

The staff of the Office in the Department of Political Science and the Computer Center have always been affable and helpful. They have always joined me in my regular academic struggles; I owe a lot to them.

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CHAPTER I

INTRODUCTION

INTRODUCTION

STATE, SOCIETY AND PUBLIC POLICY: AN INSTITUTIONAL PARADIGM

Governmental institutions have long been a central focus of political science. Traditionally, political science has been defined as the study of governmental institutions. Political activities generally center around particular government institutions—Parliament, Executive, Courts, States, Municipalities, Political Parties, and so on. Public policy is authoritatively determined, implemented and enforced by these institutions. A policy does not become a *public* policy until it is adopted, implemented and enforced by some governmental institution. Governmental institutions give public policy three distinctive characteristics: *legitimacy*; *universality*; and government monopolizes *coercion* in society.

Traditionally, the institutional approach in political science did *not* devote much attention to the linkages between the structure of governmental institutions and the content of public policy. Instead, institutional studies usually described specific governmental institutions—their structures, organization, duties and functions—without systematically inquiring about the impact of institutional characteristics on policy outputs. Therefore, the linkage between institutions and policy remained largely unexamined. It is important to remember that the impact of institutional arrangements on public policy is an empirical question that deserves investigation. We may discover that *both* structure and policy are largely determined by social or economic forces, and that tinkering with institutional arrangements will have little independent impact on public policy if underlying forces remain constant.¹

Speaking from a modernization perspective, Huntington² emphasizes the role of political institutions in developing countries of Asia, Africa and Latin America. He observes: "Violence and instability in the Third World were largely the result of rapid social change and the rapid movement of new groups into politics, combined with the slow development of political institutions. Social and economic changes—growth of cities, increases in literacy and education, industrialization, expansion of mass communications—

broaden political awareness, increase political demands, and widen political participation. These changes weaken traditional sources of political authority and traditional political institutions; they enormously complicate the problem of creating new areas of political association and new political institutions which are both legitimate and effective. The primary problem of politics is the lag in the development of political institutions behind social and economic change."

The level of political unity that a society achieves reflects the relationship between its political institutions and the social forces that form it. A social force is a racial, family, religious, territorial, economic, or status group. And a political institution is an arrangement for maintaining order, resolving disputes, selecting leaders with authority, and thus promoting political unity among two or more social forces. The more complex and varied a society is, however, the more political unity will depend for its existence and maintenance on the workings of political institutions. In actuality, the distinction between a political institution and a social force is not very clear. Many groups combine significant characteristics of both. The theoretical distinction between the two, however, is clear. The level of political development of a society largely depends on the extent to which these politically active persons also belong to and identify with various political institutions. But in a society of any greater variety and complexity, no single social force govern, much less create a community, without creating political institutions which are to some extent independent of the social forces that originated them....In a society of any complexity, the relative power of the groups changes. But, in order for the society to be a true community, the power of each group must be channeled through political institutions which soften, moderate, and redirect that power.

Historically, political institutions have grown out of the interaction and conflict of social forces and organizational devices that were gradually developed for dealing with them. As social forces increased in number and variety, political institutions had to become more complex and authoritative. It is precisely this kind of development, however, that failed to occur in many modernizing societies of the twentieth century. Social forces were strong, but political institutions were weak. Legislatures and executives, public authorities and political parties remained weak and disorganized. The development of the state lagged behind the evolution of society. The strength of political organizations and procedures

depends on the *scope of support* for them and on the *level of institutional development* they have reached. "Scope" refers to the extent to which the political organizations and procedures represent political activity in society. The level of institutionalization of any political system can be defined by its adaptability, complexity, unity, and autonomy. If these qualities can be identified and measured, political systems can be compared according to their levels of institutionalization.

Regarding the autonomy of the institutions, Huntington observes that political institutionalization of an autonomous kind means the development of political organizations and procedures that do not merely represent the interests of particular social groups. The autonomy of political institutions is measured by the extent to which they have their own interests and values separate from those of other institutions and social forces. A political party, for instance, that expresses the interests of only one group in society is less autonomous than one that expresses and combines the interests of several social groups. The same is true of autonomous legislatures, executives, bureaucracies, etc. Governmental institutions derive their legitimacy and authority not from the extent to which they represent the interests of the people or of any other group, but the extent to which they have distinct interests of their own apart from all other groups... political system with little institutionalization and high participation invite groups in the society to use their own methods and act directly in the political sphere.³

David Easton describes political science as the study of the authoritative allocation of values (i.e., policies) for a society as it is influenced by the *distribution* and *use* of power.⁴ He also observes that the conception of political science as the study of the state or of power is inadequate... There is a close tie between the pattern of values stemming from any authoritative allocation and the distribution and use of power. Society is not especially concerned with power as a phenomenon in and of itself or with government as such. Its interest is always derived from a prior concern with policy. Research into the operations of interests groups and parties are attempts to reveal forces ultimately cast into formal and effective policy; and each problem, if it has significance for political science, will show a relation, more or less direct, to the problem of the use and distribution of power in the shaping and execution of authoritative policies for a society.⁵

Analyzing from a "state-centered" perspective, Nordlinger raises vital questions about state, society and public policy: How can we account for the authoritative actions of the democratic state, i.e., public policies? To what extent is the democratic state an autonomous entity, one that translates its own policy preferences into authoritative actions? The preferences of the state are at least as important as those of civil society in accounting for what the democratic state does and does not do; the democratic state is not only frequently autonomous insofar as it regularly acts upon its preferences, but also markedly autonomous in doing so even when its preferences diverge from the demands of the most powerful groups in civil society.

He observes that each of the major variants of empirical democratic theory—pluralism, neopluralism, social corporatism, and Marxism—has as its central aim the explanation of the state's authoritative actions and inactions, the public policies that are adopted and not adopted. The explanations are not only decidedly society-centered, they consistently rely upon a set of societal constraint assumptions. With public officials being heavily and diversely dependent upon societal support, with private actors controlling and effectively deploying a great armory of political and politically fungible resources, public policy is understood primarily as a response to the expectations, demands and pressures of those who control the largest proportion of especially effective resources. The state (that is, public officials taken all together) is commonly seen as a permeable, vulnerable, and malleable entity, not necessarily in the hands of most individuals and groups, but in those of the most powerful ones. When state and societal preferences diverge, then society-centered model denies, ignores, or downplays the possibility of public officials acting on their preferences after engineering a shift in societal preferences or in the relative distribution of resources behind them; and denies the possibility of the state translating its preferences into authoritative actions when opposed by societal actors who control the weightiest political resources.⁶

The state-centered model is thought of as a complement to the "society-centered" model, compensating for its one-sided, partly problematic assertions by emphasizing important dimensions it ignores and propositions it denies. The democratic state is regularly, though by no means entirely, autonomous in translating its preferences into authoritative actions, and markedly autonomous in often doing so even when they diverge

from societal preferences. Drawing of a clear analytical distinction between state and society is a necessary simplification. The distinction between public and private actors is at least implicitly made in most studies of democratic politics, and provides the basic framework for those that deal with issues of representation. Most important for our purposes, *the differentiation between state and society allows for an inquiry into the relative importance and interplay of public and private actors in the making of public policy.*

Autonomy of the State: The fit or lack of fit between state and societal preferences constitutes the critical contextual variable within which state-society relations are played out. Variations in the patterns of state-society preferences go a long way in determining the outcome of authoritative actions. They also have an important bearing upon the manner in which the outcome is decided. We are more concerned with the frequency with which societal preferences are translated into public policy; we are more interested in how the state reacts to societal preferences than the reverse, especially when state-society preferences diverge. The state is never neutral. At least some public officials have decided preferences with regard to every possible authoritative action and inaction, whereas practically all societal actors are indifferent to some issues. With state preferences serving as the reference point, the analysis can address all policy issues directly. The state is autonomous to the extent that it translates its preferences into authoritative actions; operationally, the overall frequency with which state preferences coincide with authoritative actions and inactions and the proportion of preferences that do so.⁷

Emphasizing the state-society orientation, Kohli states that in a country (like India) in which the state sets the agenda for socioeconomic change and in which extensive state intervention is an integral part of the changing political economy, understanding the nature and role of the state is crucial for the analysis of patterns of political change. This emphasis ought not to lead to an *a priori* neglect of socio-economic forces. Rather, it means that both state and societal forces need to be taken into account. The emphasis of both structural-functional and Marxist scholars is on socio-economic forces. Politics and the state in both schools of thought are dependent variables, determined by the more fundamental social logic. This charge of neglect does not apply fully to such contemporary scholars as Samuel Huntington and Guillermo O'Donnell. Their works not

only grow out of these two traditions but also move beyond to consider the independent roles of the state and politics. Taken as two long intellectual traditions, however, structural-functional and Marxist political sociologies tend to emphasize societal considerations over political considerations. In order to redress this a priori imbalance, it is important to draw attention to the significance of political variables. A number of purely political variables influence how well a democratic state is governed: the quality of leadership, the leadership choices, the prevailing ideology, the degree of intra-elite harmony, and the design of such dominant political institutions as the party system and legislative-executive relations.

The role of the state in the Third World constitutes an additional set of causal variables. The state in countries like India is not only an agent of political order; it is also responsible for facilitating socio-economic development. The attempts to establish legitimacy and order in these settings periodically come into conflict with efforts to provide socio-economic change from above. Whereas the former tend to require that the state accommodate many of the competing demands, effective performance of the developmental function pushes the state to stand above the society in order to act as a rational agent of change. As a result of the state's widespread encroachment on the affairs of society, the distinction between the public realm and the private sector becomes blurred.

Thus the state cannot claim that distributive problems are social and not political. Under the conditions of competitive politics, the distributive issues, along class, status, party or ethnic lines, tend to get rapidly politicized. The resulting demands can strain the government's capacities, both accommodative and developmental. Moreover, a highly interventionist state tends to control a relatively large proportion of a poor society's "free-floating" economic resources. Individuals and social groups arrive at the view that their everyday struggles for livelihood must be fought not only in the market and in the civil society but also in the state arena. The state and its resources thus become objects of considerable political attention. Although it is normal in most polities to seek power, both as an end in itself and as a means to influence policy, the added element of intensity seen in low-income, interventionist states stems from the fact that access to state resources is one of the few avenues to rapid upward mobility. *A highly interventionist state therefore tends to politicize its society more than does a limited state. Widespread politicization,*

*however, does put a high premium on a polity's institutional capacity simultaneously to accommodate the resulting demands and to promote socio-economic development (emphasis added).*⁸

Theories of state and the paradigms of state intervention are significant issues in political analysis; in fact much of contemporary political theory deals with the relationship between state, power and social classes. And the two basic approaches to the study of these aspects are influenced by the liberal and Marxist paradigms. Studies conducted within the liberal framework⁹ are primarily concerned with power, explore the role of pressure groups, and examine how the institutional elite and decision makers are able to spread the influence through networks of power. Recent researches have focused more explicitly on the architectural role of the state in society,¹⁰ its impact on social and political processes through its policies, and the patterns of relationship evolved with various groups.

The Marxist approach, on the other hand, takes serious note of the relationship of the state with the ongoing social processes of reproduction and transformation.¹¹ In addition to addressing itself to the nature and character of the state, the Marxists seek to identify the relationship of classes to the state within the matrix of the dynamics and contradictions of capitalism. They do so in order to unfold the dynamics of the social structure, as indeed to explore the relations and interests which are promoted by the material force of state power.

The character of state power denotes the societal contents of the state, and the dominant classes in society. In a sense, therefore, *class and state condition each other in class societies. However, the state as such has no power; it is an institution where social power is concentrated and exercised. State actually is thus a process of interaction in a society affected by institutions which are a condensation of material power and nodal points of the relations of power within society.*

How does one analyze the state in India and its relationship with society? To begin with, any serious explanation must examine the character of the state by situating it within the socio-historical context, the paradigms of state intervention and the shifts in state strategy in different periods. After all, variations in intervention and the capacity to effect intervention is largely conditioned by the structure of social relations, the path of transition, and the nature and direction of the development process. There can be no doubt

that the relationship between the state and the underlying social structures is a complex problem in the developing countries. Structures define the parameters of state action by imposing constraints on policy choices in the long term.¹³ It is commonly argued that the concept of state cannot be discussed in isolation from the social context. Yet, most formulations, especially on the Indian state, have often emphasized the primacy and independence of the political process. This is evident in the writings of, for example, Rajni Kothari.¹⁴ Likewise, Francine Frankel, Baldev Raj Nayar and Reinhard Bendix¹⁵ have highlighted the role of political initiative in development and transformation.

Admittedly, the Indian state has played an important role in socio-economic change. At the same time, it is also evident that the state has faced major constraints in the process of modernization owing to the predominance of private control of productive resources, a fact which has curbed both the scope and effectiveness of its intervention. We must therefore, turn to a close examination of the nexus between social forces and the state. This does not imply substituting political determinism with economic determinism.¹⁶ *What it amounts to is a recognition of the analytical centrality of the relationship between state and social forces, the social determinants of state action, and the constraints imposed on its relative autonomy.* Relative autonomy, or what Theda Skocpol terms "the explanatory centrality of state as potent and autonomous organizational actor," has been stressed by liberal scholars and recognized by some Marxist scholars. The arguments of autonomy derived strength from the crucial role of politics in the Indian model of development where nation-building, economic development and an egalitarian social order, were all supposedly contingent upon the democratic process.¹⁷ Marxist scholars like Hamza Alavi emphasized the mediating role of the state apparatus in creating an autonomous space for it.¹⁸

Indian experience differed from classical European bourgeois revolutions, where capitalism first emerged in initiatives and institutions within civil society, and the state was later used as an instrument to correct its spontaneous production of inequality. In India, there was no developed civil society and many of capitalism's classical initiatives within civil society were undertaken by the state. The most serious consequence of this of course was that the state became omnipresent, since it was performing functions left to the institutions of civil society, and it was impossible to abjure transactions with this state.¹⁹

The process of resolution of social contradictions is a long process and every institution in society has to cope with the challenges posed by social forces in defense of the social order and the forces which are struggling to change the social order. The state is the central social institution responsible for the maintenance of society, and its specific role in any historical epoch is determined by its role and its legitimacy. The role of the state in contemporary India revolves around its capacity to resolve social conflicts and contradictions. The political superstructure in India is marked by inter-class and intra-class conflicts within the "exploiting" classes, in terms of a desire to increase their share of economic and political power. These conflicts are reflected in all institutions of the state.²⁰

This study adopts a frame of reference that puts the mutual interactions of the state and society at its focal center. "States are parts of societies. States may help mold, but they are also continually molded by, the societies within which they are embedded. Therefore, the crucial issues to be examined are why states do what they do, under what circumstances states are effective, and why states differ in their respective roles and effectiveness. These issues, in turn, cannot be discussed satisfactorily without looking at society, at the socio-economic determinants of politics".²¹ The nature and impact of democratic political institutions are heavily influenced by the character and behaviour of organized groups in civil society: their heterogeneity, their capacity to coalesce, and the nature of their relationships with the parties and state institutions.

The fundamental issues discussed in the above theoretical framework cannot be analyzed in a vacuum. They can be addressed only in a context where the basic institutions, of both state and civil society, interact and play active roles. Generally, it is the policy context that brings out the dynamics between the state and civil society. However, public policy making only in some areas, particularly the controversial ones, tends to involve the institutions and uncover the contradictions in them. It is in this framework that the affirmative action in favour of the Backward Classes takes on great significance in terms of its highly productive analytical potential. The policy of job reservations for the Other Backward Classes has emerged, in many ways, as the most controversial policy of the Independent India.

The centralization of the reservations for the OBCs in 1990 (based on the Mandal Commission) triggered an unprecedented institutional crisis at the national level involving

a dynamic interface between the state and society. The institutional engagement, for the first time, brought to the surface the dormant contradictions in society which also reflected in the state, thus converting the state institutions into arenas of social conflict. But before dealing with the focus of this study proper, it is important here to contextualise the post-Mandal crisis and discuss the origins and the nature of protective discrimination which is a product of the fundamental basis of Indian social, economic and political structure, i.e., the caste system. Therefore, the following sections deal with the genesis and evolution of the positive discrimination which is based on the iniquitous caste system and the resultant movements launched by the Backward Classes. The last section on the post-Independence developments completes the context of the historic institutional interface between the state and society.

POSITIVE DISCRIMINATION VIS A VIS CASTE SYSTEM: GENESIS, EVOLUTION AND TRAJECTORIES

India's system of preferential treatment for historically disadvantaged sections of the population is unprecedented in scope and extent. India embraced equality as a cardinal value against a background of elaborate, valued, and clearly perceived inequalities. Her constitutional policies to offset these proceeded from an awareness of the entrenched and cumulative nature of group inequalities. The result has been an array of programs that come under, collectively, a policy of compensatory discrimination. These compensatory discrimination policies entail systematic departures from norms of equality such as merit, evenhandedness, and indifference to ascriptive characteristics. These departures are justified in several ways. The multiple justifications point to the complexities of pursuing such a policy and of assessing its performance.²² The public policy of positive discrimination²³ in favour of Backward Classes has been a subject of national debate and controversy for a long time. India has had more experience than any other country with systems of preferential treatment for ascriptively defined groups. Governments have coped with grievances and resolved problems of their own many times in this manner. The British used this mode, not only to meet Muslim fears of Hindu domination, but also in a classic application of Divide and Rule when they granted separate electorates in 1906,

Princely States in the south used it when they found their administrations overwhelmingly staffed by Brahmins, to get more appointments for non-Brahmins, the great majority of their subjects.

Beginning with the British and some Princes long before Independence and continuing to the present day, the policy has been the principle means of addressing the problems of the lowest-ranking castes and the tribal populations. From the last decade of Nineteenth century to the present, the schemes of positive discrimination have remained an integral part of public policy of both the British and free India. Beginning with reservations of posts in public services, it extended to reservation of seats in legislative and other representative bodies to preferential treatment in admissions to educational institutions and ameliorative measures for their economic advancement.²⁴ Reservations claim a longer history in India of the British style than is generally believed. Reservation policy has been a by-product of the British style and system of governance in India, more particularly in social and economic spheres. Educational institutions in India began to be set up by the State consequent on the official declaration, in 1836, of English as India's official language. It was in 1856 that a lower caste Mahar boy (a Scheduled Caste boy in today's language) took admission in an educational institution in Dharwad, then in the Bombay Presidency. This stirred a protest in the caste-ridden local society which forced the foreign ruler to formulate a definite policy in this regard. The public policy announced was to open admission in educational institutions to all without any distinction of caste, religion and race. In 1872, the policy was elaborated and made absolutely clear with the passage of the Caste Disability Act. The unhindered admission of lower castes to educational facilities was the beginning of the quest for advancement of the weaker sections of the society

Thus in south India, educational reform preceded the reservation policy and the leadership in this respect was provided by the various social reform movements under way for quite some time in Madras, Mysore, Travancore-Cochin, etc. Reservations in government jobs in India began not in British India but in what was known as Indian India. The then princely state of Mysore had introduced reservation of jobs in government as early as in 1874 though in a selective way: it had reserved 20% of lower and middle level posts in the police department for Brahmins and the remaining 80% for non-Brahmins. Muslims and Indian Christians. This measure was the first conscious attempt to break the

Brahmin monopoly in the state public service. In 1895 a circular was issued by the Mysore Government in favour of the backward classes. Again in 1914 a system of recruitment by nomination was introduced by which the posts of Assistant Commissioners were filled by the members of backward classes. However, this did not produce the desired results.²⁵

It is for over a hundred years that Provincial Governments in India have been implementing special programs for the welfare of depressed or deprived sections of society. The first systematic step was taken by Madras Government with the framing of Grant-in-Aid Code in 1885 to provide special facilities for students of depressed classes. Subsequently, in 1921, the Madras Government took steps for higher representation of non-Brahmins in Government services.²⁶ The small princely state of Kolhapur (under the Bombay Presidency) was among the pioneers that introduced special facilities for the backward communities. The Prince declared in 1902 that he would reserve at least half the posts in the state for qualified men of the non-Brahmin communities. He also started a hostel for educating Maratha, Muslim and Jain youths. Kolhapur may be said to be the first state to adopt the reservation policy, though there had been some ineffective attempts earlier by the British Government itself in the context of democracy to break the monopoly of one community.²⁷ On the basis of representations received from aggrieved communities in 1918, the Maharaja of Mysore appointed a Committee under the chairmanship of Sir L.C. Miller (the then Chief Justice of Mysore) to recommend steps for adequate representation for non-Brahmins in the services of the State. On the basis of the Committee's report, the Government of Mysore issued orders in 1921 extending special facilities to backward communities with regard to education and recruitment in State services.

It was in 1928 that the Government of Bombay constituted a Committee (headed by O. B. Starte) to identify backward classes and recommend special provisions for their advancement. In its report submitted in 1930, the Committee classified backward classes into three categories, i.e., "depressed classes", "aboriginal and hill tribes", and "other backward classes". The Committee recommended the provision of special facilities regarding education and recruitment in Government services to the above categories. At the all-India level, the first systematic attempt at the welfare of "depressed classes" was made with the introduction of Montague-Chelmsford Reforms of 1919, when separate

representation on a number of public bodies was given to members of these classes. In official parlance, the omnibus term "depressed classes" at that time included "Scheduled Castes", "Scheduled Tribes" and "Other Backward Classes". The Government of India Act, 1935 replaced "Depressed Classes" with "Scheduled Castes". It was only after Independence that the Central Government tried to define Other Backward Classes (OBCs) with a view to making special provisions for their advancement.²⁸

The British rulers who introduced reservation, like all rulers, had double standards in values and objectives. They were liberal and believed in the principle of social justice so long as it did not endanger their own interests and so far as their own society was concerned. But their values were different for their colonies. They were not concerned with equality and social justice in colonial countries. There, as far as possible, they did not wish to disturb the existing social order. They were primarily concerned with managing forces, broadening their base and legitimizing their rule. As non-Brahmins began to express their grievances against Brahmins, in 1881 the Madras Revenue Board instructed the district collector to restrict the number of Brahmin entrants into the services and give preference to non-Brahmins. But the instructions remained on paper, though they were extended by the Justice Party in 1920, to all departments. The major proportion of the reservation was allotted to non-Brahmin Hindus who led the Justice Party. This scheme continued till 1947. Similarly, the Mysore government also succumbed to the pressure of the non-Brahmin lobby and appointed Miller Committee. The government, though it did not introduce any reservation system by order, abolished competitive examinations for jobs and asked the recruiting officer to keep in mind the goal of bringing the non-Brahmins into jobs. Some other native rulers also introduced reservation, partly as a tension management technique and partly as a benevolent gesture towards the backward castes.²⁹

However, the positive discrimination programs, introduced by the colonial rulers and Indian princes, were responses to the changing dynamics of the traditional caste system under the impact of the British rule- A number of far-reaching changes, particularly the resultant modern opportunities, introduced by the British altered the social order profoundly and aggravated the inherent inequalities of the traditional caste structure. The new opportunities in different fields were cornered by those already supplied with advantages. The new advantages tended to be cumulative, for utilization of these new

opportunities was biased by the existing distribution of resources. For a full understanding of the origins and evolution of the compensatory discrimination, one needs to examine the caste structure, its inherent inequalities, and the movements launched by the deprived backward castes. Therefore, the following section begins with a brief discussion of the caste structure.

The Compartmental Society

Indian society has been described as a compartmental society; within it a vast number of groups maintain distinct and diverse styles of life. One of the distinct and pervasive features of Indian society is the division into castes.³⁰ Caste in the narrower sense applies primarily to the Hindus, who make up 85% of India's population. Many features of caste system are also found among non-Hindu groups as well, and the term "caste" as used here applies to these groups as well as to Hindus. The term "caste" itself has a variety of meanings. It takes on membership which is hereditary, linked to one or more traditional occupations, imposing on its members certain obligations and restrictions in matter of social intercourse, and having a more or less determinate position in a hierarchical scale of ranks. The notion that hierarchic ordering is the central organizing principle of Indian civilization is expressed in the title of Dumont's *Homo Hierarchicus*.³¹ Kindred notions are shared by scholars who hold otherwise disparate views of Indian society.³²

It has been estimated, by Ghurye³³ and Hutton,³⁴ that there are 2,000 or 3,000 such castes (or sub-castes, as they are sometimes called) in present-day India. The population of these endogamous caste groups may range from hundreds to millions. An estimate places the medium size of such groups at between 5,000 and 15,000.³⁵ Membership in the caste group is ordinarily conferred by birth and is unalterable, although it may be lost by expulsion from the group. Members normally marry within the group; most social intimacy occurs within it. Ordinarily, one does not dine with those who are outside the caste, particularly with lower castes and "untouchables". Members of the caste follow a common round of life. They have a characteristic diet, domestic routine, style of dress, and round of religious observance. The caste may have distinct forms of religious expression: a preference for certain gods, shrines and modes of worship, its own fasts and

feasts. Some cultural characteristics may be shared by all or most castes over a wide geographical area, but others may be distinctive to one or a few castes.³⁶

Although most castes have a traditional occupation, in only a few—especially the skilled artisans—it is followed by most members today. Agriculture is in effect open to all groups and is engaged in widely by persons belonging to all groups. In many cases, caste tradition precludes entry into certain occupations, while the network of caste ties provides access to others. The caste is held together by ties of kinship, by a cycle of group observances, by bonds of mutual support and assistance, and finally by the power of the group to exact obedience to its rules. Most castes formally had (and many today have) councils, or *panchayats*, formal or informal, which adjudicate disputes among caste members and enforce the received etiquette of relations with other castes. Their decisions, backed by the ultimate sanction of excommunication, may involve penalties ranging from fines and expiations to one or another degree of boycott, temporary or permanent. While formal caste sanctions have declined in recent years, especially among the educated, caste opinion and caste loyalty remain powerful and cohesive and regulating forces.³⁷

Caste unites while it divides. Although there is a great admixture of conflict and competition than the harmonious articulation of functions depicted in idealization of caste, their occupational and ritual specialization does make caste groups interdependent in practice. Caste groups live not in isolation but in the midst of a set of other groups with which they have fixed and customary relationships—economic, social, political and religious. In much of India the village was organized into a network of hereditary patron-client relations known as the *jajmani* system. Many other terms are current to describe regional varieties of the system, e.g., the *balula*, or shares from village lands given to hereditary village servants in Maharashtra. The various non-landholding castes (priests, washermen, carpenters, field labourers) provided customary service to landowners in return for fixed portions of agricultural produce. The relationship was not a mere economic exchange, but implied general duties of support and prerogatives of control. The relationships between castes are hierarchic; transactions among groups express principles of obedience and subservience. Each group has its duties and disabilities.³⁸

Highness or lowness in the local hierarchy correspond roughly to the ritual purity of the several castes. However, a caste's standing also expresses its political and economic

power. To the extent that these fail to correspond, there will be ambiguity in the ranking of castes, and changing economic and political power may be followed by an improvement in the ritual standing.

Relative positions in the local caste hierarchy are conceptualized in terms of the theoretical division of Hindu society into four classes, or *varnas*. According to this theory, society is divided into *Brahmins*, the priestly and scholarly class; *Kshatriyas*, rulers and soldiers; *Vaishyas*, merchants and agriculturists; and *Shudras*, the menial and servant class.³⁹

At the bottom of the caste hierarchies are found the "untouchables"—castes with lowest ritual standing and usually the lowest economic position and traditionally subject to onerous social and civic disabilities.⁴⁰

Divine Origin and Sanction of Caste System

The concept of divine origin of the caste system has the authority of the holiest Hindu scriptures. The *Rigveda*, which is generally believed to have been written about 1000 BC, describes the creation of four *varnas* from the limbs of *Purushasukta*. The hymn *Purushasukta* of *Rigveda*, which contains the earliest reference to *Chaturvarna* (four-tiered caste hierarchy), mentions that the four *varnas*—*brahmana*, *rajanya* (the latter normally referred to as *kshatriya*), *vaishya* and *shudra*—each of which emanated from a particular part of the body of *Purusha*, "the lord of beings", who is represented as a primeval god-man sacrificed at the beginning of time:

When they divided *Purusha*, in how many different portions did they arrange them? What became of his mouth, what of his two arms? What were his two thighs and his two feet called? His mouth became the *brahmin*; his two arms were made into the *rajanya*; his two thighs the *vaishyas*; from his two feet *shudra* was born. (*Rigveda* x, 90:11-12).⁴¹

The *Taithraya Samhita* not only ascribes the origin of *Chaturvarna* to the limbs of the Creator, but also interprets this origin theologically and gives divine justification of their functions and status.⁴² The above *Samhita*, with slight variations and interpretative additions from *Rigveda* says: "The *Brahmins* are declared to be the chief because they were created from the mouth. The *Rajanyas* are vigorous because they were created from

vigor, The *Vaishyas* are meant to be eaten, referring to their liability to excessive taxation; because they were created from the stomach, the receptacle of food. The *Shudra*, because he was created from the feet, is to be transporter of others and to subsist by the feet."⁴³

According to *Bhagavat Gita*, the four-fold division of castes was made on the basis of performance of functions of individuals. In *Gita*, Lord Krishna says: "The four-fold Order was created by me, on the basis of quality and action"⁴⁴ All Hindu *Dharma Shastras* take caste for granted. All *Puranas* assume the existence of caste and look upon it as a permanent order of society.⁴⁵ The *Dharmashastras* mention that if a man does good deeds he will be born in a high caste and be well-endowed, while if he does evil acts, he will be born in a low caste or even as an animal, a pig or a donkey.⁴⁶

Inbuilt Inequalities and Their Accentuation

The caste system is peculiar to Indian society. It is an encompassing system with an institutional force with a religious background. Even a change of religion generally does not destroy caste altogether. One important outcome of the ritual ranking of castes has been to create deep-rooted vested interests in this system and to enable the higher castes to exploit the lower ones through the institutional framework of social organization. Ruling classes everywhere have tried to perpetuate their privileges through all sorts of devices and aristocracy has generally joined hands with the clergy in this process. In India caste system has endured for over 3,000 years and even today there appears no symptoms of its early demise. No social institution containing so large an element of inequality and discrimination towards majority of the people can survive that long in a purely social context. It was through an elaborate, complex and subtle scheme of scripture, mythology and ritual that Brahminism succeeded in investing caste system with a moral authority that has seldom been effectively challenged even by the most ardent social reformers.⁴⁷

Historically, the division of labour in society has divided castes into the haves and the have-nots. The former owned and continue to own greater means of production and also political power. They form privileged classes in society. The latter constitute deprived or underprivileged classes in society. This division of labour enables the privileged castes to exploit the toiling masses. However, all haves are not equal and do not constitute a

homogeneous category. The same is true of the have-nots. The have-nots are traditionally called *Shudras*. They are broadly divided into "clean" and "unclean" or *anirvasita* and *nirvasita* or *shudras* and *ati-shudras*. The latter are outside the varna system and are treated as untouchable or *achhut*. There are layers within each of these categories. Among the *shudras*, there are peasant castes, artisan castes and nomadic castes. Subjective perception of one's position in the varna system varies and changes from time to time, place to place and context to context.⁴⁸ The system of division of labour based on hierarchy is legitimized by the religious legal system formed by the dominant castes. The *Dharmashstras* and the *Puranas* give elaborate rules for observation of their respective distinctions between purity and impurity according to one's station in life. As the caste system has continued for centuries, the *shudras* and *ati-sudras* who are theoretically expected to labour and produce surplus, and serve the privileged "*dwija*" castes, remain deprived of educational benefits, economic opportunities and political power. These are crucial components perpetuating their low position and consequently their social backwardness.⁴⁹

The traditional caste structure underwent certain fundamental changes as a result of a number of changes—in economy, polity and administration—brought about by the colonial rulers. The caste system began to acquire new functions and dimensions in the changing social, political and economic ambience of the pre-Independence period. The traditional inequalities of caste structure were accentuated by the modernization process initiated by the British. The modern opportunities—in the sphere of education, employment and political offices—were monopolized by the upper castes, particularly Brahmins in peninsular India, with the help of their traditional privileges. As a result, the Backward Classes—who could not utilize the opportunities due to their low status in the traditional caste hierarchy—of peninsular India launched protest movements demanding opportunities for non-Brahmins. "Backward Class movements emerged in the context of conflicting relations rooted in the structural conditions of existence, and hence the reorganization of life styles was not an attempt to imitate the beliefs and practices of Brahmins or other dominant groups but rather resulted from *a protest and challenge* aimed at wresting economic, political, educational and religious power and privileges. These movements have brought transformatory changes, i.e., changes in the traditional patterns of

superordination and subordination, of dominance, allocation of rights and privileges and sources of legitimacy. These changes represent a middle level structural change between reform and revolution".⁵⁰

One of the main features of the non-Brahmin movement is the opposition, conflict and protest that marks the relationship of the Backward Classes with the forward castes. And the driving force of the movement was a sense of relative deprivation that resulted from the lower social position and the consequent disabilities. In the context of Backward Classes movements, caste, class and ethnicity are not mutually exclusive categories. They intersect, interact and articulate either in caste, ethnic or class idioms.

The pre-Independence movements by the Backward Classes in peninsular India and their mobilization and ascendancy in north India during the post-Independence era, had not only redefined the caste system but also added new dimensions and directions to the reservation policy. In effect, they altered the equation between the state and civil society and the very nature of the institutions that they represent. So the ensuing part deals with different strands of the Backward Class upsurge.⁵¹

BACKWARD CLASSES MOVEMENTS

Backward castes movements have a long, chequered and uneven history of struggle against the dominant upper castes. The backward castes movement began in south India in the last century and became a major political force by the first quarter of this century. In Uttar Pradesh and Bihar it began in the beginning of this century but took longer than its counterpart in south India to acquire political clout. A variety of reasons were responsible for such low progress. Moreover, there is so far no movement of any significance of the backward castes in Orissa, West Bengal, Madhya Pradesh and Assam. The movements both in the south and north India were initiated and led by the upper strata, mainly the landed peasantry, of backward castes. Having improved economic conditions thanks to the changes in agrarian structure, and/or penetration of market economy and/or access to education, they first of all aspired for higher status in the caste hierarchy. Of course, the rate of upward mobility varies.

In the political sphere both in the south and in the north, backward caste elite demanded political positions in parties, State assemblies, cabinet and public institutions-

Simultaneously, they pressed the government for reservations in government jobs and educational institutions. Different backward castes, particularly the upper castes among them launched struggles separately for sanskritisation and political positions on caste lines, Later they came together under the banner of backward castes and mobilized the lower backward castes for enlarged support in the political sphere.⁵² The first such organized movement, and arguably the most widespread, was launched by the non-Brahmins of the Madras Presidency.

The Backward Classes Movement in Tamil Nadu

The runaway lead taken by the Tamil and Telugu Brahmins in the field of education in the erstwhile Madras Presidency has been well documented.⁵³ By the turn of the century the male literacy rate among the Tamil Brahmins was 73.6% as against a similar rate among the Vellalas of 6.9%. Whereas the male literacy in English was 17.9% among the Tamil Brahmins; it was only 0.19% among the Vellalas. The Brahmins had established a near monopoly of the government services and the professions. As far back as 1851, the Madras Revenue Board had instructed the District Collectors to restrict the number of the Brahmin entrants into the services. In spite of this, the Brahmin domination of the government services and the professions went on unabated. The caste's domination in the Provincial Congress Committee had been well established. Alerted by the advent of the Montague-Chelmsford reforms and dyarchy, the non-Brahmin elite castes took the lead in establishing first the South Indian Liberal Federation, and secondly, the Justice Party in 1916. After coming to power in 1920, the Party extended in 1921 the scope of the 1881 order, by requiring all the heads of the departments to distribute appointments of all the grades among the various communities.

But for the first time in the history of the Communal G.O., in Madras, a clear cut reservation procedure was laid down by the order of 1927, providing compartmental reservations of posts for different categories.⁵⁴ This scheme of reservation was in operation till 1947. The adversely affected Brahmins were too weak numerically to resist this scheme. Many of the Brahmin leaders had also acknowledged they indeed had obtained a lion's share of the jobs and educational facilities. As the Brahmin youths felt the

squeeze of the operation of the 1927 order, they started migrating to the other metropolitan cities of India, particularly Bombay. As can be seen from the G.O., the Scheduled Castes were earmarked only 8% of the jobs, far less than warranted by their share in the population. In view of the strength of the non-Brahmin agitation, and of the need to broaden the base of the Congress Party in the thirties by inducting more and more non-Brahmin elites into the party, the first Congress ministry in the Province headed by Rajaji, did not even touch the G.O.⁵⁵

In the Tamil areas of Madras, the 1927 G.O. represented a victory for the Vellala castes, particularly the Modaliars. They had provided the leadership to the Justice Party, although there were leaders from other non-Brahmin castes as well. The Party leaders were drawn from the landed classes and were not much keen on broadening their base by including the landless castes.⁵⁶ By the thirties, the Justice Party had served its historic purpose of reducing to a great extent the sense of deprivation on the part of the *zamindar* interests, particularly in the fields of government jobs and education. In the meantime, angered by the domination of the Congress by the Brahmins, and annoyed at Gandhiji's adherence to a purified *varna* ideology, E. V. Ramaswamy Naicker walked out of the party in 1925 and started the self-respect movement. The movement aimed at nothing short of a rejection of the Brahminical religion and culture, which Naicker thought was the prime instrument of enslaving the Tamilians. By 1939, Naicker was demanding a separate Dravidistan. But for the self-respect movement, the elite non-Brahmins of Madras would in course of time, have been as isolated from the lower caste groups, as the Lingayat and Vokkaliga leaders-in Karnataka came to be at the end of the sixties.

In 1944 the Justice Party was reconstituted as the Dravida Kazhagam, which was imbued with not only an anti-Brahmin, anti-North, anti-Hindi ideology but also with separatist sub-nationalism. In 1947, the Communal G.O. of 1927 was revised. The 1947 G.O. was historic because for the first time the non-Brahmin castes were bifurcated into non-Brahmin Hindus and non-Brahmin backward Hindus. Obviously, the non-Brahmin Hindus consisting of the forward Vellala, Naidu, Chettiyar, Reddy, etc., castes did not resent this bifurcation since they were given a compartmental reservation of 43% of the jobs.

After the adoption of the Constitution, the compartmental reservation was struck down by the Supreme Court. Then the 1947 scheme was converted into the following scheme of job reservation by an Order of 1951: Open competition: 60%; backward classes: 25%; and Scheduled Castes: 15%. In the light of the population Figures of the Scheduled Castes and Tribes (after the 1951 Census) and after the separation of Andhra, the Madras Government promulgated in 1954 the following reservation scheme—open competition: 59%; backward classes: 25%; and Scheduled Castes and Tribes: 16%. The non-Brahmin forward castes who had provided the leadership to the non-Brahmin movement two decades ago, were now compelled to compete with Brahmins in the open competition pool. This did not give rise to any backlash from the non-Brahmin forward castes as they had become sufficiently powerful to hold on to their benefits—in politics and as well as in services.⁵⁷ A special feature of the above scheme was that it divided almost every major community *or* caste group in Tamil Nadu into forward and backward sections—Christian converts from the Scheduled Castes are backward; other Christians are forward; Labbal and Deccan Muslims are backward; and Urdu-speaking Muslims are forward. Adi Saiva, Karghata, Kalaveli Vellalas are forward; and Thuluva Vellalas and Sozhi Vellalas are backward. All Reddys are forward except Ganjam Reddys; Gavaru and Vadugar Naidus are backward; but Kamma Naidus are forward. Similarly, the Chettiyars are also divided into forward and backward sub-caste groups. This manner of division greatly reduced the potential of the forward sub-castes to protest or agitate.⁵⁸

In actual operation, the benefits of reservation have gone primarily to the relatively more advanced castes among the notified backward classes. The Tamil Nadu Backward Classes Commission took special note of it and suggested compartmental reservation for different categories of Other Backward Classes, but the State Government did not heed this suggestion. The main question here is: Why did the weaker and minor backward castes constituting 88.7% of the backward classes population not feel the resentment against the benefits of reservation going to only a handful of castes? The answer will have to be found in the peculiar Dravida Kazhagam culture, which has been forged both by the DMK and the AIADMK. As long as the Tamil cultural revivalism continues grip the State and as long as the anti-Hindu, anti-North and anti-Aryan issues dominate the minds of the people, a real backward classes movement espousing the cause of the really backward will not

emerge. The same factors continue to provide a cohesion between the various non-Brahmin castes. The DMK leaders particularly are not interested in anything which will weaken the ethos of the Tamil movement.

Unlike some other States, an open conflict between the Harijan and the OBCs has not developed in Tamil Nadu to eclipse the Brahmin vs non-Brahmin cleavage. Because Tamil Nadu is a non-Sanskritic cultural area, the four-fold *varna* system has less applicability there. The Harijans promptly responded to Ramaswamy Naicker's self-respect movement. Hence, these relationships between the backward non-Brahmins and Harijans neither threaten the forward non-Brahmins nor help them. The energetic Nadars have improved their position considerably. Others too do not expect much of a threat to their rank or status. Even if some non-Brahmin forward castes feel squeezed by the reservation schemes, the expanding Tamil Nadu economy may have come to their help. The forward Naidu boys have begun going into industry, business, etc. And the Brahmins have almost written off the Tamil Nadu government service.⁵⁹ The backward class movement did not proceed to its logical end of sustaining and expanding its base for eradicating the caste system, which would also have destroyed traditional status superiority of upper backward castes over lower backward castes in general and untouchable castes in particular. The leadership raised the issue of imperialism of north Indians or Dravidians vs Aryans which sidetracked the cause of backward castes who are at the bottom. And in course of time, the DMK leadership who led the movement in the fifties "shifted its emphasis in Tamil nationalism from that of race, which would have emphasized downward alliances with the "Adi-Dravidas" or former untouchables, to that of language which permitted an accommodation upward to include Tamil Brahmins".⁶⁰ And the educationally backward castes of neighboring Mysore State also launched a parallel movement.

The Backward Classes Movement in Karnataka

Most parts of the present Karnataka State were parts of the earlier Mysore State. After about fifty years of direct British control, the administration of the Princely Mysore was handed back to the Prince in 1881.⁶¹ During this period and the subsequent couple of

decades, the important government posts came to be filled by Brahmins from Madras this gave rise to a lot of resentment on the part of Mysore Brahmins, who raised the cry of "Mysore for Mysoreans". During the first two decades of this century the Mysore Brahmins started gaining an upper hand and completely established their ascendancy. In the Princely Mysore State, the Brahmins constituted 3.8% of the population, Vokkaligas 20.4%, Lingayats 12% and depressed classes 15%. At the turn of the century, according to 1901 Census, 68% of the Mysore Brahmins were literate whereas only 14.1% of the Lingayats and 4% of the Vokkaligas were literate. Like their counterparts in Madras, the Brahmins had established a runaway lead over the two dominant landed gentry castes of the Lingayats and the Vokkaligas. During the next 40 years, the percentage of English knowing Brahmins increased from 10.2% to 36.2%, whereas the similar-percentage among the Lingayats increased from 0.13% to 2.34% and among the Vokkaligas from 0.7% to 1.09%. Almost contemporaneously with the rise of the Justice Movement in Madras in the second decade of the century, the Lingayats and Vokkaligas of the Princely Mysore State became agitated over the Brahmins' preponderance in the government service and education. In the first decade of the century, their castes' associations appeared and by 1917 under the leadership of C. K. Reddy, *Praja Mitra Mandali* was established to voice the claims of the non-Brahmins.⁶²

On the basis of representations received from the aggrieved communities, a Committee was appointed by the Maharaja in 1918 under the chairmanship of L.C Miller (the Chief Justice of Mysore) "to consider steps necessary for the adequate representation of non-Brahmin communities in public service". The Miller Committee, in its report submitted in July 1919, vindicated the complaint of the non-Brahmins that the civil service in Mysore was dominated by Brahmins: "We find that the results obtained have not shown any progressive reduction of the inequality each year".⁶³ After accepting the Miller report, the government passed orders in May 1921. The order, *inter alia*, constituted a Central Recruitment Board and reserved 75% of the vacancies for the backward classes.⁶⁴ Meanwhile, in the absence of a sharp focus, the *Praja Mitra Mandali* disintegrated and its place was taken up in 1928 by yet another party of non-Brahmins, *Prajapaksha*. The party consisted of younger elements belonging mainly to the two dominant castes who had considerable exposure to the caste conflicts in the neighboring States. The Indian National

Congress had also begun organizing the people of the Princely States on parallel lines to obtain democratic concessions. Although many of the non-Brahmin stalwarts had held aloof from the Congress Party, they were persuaded and impelled by the circumstances to join the Congress movement. In this way the entry of the Lingayat and Vokkaliga landed gentry into the Movement considerably intensified the Congress Movement in the State. After the merger in 1947 of the Princely Mysore State into the Indian Union, the Vokkaligas started controlling the State apparatus and the Congress Party, while the Lingayats constituted their junior partners.⁶⁵

The formation of the unified Karnataka State in 1956 altered the caste balance considerably. The Lingayats constituted 15% of the State's population and Vokkaligas about 11%. The first Chief Ministers of the expanded Karnataka State belonged to the Lingayat caste. The community dominated not only land but also other sources of political patronage. After the Reorganization, the new leaders extended the communal reservation scheme to the entire State. As a result of a number of Court cases culminating in the famous *Balaji* judgment, the Government ordered in 1963, 30% reservation for the Other Backward Classes and 18% for Scheduled Castes and Tribes. The beneficiaries of this scheme were the politically dominant castes of Lingayats and Vokkaligas. This gave rise to considerable resentment among other minority castes, who found themselves left high and dry. Devraj Urs, who rose as the leader of the Congress (I), very carefully and sedulously cultivated the non-Lingayat and non-Vokkaliga communities. It was primarily the consolidation of this base that enabled him to rule the State from 1972 to 1980.

In 1972, he set up Karnataka Backward Classes Commission (headed by Mr L G Havanur). The Commission did not include the Brahmins, Bunts, Lingayats, Khyatriyas and Jains in the list of Backward Classes. After modifying the Commission's recommendations the Government divided the underprivileged classes into six categories and made separate reservation for each group. The special feature of this scheme was that some sub-castes of the Lingayats had been classified as backward and majority of the sub-castes classified as forward. While the Vokkaligas have been classified as a backward community, their erstwhile senior partners in Karnataka politics, the Lingayats had been classified as mostly forward. As a result, the Lingayats find themselves divided on the issue. Also, on this issue an alliance of the Vokkaligas with the Lingayats cannot take

place as they find themselves in different camps of the backward and the forward. This is in total contrast with the Bihar and Uttar Pradesh situation where all the major forward caste groups, i.e., Brahmins, Kayasthas, Rajputs and Bhumihars have been classified as forward and can find a platform to unite upon.

The Havanur Commission Report caused considerable controversy between Lingayats and other backward classes. But owing to effective mobilization of the smaller backward castes, protests and agitations organized by Lingayats did not cut much ice. The coalition of minority backward castes forged by Devraj Urs had been pretty powerful and durable. The Karnataka non-Brahmin movement, in the decades following the twenties, failed to produce any overarching revivalist Kannada ideology which might have prevented the cleavage among the non-Brahmins from emerging to the surface. As discussed, the more recent cleavage has displaced the older Brahmin-non-Brahmin cleavage. Like the Brahmins, Kayasthas, Bhumihars and Rajputs of Uttar Pradesh and Bihar, the Lingayats, the Brahmins and Bunts of Karnataka have been kept out of the reservation scheme. The Karnataka Brahmins are so weak that even if they join hands with Lingayats, it would not make any difference.⁶⁶ As the backward castes split between upper and lower backward castes, the Lingayats and Vokkaligas of the upper backward castes fought against each other to be included or excluded from backward caste lists in the 1970s.⁶⁷ In Karnataka as long as the Lingayats had been classified as backward, there was not much public agitation. But their exclusion first by Havanur Commission and then in the G.O.s based on the report provoked the ire of the community. As the competition among backward castes gets intensified and new castes begin to assert their claim with the dominant backward castes, the backward castes get split, for the purpose of reservation, into backward communities and backward castes in Karnataka, non-Brahmin Hindu and backward Hindus in Tamil Nadu, and other backward classes and most backward classes in Bihar.

When the dominant stratum realizes that it is not possible for it to get reservation in the name of caste, they emphasize the economic criteria.⁶⁸ Similarly, Lingayat and Vokkaliga communities having realized that they would not get backward status as caste, insisted that Chinnappa Reddy Commission (1990) should adopt economic criteria to identify the SEBCs.⁶⁹

Unlike the Backward Class movements of Tamil Nadu and Karnataka, the non-Brahmin movement of Maharashtra took slightly different course and emerged at two levels: one led by the non-Brahmin Marathas and the other by the untouchable caste of Mahars. The organizational triumphs of these two large and effective protest movements in this century were dependent on the democratizing processes of the period of political reforms (1921-39), but both had roots reaching back to an apolitical period in the last half of the Nineteenth century.

The Maharashtra Backward Classes Movement

From the second half of the nineteenth century, particularly in south India, and in the Bombay Presidency, the sons of rich peasants among the dominant land-owning castes, and of local traders and moneylenders who expanded into commerce, started acquiring English education. A small fraction of this newly educated class came from lower *Shudra* cultivating, artisan and trading castes, and even from among untouchables.⁷⁰ In the 19th century Maharashtra, Poona and Kolhapur provided leadership to the emergence of backward castes movement in India. One of the first products of Christian missionary education was Jothiba Phule of Poona who belonged to the Shudra caste of gardener. Phule (1827-1890) is acknowledged as the father of the non-Brahmin movement in India. He wrote several books for the material and spiritual improvement of the lower classes. The condition of the untouchables horrified him. He called upon the people to revolt against Hindu casteist gods and degrading religious practices. He wanted the lower castes to form their own associations, create an *esprit de corps* and work for their emancipation from the age-old degradation as *Shudras* in society, education and religion. Jothiba founded the *Satya Shodak Samaj* to unite all the backward classes on a common platform. He advocated the principle of adequate representation for members of all castes in public services.

The non-Brahmin movement generated in Bombay Province (now Maharashtra) had its effect in Kolhapur—a small Maratha state—under the control of the Bombay Government by Maharaja Chatrapati Shahu.⁷¹ The Maharaja, displeased with the Brahmins, devoted much of his time to the non-Brahmin movement. He declared in 1902

that he would reserve at least half the posts in the State for qualified men of non-Brahmin communities. To give fair opportunities to all communities, the prince started a hostel in Kolhapur city for non-Brahmin youths. Kolhapur may be said to be the first state to adopt the reservation policy, though there had been some ineffective attempts earlier by the British Government to break the monopoly of one community. Kolhapur, therefore, has been a landmark in the backward classes movement towards equality.⁷² The backward classes movement in India originated in Maharashtra and Tamil Nadu. Gail Omvedt considers Maharashtra and Tamil Nadu to be States where rural impoverishment was highest. This was why they produced a cultural revolt.⁷³ The *Satya Shodhak Samaj* provided organization and leadership to backward castes like Malis, Telis, Kumbhis and Satis. They prepared the social base for the leadership of Bheemrao Rajnji Ambedkar in subsequent years. It was in 1928 that the Government of Bombay set up a Committee headed by O H B Starte to identify backward classes and recommend special provisions for their advancement. The Committee, in its report (1930), classified backward classes into three categories—depressed classes, aboriginal and hill tribes, and other backward classes—and recommended the provision of special facilities regarding education and recruitment in government services to the above categories.⁷⁴

While the non-Brahmin movement had its maximum political impact in the Tamil region, the Depressed Classes Associations led by educated individuals from untouchable communities ultimately succeeded in gaining reserved seats in provincial legislatures and the central Legislature on a pan-Indian scale. The foremost spokesman of the untouchables, Dr B R Ambedkar, who rejected Gandhi's claim to personally represent all of India's untouchables, was invited by the British to act as the delegate of the Depressed Classes at the Round Table Conference of 1930-32. The 1932 Poona Pact recognized untouchables as a political category across British India by providing reservations of seats for the Depressed Classes in legislative bodies almost in proportion to their population. Dr Ambedkar had begun the process of an ideological awakening among the untouchables, especially the members of his Mahar Community. His success in gaining reserved seats for the Depressed Classes provided a new political category with which they could identify. The Mahars were the first to reject Gandhi's designation of untouchables as Harijans (children of god), and to adopt the alternative identity of the Scheduled Castes identified in

the 1935 Constitution. In doing so, they followed the example of the backward communities, in effect declaring that the deficiencies they showed had been imposed upon them by servitude under the traditional social order and could be removed by the contemporary policies of the modern state.⁷⁵

The other backward classes of Maharashtra, whose number grew from 125 in 1953 to 160 in 1967, also mobilized themselves as social groups. But the government policy was to move from caste to income criterion. In November 1961, the State Government appointed a Backward Classes Committee (headed by B. D. Deshmukh). The Committee in its report of January 1964, grouped backward classes into four categories and recommended that reservations for 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 reservations in the State services and educational institutions for Backward Classes:

Scheduled Caste and Scheduled Caste converts to Buddhism: 13%; Scheduled Tribes, Denotified Tribes and Nomadic Tribes: 4%; and Other Backward Communities: 10%—total: 34%. Interestingly, the above scheme provides reservation, in proportion to population, only in the case of the first two categories but not in the case of the other backward communities who were extended only 10% of the vacancies. Subsequently, in April 1979, the State Government issued orders that 80% of all vacancies should be reserved for Economically Weaker Sections of Society, i.e., families whose income was less than Rs 200 per month. Where adequate number of suitably qualified candidates were not available, preference for the balance of reserved seats was to be given to candidates whose family income ranged from Rs 200 to 400 per month. And the 80% reservation was inclusive of the earlier reservations for the OBCs, SCs and STs.⁷⁶

ASCENDANCY OF BACKWARD CLASSES IN NORTH INDIA

The backward classes movements have varied in their support bases, extent of relative deprivation, goals they were seeking and the means they adopted. These variations were strongly determined by the different type of cleavages provided by the inherited social

structure, and the impact of the British rule and different public policies adopted by the post-Independence governments, both at the Centre and in the States. The rise of the backward classes in north India, unlike in the peninsular India, is basically a post-Independence phenomenon. In the south, the backward classes movement had its origins in the Brahmin-non-Brahmin polarization whereas in the north the conflict emerged between the generally forward and "twice-born" castes of Brahmins, Kayasthas, Bhumihars, Rajputs on the one hand and the intermediate castes of Yadavs, Ahirs, Kurmis, etc, on the other. The closest approximation to the stratified social system of the *varna* order survived in the Ganga valley of its origin—a region which today accounts for 25% of India's population. Within this area the twice-born castes are fully articulated and represented by area-wide sub-castes of Brahmin, Kshatriya and Vaishya rank. According to the 1931 Census for the United Provinces—the most populous contemporary State of Uttar Pradesh—Brahmins constituted 9% of the population, that is 40% of the entire Brahmin *varna* category in India. Brahmins and Rajputs accounted for over 16% of the population, with Vaishyas (banias) adding another 2.5%. A similar *varna* order prevailed in adjacent Bihar, where twice-born castes constituted more than 12% of the population and Kayasthas, accorded elite status as a *literati* caste, added a little more than 1%.

The *varna* divide between the twice-born castes and the *Shudras* in the Hindi heartland areas has historically demarcated a rigid social hierarchy, one in which the lower castes were deprived of education, denied social dignity, and confined to manual work of cultivation or the other low status artisan and service occupations. Untouchables, by definition, performed polluting tasks, and, in addition, worked in the fields, commonly under the conditions of bonded labours. Although, rajputs rather than brahmins exercised the greatest power as land controllers, Brahminical ideology played the most important role in legitimizing the status and occupational hierarchy. High status groups (including ashraf Muslims) did not personally engage in cultivating the land, or in any sort of manual work which was left *to jatis* of the *Shudras* and to the untouchables.⁷⁷

In south India, the *varna* structure by itself could not legitimize the secular stratification of wealth and power. The Brahmins constituted no more than about three to four percent of the population. While they remained at the apex of the ritual hierarchy.

they were unevenly distributed, and controlled extensive land only in some localities. The Kshatriyas, if present at all, were settled in extremely low concentrations. Vaishyas of indigenous origin were frequently outnumbered by immigrant marwaris, jains or other mercantile castes. In most of south India, land-controlling groups came from origins which marked them as *Shudra* by Brahminical criteria.⁷⁸ The impact of imperial power on dominance relations sanctified by the *varna* order was only somewhat more solid within the Aryan heartland of the Gangetic plain.⁷⁹

It is possible to divide the *Shudra* category in north India into two clearly identifiable sub-categories—what are called the upper *Shudras* and the Lower *Shudras*. The former comprise such economically powerful and politically aggressive groups as the Jats, Yadavs, Kurmis and Koiris while the latter include the humble Hajjam, Kumbhar, Lohar, Teli, Tarwa, Dhanuk and Mallah.⁸⁰ The Jats are not officially included in the backward classes list but regard themselves as the leaders of the backward classes. It is the inclusion of all these heterogeneous groups within the *Shudra* category that has made for its large size and has enabled leaders of the backward castes (that is the upper *Shudras*) to press hard their claim for special status in the post-Independence period. They have alleged that Congress Party (via the Nehru model of development which served as its ideological framework) has been instrumental in empowering a small group of upper castes, a pro-industry group, at the expense of the rural majority. This has left the backward castes with no option but to launch an all out attack on the Congress system and all that it stands for. And the upper caste dominance in the Congress party has been well documented.⁸¹ But the Congress was also instrumental in bringing about a veritable revolution in the countryside. Through its land reform legislations it was primarily responsible for dispossessing the big zamindars and empowering the backward castes. The reforms created a substantial class of medium-sized owner-cultivators. Many of whom belonged to the backward classes. "Unlike large landowners whose origins and resources are located in the history of the British Raj, self-employed cultivators are largely a product of post-Independence agrarian policies. As a consequence, the center of power shifted from the feudal landlords to the market-oriented independent cultivators".⁸²

In caste terms, the principal losers in northern India were Rajput-Thakurs and to a lesser extent Bania, Kayastha and Muslim landlords. The main beneficiaries were the

erstwhile tenants among Jats, Yadavs, Kurmis, Koiris, that is those belonging to the upper strata of the *Shudra* castes. After cornering the benefits of this first wave of agrarian legislation, these groups took the lead in blocking all subsequent attempts at reform designed to benefit the marginal farmers and the landless who usually also belonged to castes and groups further down the hierarchy. "Bullock capitalists" (as middle peasants are referred to by Rudolf and Rudolf), independent agricultural producers, middle peasants, backward classes, backward castes, intermediate castes are all overlapping terms. They refer primarily to those members of the *Shudra* castes who are self-employed, operate holdings between 2.5 to 15 acres, use a pair of bullocks and the new inputs associated with the green revolution.⁸³

In the premier State of the Hindu heartland Uttar Pradesh, the principal backward castes the Yadavs, Kurmis, Lodhas and Gujjars controlled 6% of the zaminadari rights in the State in the pre-Independence period. After Independence, however, 20% of the land came to be owned by these four castes (together they comprise 15% of the State's population). Taking all the backward castes of U.P., their share increased from 8% zaminadari rights prior to Independence to control over 38% of the land after Independence,⁸⁴ The displacement of large landowners by middle farmers may be accurately described as one of the most significant developments of the post-Independence period. The middle farmers today constitute the most powerful group in the countryside economically as well as politically. They have more voters than any other agrarian class taken by itself—about 25% of the total population—and have emerged as the principal spokesmen of agrarian interests. But agrarian interests for them remain confined to the interests of middle farmers which explains why their major demands have been remunerative prices and other input costs—and lately, administrative jobs via the Mandal Commission. Politically the rise of the middle farmer was the single most important cause of the decline of the Congress in north India. Despite its electoral dependence on the forward castes, Scheduled Castes, tribes and minorities till 1967, the party was also successful in incorporating sections of the backward castes even though they did not serve as its "votebank". After all, Charan Singh remained an important leader and the pre-eminent spokesman of rural interests in the Congress until he quit the party in 1967.⁸⁵

The middle peasant challenge emerged clearly for the first time in 1967 when the Congress Party lost power at the State level in all north Indian States and middle peasants took over as chief ministers in Haryana (Rao Birendra Singh), Uttar Pradesh (Chaudhury Charan Singh), Madhya Pradesh (G N Singh) and Bihar (B P Mandal).⁸⁶ For a still clearer picture of the increasing political clout of the backward castes, one must turn to the States of Uttar Pradesh and Bihar:

BIHAR: In the non-Sanskritic area of Tamil Nadu, the cleavage between the Brahmins and others overshadowed the other cleavages and the peculiar Dravidian ideology has been muting the cleavages among the non-Brahmins, and between the non-Brahmins and Scheduled Castes. In contrast, Bihar and U.P. are two States in the Sanskritic cultural area where there was no scope for non-Brahmins to unite under one movement. The twice-born castes are found fully differentiated among themselves and also from backward castes and Scheduled Castes. And the Kayashtas emerged in these areas as the chief *literati* caste and even surpassed the Brahmins. The politics of contemporary Bihar reveals caste conflicts at two levels: simultaneously between the forward castes and the upper peasant castes; and between the upper peasant castes and the Scheduled Castes. In Bihar, the forward castes of Brahmins, Bhumihars, Rajputs and Kayashtas constitute 13% of the population; the upper backward castes of Banias, Yadavs, Kurmis and Koeris constitute 19.3%; the minor artisan and landless castes like Dhanuk, Mallah, etc, form 32%; Muslims and the Scheduled Castes and Tribes make up 12.5% and 23.5% respectively.⁸⁷

Among the upper backward castes, the Yadavs and Kurmis had begun to organize themselves along the caste lines during the first decade of this century. The All India Yadava Mahasabha has its headquarters in Patna, and the Bihar Yadavas, along with their counterparts in Punjab and U.P., formed the backbone of the Indian Yadava movement. Ultimately, the Yadavas in the other States in India could not attain the same level of political mobilization as the Bihar Yadavs did.⁸⁸ Unlike the non-Brahmins of Mysore and Madras, the entry of Yadavs, Kurmis and Koeris into the politics in general and the Congress Party in particular, was almost totally controlled and governed by the rivalry among the forward castes.⁸⁹ In the years before 1967, this controlled induction of the backwards into the Congress convinced the socialist leader Ram Manohar Lohia that the

Congress could be defeated only if all the backward castes could be united in one political party. In the sixties, the *Samyukta Socialist Party* started assiduously wooing them.

The Congress debacle of 1967 marks an important stage in the upsurge of the backward castes. In this election (to the *Vidhan Sabha*) the Bania, Kurmi, and Yadav candidates were returned in big numbers and constituted 31.6% of the members. The share went up again in 1977 when the Janata Party won. The Karpoori Thakur government issued a G.O., in November 1978, accepting the classification of the Bihar Backward Classes Commission (headed by Mungeri Lal) for the purpose of recruitment to public sendees.⁹⁰ Thakur was only pursuing the Lohia line of further mobilizing the backward castes. He thought that he could successfully graft the Karnataka model on Bihar. But the G.O. provoked widespread backlash on the part of the forward castes. Moreover, the mobilization of the backward classes in Bihar has been a belated and fragmented one. The backward castes had emerged divided. The upsurge of the backward castes meant really the upsurge of the Yadavs. In fact in the last two decades Yadavas alone have captured the chief ministership of the State no less than three times (B P Mandal, D R Rai and Laloo Prasad Yadav).⁹¹

The Thakur G.O. came without an adequate mobilization and unification of the backward. Perhaps he thought that the 1977 Janata victory represented a viable and durable resurgence of the backward castes. And the power of the forward castes in the government services and their semi-feudal hold on the countryside is still strong.⁹²

UTTAR PRADESH: As in Bihar, in Uttar Pradesh too the caste system is found well differentiated in terms of the *varna* system. According to the 1931 Census, the forward twice-born caste constituted about 20.3% of the total population. The upper peasant castes of Yadavs, Kurmis, Jats, Lodhas and Koeris formed about 16.4%. The Muslims then constituted 13.6%. The Brahmins and the Kayashtas were the first to take to modern education. The Kayasthas particularly started dominating the public services and the professions. Later on, around the forties, the Banias too started taking to modern professions. One very interesting feature of the modernization of Uttar Pradesh is that the dominant landed gentry, the Rajputs, never felt threatened by the Brahmin-Kayashta monopoly of education, professions and government services. Before the abolition of the

zaminadari system, the Rajputs formed the bulk of the zamindars in the State. The zaminadari abolition in 1952 did not completely upset the political economy of U.P. As in Bihar, the Brahmins and Rajputs of U.P. still have considerable stake and share in the rural power structure. There has been no neat power arrangement as in Maharashtra, Kamataka and Tamil Nadu. There is yet another important reason why the cleavages among the forwards as in Bihar, or between the forwards and the backwards as in Kamataka and Tamil Nadu did not appear in U.P. During the twenties and the thirties, the United Provinces was an important stronghold of the Muslim League. The Hindu-Muslim, and Congress-League cleavages overshadowed every other division. The U.P. backwards, staying in the Hindu Sanskrit heartland and surrounded by the famous shrines and places of pilgrimage, could not be persuaded to reject Brahminism.⁹³

In the forties, the peasant castes of Yadavs, Kurmis, Koeris and Jats developed a high degree of affinity among themselves. Out of this affinity among them arose the AJGAR (an acronym for Ahir, Jat, Gujar) movement. "The annual conferences of the Yadava Mahasabha also whipped up opposition to the Thakurs, Kayasthas, Banias, Bhumihars and Brahmins who were seen as the exploiters of Yadavs, ill treating them, and thwarting their attempts at progress. Political mobilization and agitations were directed against these groups".⁹⁴ The demand for the reservation of jobs was there from the thirties, but the Congress leaders were not favourably disposed.

Despite these stirrings on the part of the OBCs, a unified political platform could never be forged for the OBCs and the Scheduled Castes. The impact of the Arya Samaj movement has been considerable on Jats, Yadavs and others. The Yadavs and Kurmis have been too much in the grip of the process of Sanskritisation. To the extent the upper peasant castes have resorted to Sanskritisation, they have generally been unable to make a common cause with the lower backward and the Scheduled Castes. Therefore, the backward class movements in U.P. and Bihar have not attained their full momentum and strength. For the first time in the post-Independence history of U.P. three ministerships went to the upper peasant castes (including Yadav and Kurmi) in the 1967 S V D Ministry headed by Mr Charan Singh. This was due to the fact that the backward classes made considerable gains in the 1967 elections. Like Karpoori Thakur in Bihar, Ram Naresh Yadav mistook this increase for a durable rise of the backwards and was emboldened to issue the famous

communal G.O. of August 1977. The 1980 elections disproved the assumption of critical change in the balance of power.⁹⁵

In Uttar Pradesh, the backward classes comprise around 42% of the population with Yadavs heading the list at 9%. Attempts at the political mobilization of the backward castes began soon after Independence. By the early 1960s, the Socialist Party under the leadership of Rammanohar Lohia had emerged as the principle spokesman of these castes. Thereafter the mantle fell on Charan Singh.⁹⁶ In fact, for several decades after Independence, the Congress Party remained the principal vehicle through which the backward castes in U.P. sought political mobility. Their quest for independent political power took concrete form with the formation in 1969 of the Bharatiya Lok Dal (BLD), the party *par excellence* of the backward castes. Thereafter the backward castes became increasingly strident in their opposition to Congress rule. The BLD's victory in the 1977 Assembly elections (as a major constituent of the Janata Party) was widely perceived as the victory of the backward castes at the cost of the upper castes.

For the first few decades after Independence, the Jats were the undisputed leaders of the backward castes. But in recent years they have faced increasing challenge from the Yadavs. The split in the Lok Dal following the death of Charan Singh must be viewed essentially as a Yadav revolt against Jat leadership. The determination of the backward castes to seize power together with the internal contradictions and struggles within their alliance system has thrown the politics of the entire northern region into turmoil. For a while Yadavs rebel against Jats, Kurmis challenge Yadavs, and lower *Shudras* turn against upper *Shudras*. The backward castes as a whole refuse to align with any set up that does not concede from total supremacy. Though not coherent enough to capture power on their own, they are powerful enough to prevent others from forming a rival stable order. At least since the 1960s, the backward castes, or more specifically the upper sections of the backward, have been key players in the politics of northern India. Despite some attempts to accommodate these castes in the Congress, they have been steadfast in their search for an independent political identity.⁹⁷

The Backward Class upsurge had spawned, among other things, arguably the most comprehensive system of affirmative action in the world. More importantly, the political mobilization of the underprivileged castes had started changing the very configuration of

Indian society, economy and polity. Such process gathered momentum in the post-Independence era under a democratic and secular Constitution. Because such a system had established a dynamic interface between the state and civil society. The following section—complementary to the foregoing discussion—completes the context by examining the state-society relations after the Independence with a special focus on caste system and reservation policy.

STATE, SOCIETY AND COMPENSATORY DISCRIMINATION:

POST-INDEPENDENCE LANDMARKS

Only since 1950 has India existed as a single political system with strong central powers over constituent States that encompass distinctive regional identities. The large scale state system established in the subcontinent during the period of colonial rule functioned in many regions as a "Limited Raj". Neither the Muslim and Mughal imperia nor the great Hindu empires of ancient and medieval India exercised centralized bureaucratic control through ownership of land and revenue extraction, or wielded a monopoly of force within the territory defined as their dominion. By contrast, it is common to speak of India's ancient civilization based on an underlying cultural unity identified with the Brahminical tradition. This assumption of a common set of ideas, beliefs and values understood by Hindus in all parts of India has been strengthened by modern anthropological studies in diverse linguistic areas. Viewed in the context of marriage, commensality and occupational patterns, localized caste (*jati*) hierarchies are seen as homologous structures representing an internal rationality common to the social order as a whole.⁹⁸ Dumont observes that religious symbolism became attached to the notion of "hierarchical collectivity" in which the use of concentrated politico-economic power was circumscribed by moral obligation.⁹⁹ As a result, it is arguable that commands by the dominant castes were perceived as legitimate and evolved a high level of predictable compliance from the lower castes towards whom they were directed.

The portrayal of traditional Indian society through general categories that obscure regional differences has tended to represent the subcontinent before British rule as a static

hierarchical order of Brahminical religiosity, There had been significant degree of internal variation in patterns of social stratification, as well as frequent movements of religious protest against Brahminical orthodoxy.¹⁰⁰ The impact of these religious protest movements on secular inequalities could not be very great. Even so, opportunities for social mobility, both of individuals and groups, were not absent. This much can be inferred from the temple honors system in south India presided over by hereditary *Brahmin* priests. The calibration of changing donative and redistributive transactions between the worshippers and the deity, accommodated rising *Shudra* groups whose military exploits or commercial success otherwise might have motivated them to challenge the *varna* ideology.

More direct means of achieving higher status were available in cultural regions where a Rajput-type militaristic ethos facilitated the partnership of princes and wealthy Vaishyas and Jains, and opened opportunities for peasant soldiers to claim warrior status as they rose in the ranks of local armies.¹⁰¹ The most far-reaching consequences of the British intervention in Indian society were those that followed from the land revenue settlements made by Company in all parts of British India. But the social effects were far from uniform either within the *zamindari* areas or the regions under some form of *ryohvari* tenure.¹⁰² The full measure of the colonial impact, however, cannot be taken without focussing on the extent of ideological and political transformation in the bases of social dominance. If, on top of this, are added all the other changes commonly associated with colonial rule, the potentially radical character of the colonial intervention becomes apparent. A less exhaustive list includes:¹⁰³

Merit-based recruitment to English-language schools and colleges, administrative services and the modern professions; sweeping critiques of Hinduism as a "*brahmin* ideology" to oppress the majority, mounted by Christian missionaries who opened schools attended by the upper castes as well as tiny elites of low caste and tribal groups; proliferation of district towns, growth of port cities and expansion of metropolitan centres that offered, in principle, caste-free employment in different fields; growing prosperity of dominant cultivating castes in the fertile regions of Tamil Nadu, Andhra, Gujarat, the western United Provinces and Punjab which elevated alongside ritual status as an important new source of prestige; unprecedented opportunities for the traditional trading and business communities to make money in commerce and industry, and the emergence

of new entrepreneurial class as well as the proletariat and the petit bourgeoisie in the cities and towns of Bombay, Bengal, Gujarat and Madras. All of these innovations of the state, taken together, offered possibilities for detaching dominance from caste status in ways that amounted to an entirely new phenomenon in India's society.

The political arrangements in the early phase of post-Independence period were clearly dominated by an educated nationalist elite. The business class was also politically influential, and the landed and the caste elites were slowly brought into the ruling coalition. The new rulers enjoyed widely-perceived legitimacy, in part because of the traditional patterns of authority in society such as the caste structure. Over the past two decades, however, or since about 1967, much has changed. Most important, the state's capacity to govern (i.e., the capacity simultaneously to promote development and accommodate diverse interests) has declined. Along with this decline, order and authority have been eroding. Since the mid-1960s, the surface manifestation of this process has been widespread activism outside of the established political channels that often has led to violence. Below the surface lies an important cause of these political problems: disintegration of India's major political institutions, especially the decline of its premier political entity, the Congress. Below the established state elites, the vertical patterns of fealty in India's civil society have been eroding. Members of higher castes and other "big men" have gradually lost their capacity to influence the political behaviour of those below them in the socioeconomic hierarchy. As a result, new social groups have entered the political arena and pressed new demands upon the state. Without a dominant party and other conflict-resolving institutions, democratic accommodation of such demands has been difficult.¹⁰⁴

Over the past two decades, a legitimate and moderately stable state that was confident of its ability to lay out India's agenda for socioeconomic change has evolved into a reactive state. This state is omnipresent, but feeble; it is highly centralized and interventionist, and yet seems powerless. It has the responsibility to foster the "life chances" of its many diverse social groups, but rather than initiating action, it primarily reacts. Moreover, the state now appears capable neither of dealing with the concerns of diverse interest groups nor of directing planned development. Its dominant institutions are in disarray, and the search for new legitimacy formulas goes on. Also, traditional authority

patterns in the social structure have been weakened. As the Indian state is organized as a democracy, politics and political competition tend to permeate much of social life. This tends to politicize all forms of societal cleavages—old versus new, social and economic. Thus, the accumulating distributive claims on the state partly reflect the state's attempt to penetrate and reorganize socio-economic life. India's democracy has been democracy from the above: for most of its existence, it has been more of a gift from the elite to the masses than something the masses have secured for themselves. There is no doubt that the longer democracy is practiced, the more difficult it becomes for the elite to take away basic democratic rights.

An elite-dominated democracy has also structured the patterns of political mobilization. Leaders have mobilized socioeconomic groups more as power resources in intra-elite struggles and less to satisfy group aspirations. This pattern of elite-led mobilization is distinguishable from the more conventional concept of social mobilization that supposedly accompanies industrialization, urbanization, literacy, and so forth. Whereas social mobilization is generally produced by economic development and "modernization", elite-led mobilization often reflects patterns of intra-elite conflict.¹⁰⁵ The primary goal of elite-led mobilization in India has been power for the elite. The issue of whether or not the aspirations of the mobilized groups can be satisfied has always been secondary in the minds of the mobilisers. The mobilized but unorganized groups that are ignored by politicians once they have served their political purposes add considerable volatility to the polity. When "real groups" with "real interests" such as labour, are mobilized, there is a realistic chance that the mobilization will be accompanied by organization and that group demands can be accommodated after negotiations. By contrast, mobilization from above often attracts demagogues. Because it remains unorganized and really does not have concrete, even if incremental, gains for the mobilized groups as its priority; such mobilization periodically tends to generate political turmoil. This focus on elite-led mobilization should not detract attention from the fact of real distributional conflicts. The developmental model that India has pursued has exacerbated existing inequalities along regional, rural-versus-urban, ethnic, class, and caste lines. The resulting dissatisfaction provides the raw material for elite-led movements. The point, however, is

that dissatisfied groups have only rarely produced their own leaders and sustained oppositional movements on their own.¹⁰⁶

Historically, caste boundaries approximating the four-tiered *varna* system have been rather more marked in the northern than in southern parts of India. For instance, in rural northern India there are Brahmins and Rajput Thakurs—the latter are clan as much as caste-based—who are mostly drawn from the upper landed strata. Kurmis, Ahirs and Yadavs are the middling castes, or the so-called "clean" agricultural castes, and are more often than not middling farmers and peasants. Chamars and Pasis are the lowest castes and swell the ranks of landless labourers—who are officially known as the Scheduled Castes. In southern India, however, there are only three distinguishable castes—the Brahmins, the non-Brahmins and the Scheduled Castes and Tribes. Previously, Brahmins, a mere 3% of the population, dominated the government services and cultural life of the south. Since 1920s, non-Brahmin movements have contributed to the steady etiolation of Brahmin dominance, thus narrowing over time the arena of conflict between the upper castes in the south. Except in matters concerning marriage and commensality, caste has a relatively weaker hold in West Bengal and the north-eastern states where class, linguistic and regional loyalties are much stronger. Despite immense regional variations in the caste system it is commonplace to view India as the bastion of Brahmins, Thakurs and a handful of others known as the "forward castes". Although about 17.6% of the total population, the forward castes exercise a disproportionate measure of political and economic power. At the bottom of the caste order are the scheduled castes and tribes who constitute about 25% of the population. In between these two layers are an estimated 1,000 to 4,000 intermediate castes *byjati*, known as the Other Backward Classes which comprise nearly 43.7% of the population.¹⁰⁷

Since 1870s, when the political associations began to be formed for democratization of India to till 1947 when the present form of Indian democracy came into being and further till 1960s, the Indian elite was essentially dominated by the individuals of upper castes of society.¹⁰⁸ No doubt, this section of elite was challenged from time to time by the Other Backward Classes (OBCs) and Dalits but they were not so powerful enough to break the hegemony of the upper caste elite. The ruling Congress party adopted a conciliatory approach to the privileged communities and classes that virtually ruled out

any direct attempt to organize the lower castes and poorer classes for political action. The Congress continued to portray itself as the only secular party with a national constituency representing the interests of all social groups, including the poor and the minorities. The Constitution, the Parliament and the Congress party all made symbolic commitments to provide for the educational, social and economic advance of the poorest sections under the "socialistic pattern of society".

The leaders of the State governments, although virtually all Congressmen till 1967, either belonged to or depended upon locally dominant landowning castes to mobilize the rural vote and win State and national elections.¹⁰⁹ Until the mid-1960s, the Congress party entered the electoral arena in the north with formidable advantage against their opponents. They could count on the votes of the twice-born castes, especially brahmins; and the "vote banks" of the Scheduled Castes and Muslims. In the keystone State of Uttar Pradesh, which alone elected 16% of all members of Parliament, a coalition of brahmins (9%), Scheduled Castes (21%) and Muslims (15%) was virtually sufficient on its own to win elections. In neighboring Bihar, the second most populous State, which sent another 10% of the nation's members to Parliament, the core Congress constituency of Brahmins, Scheduled Castes and Muslims reached roughly 30%; and vote levels could be pushed up to above 40% by mobilizing factions from one or more of the rival twice-born castes. Congress could pick up ambitious leaders from among the Backward Classes and tribals by offering them government contracts, business licenses and party tickets to co-opt their social base.

Electoral strategies outside the Aryan heartland required different alignments depending on the social configuration of the region. Among the linguistic States created after 1956, several were dominated by sub-regional and/or State-wide agricultural castes, which along with the urban upper castes and middle classes provided the major social base of the party. Thus, the Congress party consolidated its power in Andhra with the support of the *reddys*; in Karnataka, with the *lingayats* and *vokkaligas*; in Maharashtra, with the *marathas*, and in Gujarat, with the *patidars*. Nevertheless, the Scheduled Caste votebank everywhere played a significant role; as did the Scheduled Tribes in certain regions, and the allegiance of Muslims.¹¹⁰

One of the major instruments of accommodation and co-option was reservation policy, used to mobilize support on the basis of "political categories". Reservations institutionalized social divisions among the poor, and encouraged competition of disadvantaged groups against one another for privileges from the ruling party, thereby establishing a pattern of vertical relationships between the various sections of the underprivileged and dominant social groups. A second major instrument of co-option in undercutting class solidarity among the cultivating peasantry was the implementation of zamindari abolition. The elimination of intermediaries between the peasantry and the state defused class violence that had threatened to get out of hand in Uttar Pradesh, Bihar and West Bengal, and which in the mid-1940s, had triggered armed struggle against the government in Telangana under the leadership of the Communist Party.¹¹¹ The reforms halted the process of polarization between landlords and tenants while establishing across regions a class of rich and middle peasants who accounted for the major portion of the cultivated area but were present in large numbers only in a few States.

Across several regions, including Uttar Pradesh, Tamil Nadu, Andhra, Karnataka, Maharashtra, Gujarat and Orissa, rurally oriented development programs after Independence were initiated by this class and carried out in its interest. Moreover, growing economic differentiation reinforced caste solidarity by increasing the salience of the materiality of caste. At the village level, more prosperous members of *jatis* could provide crucial assistance to poorer members through low interest loans, reduced rents on land, and employment, and also act as intermediaries between the poor and government agencies. This phenomenon was also present in urban areas through the creation of caste associations at various levels of caste cluster, region and city. Caste organizations were also used for political action, especially to lobby the State government to include the caste as a backward community eligible for reservations. At the same time, growing emphasis on the identity of the Backward Classes reinforced a sense of separation from the Scheduled Castes. All of these factors together help explain why despite growing economic differentiation, region, religion, caste cluster or tribal group remained the primary identity through which economic discontent was articulated.¹¹²

In a number of States where politicization of the disadvantaged lower castes and poorer classes was further advanced, the competition for political and state power was

carried out by social groups formed into Backward Classes and Forward Castes in contours first shaped under the British Raj. The very first amendment to the Constitution passed by Parliament in 1951 allowed the States to make "special provisions for the advancement of any socially and educationally backward classes of citizens". The problem of formulating an objective method to gauge backwardness, which unlike "untouchability" was open to varied interpretations, delayed the granting of reservations at an all-India level. It was as early as 1953 that the Central Government set up a Backward Classes Commission which submitted its report in 1955. The majority of the members drawn from the *Shudra* castes ended up in disagreement with the Brahmin chairman of the Commission. They repeatedly asserted the crux of their argument that "our society was not built essentially on an economic structure but on the medieval ideas of *varna*, caste and social hierarchy". Their Report recommended sweeping reservations for the Other Backward Classes in all the State and Central government services. The dissenting Chairman interpreted the majority demand for caste criteria of backwardness as evidence of the intention of "dominants" among the backwards to "wage a politics of confrontation with the upper castes and to remove them from power". He accused the leaders of the backwards of wanting to drive a wedge between the upper classes and the lower classes, so that the "advanced communities are not allowed the right to speak for, or represent the backward communities". The report was rejected by the Nehru government on the grounds that its measure of backwardness was neither objective nor convincing.¹¹³

Letting the matter rest suited the upper caste, and particularly Brahmin, dominated elected and non elected institutions at the central level. But the Indian state's ambivalent attitude towards historically disadvantaged social groups defined in terms of caste had served to create arenas of virulent social conflict at all levels of the different regional political economies. While successive Congress Central governments sat on the fence, many States on their own initiative adopted reservations in response to organized demands by economically and politically powerful backward castes and classes for protection against social discrimination. The process was more marked in the southern States where non-Brahmin (or anti-Brahmin) social movements were particularly strong. In many northern States, by contrast, society at the local and regional levels was permeated by caste-based ideologies of domination and control. An air of arrogant superiority was not

just the monopoly of castes such as the Bhumihar Brahmins and the Rajput Thakurs of the Gangetic plain but also of agricultural castes such as the Patidar rich peasants of Gujarat.

Throughout India's post-Independence history, the central (Indian) States' equivocal normative position on equality had to contend with caste-based ideologies of hierarchy deeply embedded in local and regional cultures. Ill-defined politics of positive discrimination stood little chance on then- own of achieving the kind of compensatory equality that was loudly avouched as a crucial components of state ideology. It was only in regions where some impetus came from below in the form of anti-upper caste social reform movements that the hiatus between the Indian state's normative position and regional social reality narrowed in any significant measure. The denting of Brahminical dominance by intermediate social groups did not denote the victory of the downtrodden castes and classes. It merely enhanced the power of those claiming to be the other backward castes and classes. The Indian state's ideological promise to redress historical disadvantages along caste lines was turned to good advantage by groups who were well placed and skillful enough to borrow that idiom at the level of regional social formations.¹¹⁴

The universal suffrage created the opportunity for the more educated members of the backward communities to take up the cause of reservations as an ideological rallying point for political mobilization of the large layer of *Shudra* castes (also referred to as "middle" or "intermediate" castes) that formed the bulk of the cultivating peasantry or *kisans*, and the lower middle classes. Their independent entry into politics from the 1967 elections ruptured the Congress system of elite accommodation on which the privileged position of the Forward Castes and middle classes in the political and public institutions of government at the states has rested since the colonial period. Over the twenty three years (as of 1990) since the DMK first came to power in Madras (Tamil Nadu), there emerged a broad pattern across regions of the growing power of the Backward Classes relative to the upper castes in elected political bodies. A good deal of this change can be attributed to politics followed by the leaders of competing political parties who tried to broaden their social constituencies after the collapse of the Congress system while remaining within the framework of accommodative politics that bypassed class issues.

The political mobilization of the Backward Classes, whether pursued by regional or national political parties, rested on appeals to caste sentiments among cognate groups that cut across class differences to maintain the segmentation of the poor around distinctive social, ethnic and religious categories. The political divisiveness of this approach was least serious in the States of south India where the Forward Castes had themselves emerged from the landowning *Shudra* peasantry, and where backward Hindus demanded a share in the privileges of dominant groups without seeking to displace them. In Tamil Nadu, the sub-national Tamil cultural identity was associated with a community ideology that measured caste Hindu privileges mainly against the unprivilege of Scheduled Castes. Rising levels of reservations to 68% of places (including 15% for the SCs), and introduction of an additional category of "most backward" by the late 1980s did little to disrupt the politics of accommodation.¹¹⁵ A similar approach initiated by the Congress party in Andhra Pradesh and Karnataka also allowed for moderate change in the social composition of political and bureaucratic elites, although falling short of overcoming the dominance of established groups. In both States, distinct regional identities diluted overarching sentiments of Telugu or Kannadiga cultural nationalism, while regional and/or State-wide dominant castes could not be bypassed to permanently shift the base of social support for the party to the Backward Classes.

On the whole, in south India, reservations for Backward Classes combined with high expenditures on social welfare programs, sustained the politics of accommodation by enabling some small proportion of the disadvantaged castes to join the urban middle classes and find places in the political and public institutions of the State. By contrast, such policies in other regions, more rigidly structured around *varna* divisions, produced violent confrontations between Backward Classes and Forward Castes that made the institutions of the State into arenas of conflict and rendered them ineffective in defusing caste and class confrontation.¹¹⁶

In Bihar and Uttar Pradesh, as shown by Frankel and Hasan,¹¹⁷ the Backward Classes emerged as an important political force from the 1960s, in opposition to the Congress party, initially identifying with the Socialists, and then with Charan Singh's various coalition parties. In these States, the struggle was waged between more evenly balanced numbers, across *varna* lines of *Shudra* and twice-born, and for the purpose of replacing the

upper castes as political leaders in the State legislatures, and through reservations, diluting their virtual monopoly over senior posts in the State services. The confrontation also included a class dimension. Leaders of the Backward Classes attempted to expand their social base among the prosperous rich and middle peasantry by appealing to the poor peasantry's common resentment of the upper castes, who did not soil their hands with the menial tasks of cultivation historically assigned to the lower orders. An aggravating factor in both industrially backward states was that the towns offered few economic opportunities for the educated sections of the upper castes, except those in the enlarged civil services. Similarly, entry into these positions was perceived by the Backward Classes as the only avenue for overcoming the caste disabilities that prevented them from achieving equal dignity and power in society. The multiple strands of this conflict, which involved issues of ideology, status, class and power all at once, pulling against the whole fabric of the social order.

The first attempt by the short-lived Janata government, in 1978, to enforce a reservation policy in Bihar of 25% for the OBCs triggered large-scale street fighting and polarized Backwards and Forwards in towns and villages throughout the State. The Forwards regained the upper hand after Janata split into the Lok Dal and the Bharatiya Janata Party, facilitating the Congress (I)'s return to national and state power in 1980. Nevertheless, the struggle continued unabated. Although caste and community remained the primary identity for all groups, the Backwards began to forge alliances with poor peasants among the *rajputs*, Scheduled Castes and Muslims. This coalition threw its support to the Janata Dal (a combine of disillusioned ex-Congressmen, socialists and the Lok Dal who had earlier supported Janata), which ousted the Congress (I) at the national level in 1989, and displaced Congress (I) as the single largest party in Bihar in 1990.

Political developments in Uttar Pradesh during the same period, between 1977 and 1979, revealed some similar features. The Janata government's more modest reservation policy of 15% for the OBCs had met with riots in the eastern districts. Subsequently, during the long interregnum of Congress (I) rule, the Backward Classes were outflanked by a *brahmin* and *thakur* alignment with the Scheduled Castes. Nevertheless, the MAJGAR (Muslims, ahirs, jats, gujars, rajputs and other backward castes) pieced together by the Janata Dal in 1989 held together well enough to break up the Congress' traditional

votebank, and to cost its control over both the Center and the State government. Equally striking, the Janata Dai's victory was achieved with the electoral cooperation of the Bahujan Samaj Party, the first party led by a member of the Scheduled Castes to mobilize large numbers of these communities and the most backward castes on an *anti-brahmin* and anti-caste platform in the Aryan heartland.¹¹⁸

In contrast to the south, the sharper lines of division between upper and intermediate castes in the north led to violent agitations and clashes against all attempts to implement reservation policies for the backward castes. This was especially true for Bihar and U.P. where the Congress relied on the support of the upper and the lower castes to parry the rising challenge of the backward castes. Playing the two ends of the social spectrum against the middle had worked reasonably well for the Congress until 1977 when the Janata Party, drawing support from agriculturally dominant backward castes in northern India, trumped the premier national party at the hustings. The formation of a new backward classes commission in 1978 headed by B.P.Mandal indicated the growing ability of the middling agricultural castes in north India's regional political economy to directly influence the center stage of politics. Caste was made an explicit criterion of the commission's recommendations for reservations. But by the time the commission's report was presented to Parliament, the Congress under Indira Gandhi had regained the saddle to make sure that the document gathered more dust than mileage. In 1989, the victory of the Janata Dal under V.P.Singh provided an opening for the advocates of reservations for the other backward castes.¹¹⁹

The victory of the Janata Dal under V.P.Singh at the Center in 1989, and at several States in 1989 and 1990, indicated further the disintegration in north India of long established patterns of vertical mobilization, and placed in relief the outline for a new basis of horizontal co-operation of the disadvantaged social groups. Nevertheless, the coalition which defeated the Congress (I) had a contingent configuration formed out of shared ambitions and special antipathies. The core of its support in north India came from an alignment between *rajputs (thakurs)* and the more prosperous sections of the Backward Classes, especially *yadavs, jats, kurmis* and other middle castes. The co-operation between *thakurs* and the Backward Classes was itself a new social phenomenon in an area where

memories were fresh of oppression by *thakur zamindars and jagirdars of yadavs, jats* and other cultivating castes.

The Backward Classes and *kisans* had supported the Janata Dal, as they had the Janata and the Lok Dal in earlier elections, perceiving it to be their own political vehicle for rising to power not only in the States but also at the Centre. They placed the highest importance on promises of the party leadership to meet their social as well as economic demands as a new agrarian middle class, which had a dual origin in the low castes and cultivating peasantry. Among these promises were commitments by the national leadership to implement the recommendations of the Mandal Commission, first made in 1980, to provide 27% reservations for the OBCs in the all-India services of the IAS and IPS and other allied services. Besides, the Janata Dal promised to redirect plan priorities from the industrial to the rural sector, allocating more than 50% of expenditure to agriculture, and waiving repayment of bank loans to agriculturists.

Even as the Backward Classes savoured their first taste of political power at the Centre, their ability to establish an enduring social combination to displace the upper castes, remained in question. Conflicts between the more affluent cultivating peasantry and landless labourers over both caste discrimination and economic rights, reflecting persistent caste and class divisions between Backward Classes and the Scheduled Castes, are not uncommon. Although India's major political parties contrived to mobilize the poor on the basis of community rather than class, this did not mean that economic differentiation was unimportant in understanding the relationship between dominance and state power in the late 1980s. By contrast, the expanding urban middle classes, composed of the English-educated upper and forward castes, with infusions of individuals from backward communities benefited by reservations, constituted the core of the economically dominant classes in society. Still divided by region, community and caste, politicians from the Backward Classes and *kisans* were groping their way to the creation of a national farmers class.¹²⁰

The decline of a homogeneous elite, rooted in status hierarchies erected upon devalued notions of purity and pollution, is likely to place even greater importance on access to the huge resources of the managerial state as a basis of rank and privilege in society. The battle

for ascendance between the city and countryside, industry and agriculture, bureaucrats and politicians, the urban middle classes and peasantry, landowners and agricultural labourers, industrialists and workers, Forward Castes and Backward Classes, and even advocates of a Hindu state and those of a secular state, are all aspects of the social turmoil accompanying the collapse of the Brahminical system as a source of legitimacy for the unequal social order. The downtrodden—Dalits, minorities and women—have begun to raise the question of which social forces are responsible for the persistence of grinding poverty. They have started to understand the benefits of organization in extracting from political parties tangible gains in return for their support.¹²¹

It was at this crucial juncture that the National Front coalition regime (led by the Janata Dal)—which depended on the core support base of the emerging intermediate castes of north India—announced in 1990 its decision to partially implement the recommendations of the Mandal Commission. The unanticipated adoption of the reservation policy in favour of the OBCs unleashed unprecedented developments which impacted profoundly on the state, society and compensatory discrimination. The unparalleled institutional conflict, that the acceptance of the Mandal Report gave rise to, brought to the surface the underlying contradictions in state and society. The historic institutional interface with the Mandal Commission is the frame of reference of this study with which the ensuing section is concerned.

STATE, SOCIETY AND MANDAL COMMISSION: INSTITUTIONAL RESPONSE, ROLE AND CONFLICT

The state and society operate and express themselves through institutions. In a way society "behaves" through its institutions. A systematic study of different fundamental institutions—in an interactive context—provides the key to the comprehension of the fundamental issues of public policy, state and society. The authoritative allocation of values is influenced by both political and social institutions. In other words, public policy is an outcome of the interaction between the state and civil society. The policy output is generally a result of either institutional consensus or conflict. But it is the conflict between institutions that reflects the underlying contradictions. An analysis of both inter and intra

institutional conflict in public policy making provides a key to the understanding of the larger issues of public policy, state and society. It is in this context that the controversial policy of reservations assumes great significance.

The job reservation policy in favour of the Other Backward Classes based on the Mandal Commission Report is arguably the most controversial public policy of the post-Independence period. The policy, for the first time, brought the state and society into conflict. The fundamental institutions of both state and society played active roles during the national controversy over the Mandal Commission. Thus, the partial acceptance of the Mandal Report brought to the surface the underlying contradictions in both civil society and the state and between the state and society. Because the policy brought about both inter and intra-institutional conflict as well.

The Reservation Policy—redistributive-cum-accommodative in nature—tends to divide not only the fundamental social institution of caste—on which the policy impacts directly—but also all other basic institutions of India like Parliament, Executive, Judiciary, political parties, etc. The affirmative action assumes added significance in view of the fact that all important institutions of the state and civil society do not generally play an active and direct role in other policy areas like anti-poverty policy, industrial policy, agricultural policy, education policy and foreign policy. In other words, these policies are less or non-controversial and hence do not bring out the contradictions in either state or society.

Moreover, the Reservation Policy in favor of the OBCs also unleashes violent and protracted resistance from the non-beneficiaries, that is the upper castes, in the form of agitations which often lead to death and destruction disturbing the law and order. Highly emotional exchange of arguments between the beneficiaries (Backward Classes) and the non-beneficiaries or "losers" (forward castes) over the policy is now only to be expected. The issue of reservations can be emotive to such an extent that scores of agitating students committed self-immolations during the anti-Mandal turmoil. The anti-reservation backlash could even assume the potential to bring down the democratically-elected governments; in fact it did topple the Madhavsingh Solanki's government in Gujarat in 1981 and the National Front-led coalition government at the Center in 1990.

The Institutional Matrix of the Study

The primary focus of this study is on the fundamental issues of state, society and public policy. The study is situated in the exceptional institutional matrix that unfolded during the national controversy over the Mandal Commission. The public policy of positive discrimination in favor of the Other Backward Classes—a redistributive-cum-cooptive policy—is the focal point of the analysis. The unparalleled developments that occurred in the wake of the abrupt acceptance of the Mandal Commission recommendations provided a unique and historic opportunity to examine the dynamics of public policy making in the area of compensatory discrimination. Because the active roles played by the vital institutions, of both state and civil society, in the national controversy over the Mandal Commission had brought out into the open the hidden contradictions—socio-economic and political—in both the state and civil society. Because it is only the reservation policy that tends to cause institutional conflict; and this was best exemplified by the intense controversy generated by the Mandal Commission. Therefore, the OBC reservations based on the Mandal Commission provides a very useful frame of reference.

This study attempts to examine why the preferential treatment in general and OBC reservations in particular is arguably the most controversial of all public policies. And why almost all the basic institutions of both state and society react actively to the policy and more importantly, why there is both inter and intra-institutional division over the policy while a broad institutional consensus exists in favour of reservations for Scheduled Castes and Tribes. Public policy analysis would be incomplete if it does not examine the role of the state. So this study tries to address the active part played by the state vis-a-vis the society—during the national turmoil over the Mandal Commission—in making the policy of job quotas for the SEBCs. Because how the inherent contradictions in society come to the surface—which is part of the historical process—and how the conflict is resolved are very crucial to any systematic analysis of state-society interplay.

At a more crucial level, the study also seeks to find out why the state encounters massive resistance from civil society, particularly from the upper castes, in enforcing a redistributive policy like job reservations for the OBCs. For the state's legitimacy was

seriously eroded during the Mandal controversy despite the fact that the beneficiary category of OBCs constitute about 50% of the population. So it is important to examine the factors responsible and under what circumstances the state assumes legitimacy in implementing a reformative policy like job reservations. Moreover, the society was also equally divided over the Mandal Commission and instead of resolving the social conflict, the state itself got caught up in contradictions. So what are the factors that influence the state's capacity to enforce its developmental and accommodative agenda and resolve the possible social conflict. It is also crucial to find out under what conditions does the state chooses to adopt a policy of far-reaching consequences (like job reservations) which tends to disturb the existing power structure and whether the Indian state has autonomy in enforcing a distributive policy, particularly in the face of opposition from the dominant groups. More to the point, what was the impact of the anti-reservation agitation—and the resultant institutional conflict—on the reservation policy in question.

The institutions under study are:

- 1. EXECUTIVE**
- 2. LEGISLATURE**
- 3. JUDICIARY**
- 4. POLITICAL PARTIES**
- 5. CASTE GROUPS**
- 6. PRINT MEDIUM**
- 7. INTEREST GROUPS**

This study attempts to address the above discussed issues by examining: the way in which the above institutions responded to the OBC reservations; the role played by them during the institutional crisis triggered by the Mandal Commission; and the nature of the institutions brought out by the above two factors. In other words, it tries to understand not only the dynamics of public policy making in the most controversial area, i.e., compensatory discrimination in favour of the SEBCs, but also the nature of both state and society as revealed by the unprecedented interaction (rather conflict) brought about by the Mandal Commission.

This study makes an analytical distinction between state and society, i.e., state (or "political") institutions and "social" institutions; or between the "public" and the "private" domains. The concept of state distinguishes the structure and the dynamics of political rule from that of civil society; it also refers to empirically identifiable political institutions like executive, judiciary. And there is no consensus regarding the true nature of certain institutions, like political parties, as to whether they belong to civil society or state because they straddle both social and political spheres. Therefore, the said institutions are studied at three levels: Executive, Legislature and Judiciary represent the state; Caste Groups, Print Medium and Interest Groups stand for the civil society; and the Political Parties, which act as a vital medium between the state and society and represent the society in the state. The present study includes the interest groups in civil society because they try to influence the public policies in their favour without trying to gain and exercise power. Also, society and civil society are used interchangeably. The following section sets out how the historic institutional chain reaction occurred in the wake of the acceptance of Mandal Commission recommendations.

THE INSTITUTIONAL FRAMEWORK

The policy of positive discrimination in favour of the Backward Classes has been arguably the most controversial of all public policies in India. In fact the very first Amendment to the Constitution was effected in 1951 to facilitate reservations for the Backward Classes. The policy of compensatory discrimination comprises a wide array of preferential schemes. These are authorized by the constitutional provisions that permit departure from the formal equality for the purpose of favoring specified groups. A broad national consensus seems to exist as far as the reservation policy for the Scheduled Castes and Scheduled Tribes is concerned. And the policy has become almost non-controversial since the introduction of reservations for the Other Backward Classes. Consequently, the reservational scheme in favor of the OBCs has emerged as the most controversial component of positive discrimination.

The Governments, both at the Center and in States, have been implementing various reservational programs for the welfare of the Backward Classes. But reservational policies in favor of the OBCs have always caused violent backlash from the upper castes. During the early 1950s, there was a strong but silent resistance in some quarters to the legislative provisions regarding caste. As the leadership at the Center was effective and the charisma of Nehru was at its height, the resistance failed to manifest in any ugly form. The resistance gradually assumed the form of agitations. The anti-reservation agitations in Bihar, Gujarat and Andhra Pradesh in 1978, 1981 and 1986 respectively are still fresh in our memory. But the earlier anti-reservation movements and the resultant disorder had confined only to the respective States where the policy was introduced or modified. The agitations assumed all-India proportions only in the wake of the implementation of the recommendations of the Mandal Commission . Moreover, reservation policy had become a truly national issue in 1990 with the acceptance of Mandal Commission Report. On August 7 of that year, the minority National Front government suddenly announced the partial acceptance of Mandal Commission recommendations by reserving 27% of civil posts in the Central government for the OBCs. The developments that followed the historic decision are unparalleled in the annals of post-Independence India.

The partial acceptance of Mandal Commission recommendations by the Central government sparked off a violent backlash by the upper castes. The anti-Mandal Commission agitation, which had broken out in the capital Delhi, spread rapidly to other north Indian cities and later to south India. The anti-Mandal movement culminated in self-immolations and suicides by some agitating students—an unknown phenomenon in the history of positive discrimination. The agitation paralyzed the normal life all over the country, particularly in north India. Most of the country was affected, either directly or indirectly, by the national controversy over Mandal Commission. It was the anti-Mandal agitation, especially the self-immolations, which set off the institutional domino effect—drawing other vital institutions into the vortex—and polarized the nation into pro and anti-reservationist camps.

The print medium, most effective of the mass media, particularly the national English language press, played an active part during the national controversy over the job reservations for the OBCs. The leading national English dailies played the role of a kind of

propaganda vehicle for the anti-reservationists. The national turmoil over Mamlal Report provided a rare opportunity to estimate the nature of the national press. The coverage of the anti-Mandal agitation—in terms of the space allotted—by the three largest circulated English dailies and the tone and tenor of the editorials are studied for the above purpose. The national press, in general, was highly critical of reservations and played a provocative role. It aggravated the violent controversy by sensationalizing the agitation and glorifying the protest suicides. A section of the press even resorted to direct incitement to violence.

Political parties as "coalition of groups" provide the institutional means of initiating, sustaining and accelerating change and of absorbing the impact of change. The Central government's abrupt decision to implement the Mandal Commission recommendations had caught political parties of all persuasions unawares. Like other political institutions of the nation, the reaction of national political parties had also been ambiguous, confused and even contradictory. The job reservation policy for the SEBCs was taken by the National Front—the minority coalition government led by the largest constituent the Janata Dal. The momentous decision had brought out into the open not only the inter-party but also the intra-party contradictions. Initially, all major political parties maintained a studied silence. But as the anti-Mandal frenzy on the streets mounted, they started reacting. All political parties—including the Left which accepted the policy in principle—criticized the manner in which the policy was being implemented. And most of the national parties, particularly the Congress and the BJP, found fault with the methodology of the Mandal Commission. But no political party had opposed the policy outright. Interestingly, only the National Front and the BJP promised—in their pre-general election manifestos—to implement the reservations for the OBCs; the other parties did not mention the Mandal Commission at all. However, the unexpected acceptance of Mandal Commission Report was a result of power struggle within the National Front and not a response to the demands from the OBCs or their leaders. Interestingly, the left extremist groups also entered the fray supporting the policy. The momentous decision on Mandal Report had exposed the internal contradictions; and the ideological and mobilisational crises of parties and groups.

The political parties—which represent the social groups in the state and articulate their interests—had failed to reach a consensus and defuse the conflict. Resultantly, for the

first time in the annals of public policy making in India, a wide spectrum of interest groups directly and actively partook in the national controversy. They ranged from industrial lobbies to religious organizations. The groups played their parts in different ways: issuing statements, organizing or participating in protest rallies, and even resorting to violence outright. The reaction of the interest groups uncovered their caste (or "class") character as they were divided largely on caste lines.

The national controversy over OBC reservations, for the first time, focussed the national attention on the locus of the executive in the realm of preferential treatment. The executive has been taking policy initiatives in the domain of positive discrimination since its inception during the colonial era—first reservational scheme was adopted in 1885 by the Madras government. Constitutional provisions, particularly the Articles 15(4), 16(4) and 340, empower the state to identify the Backward Classes and take effective steps for their overall development. However, the role of the executive in formulating and enforcing the affirmative action programs has remained one of the contested aspects of compensatory discrimination. Almost all policy decisions in this area have been taken by the executive branch of the state, generally through executive orders. Critics contend that since the reservation policy affects the fundamental rights of the citizens, the policy should be made by the legislature in the form of a law because the "political" executive tends to abuse its powers for its own political gains. But the judicial pronouncements on the question state that preferential programs can be formulated and implemented through executive orders.

The first national policy of job reservations for the SEBCs—based on the Mandal Report—was also made through an executive order. It was that order which triggered the institutional ripple effect and brought the state into conflict with civil society. The circumstances and the way in which the Union Government announced the policy made the role of the executive even more contentious. The immediate cause of the announcement was power struggle within the ruling Janata Dal. Before its announcement, the policy had not been discussed either by the coalition partners of the minority National Front government or by the parliament. The policy was fiercely opposed by the upper castes on an unprecedented scale and scores of petitions were filed challenging the said order. As a result, the fissures within the ruling coalition got deeper. And the Supreme Court's stay on the enforcement of the policy seriously undermined the legitimacy of the executive.

The legislature is generally deemed to be the most important branch of the Government. But in reality, the powers of the parliament are increasingly eroded by the executive. The Union Legislature had been bypassed by the Executive in making a very significant policy like job reservations for the OBCs in the Central Government. The then prime minister merely announced (on August 7, 1990) in the *Lok Sabha* his government's decision to reserve 27% of Central government jobs for the SEBCs; and the Union Government issued an Office Memorandum (on August 13, 1990) giving effect to its decision without initiating a debate either in the parliament or outside. However, the national turbulence over the OBC reservations and the resultant institutional confrontation compelled both executive and legislature to initiate a discussion in the House. The first debate in the Parliament (*Lok Sabha*) over the situation arising out of the government's decision to implement Mandal Commission recommendations took place on August 24, 1990—amid violent anti-reservation agitation. In all, three sessions (debates) were held in the *Lok Sabha* to discuss the controversial policy. Members from almost all major political parties participated in the debate. Presumably, the House was also divided over the quota policy.

All the members cutting across party lines felt that the policy should have been discussed in the Parliament before its implementation and the opposition members protested the manner in which the policy was being implemented. Most of the participating members expressed their concern over the loss of lives in the agitation and urged the government to invite the students for talks. Interestingly, no party stated that it was totally opposed to the policy based on the Mandal Commission recommendations. The emotional debate was also characterized by occasional exchange of personal invectives. The Government neither modified nor diluted the controversial policy despite the long and heated debate in the Parliament and the violent anti-reservation agitation outside. The legislature did not make any serious efforts either to defuse the agitation or to build a consensus over the policy. Thus the parliament merely reflected the contradictions outside and failed to influence the policy in any way. Consequently, the sharp divisions in the parliament only added to the institutional conflict.

The main lines of reservation policy formulation—the use, extent, method, recipients, duration and administration of preferences—lie with the government. But the

judiciary has the power of judicial review. Although there is a general Constitutional duty to protect and advance the interests of the Backward Classes, the Constitution does not explicitly oblige the executive to employ any particular method of doing this. Scores of aggrieved parties filed petitions before the Courts against various reservational programs for the Backward Classes and for the enforcement of their alleged fundamental rights. Over the years, a considerable body of case law has grown on this issue in which certain clear trends and a broad consensus are discernible. The Apex Court intervened in the national fracas over the Mandal Commission on 21 September, 1990; on that day, it asked the authorities concerned to handle the anti-reservation agitation with "appropriate care". Again on October 1, 1990, the Supreme Court intervened actively in the explosive situation—amid self-immolations by some students—by staying the operation of the Office Memorandum issued by the Government to implement the Mandal Report. On change in the government at the Center, an amended memorandum was issued by the Congress government. This was also challenged. The writ petitions throughout the country were transferred to the Supreme Court and referred to a Special Bench of Nine Judges, *to finally settle the legal position relating to reservations*. The Supreme Court gave its final landmark judgment on November 16, 1992. The historic verdict by the Supreme Court in the Mandal Commission Case (*Indra Sawhney vs Union of India*) is the most comprehensive judicial pronouncement on the policy of compensatory discrimination which addresses all relevant issues of the policy.

The judgment upheld the 27% job reservations for the SEBCs. More importantly, the Court directed that the "Creamy Layer"—the privileged sections of the OBCs who do not deserve the reservational benefits—should be removed from the beneficiary category. The judiciary also declared unconstitutional the Congress government's provision providing 10% reservation for the economically poor persons. It should be mentioned here that there was no consensus even in the judiciary over the reservation policy. In fact the three minority Judges (of nine-judge bench) dissented by their separate judgments. However, the judiciary proved more decisive by putting an end to the anti-reservation agitation—by staying the government's order—and to the public controversy. It had legitimized arguably the most contentious public policy of Independent India. At the same time, even the majority judgment did not validate the government's policy *in toto*. The

judiciary attempted to strike a judicious balance between the competing interests of backward castes and forward castes while explicitly recognizing the significance of caste factor.

Before setting out the institutional conflict over Mandal Commission in Chapter IV, a comprehensive discussion on the controversial category of Other Backward Classes is presented in the following Chapter II. Chapter III deals with the controversial Mandal Commission which marks a watershed in the history of Backward Classes and compensatory discrimination. As it will be seen, the national controversy centers around the Mandal Commission on which the contentious policy of job reservations is based.

NOTES

- . Thomas R. Dye, *Understanding Public Policy*, Prentice Hall, Englewood Cliffs, NJ., 1987, pp. 22-23.
- ². Samuel P. Huntington, *Political Order in Changing Societies*, Febber and Simons, N.Y., 1975, pp. 1-7.
- ³ Ibid., pp. 18-30.
- ⁴ . "Authoritative" means the policies, whether formal or effective, are accepted as binding; political research seeks first and foremost to understand the way in which values are authoritatively allocated, not for a group within society, but for the whole society.
- ⁵ . David Easton, *The Political System: An Enquiry into the State of Political Science*, Scientific Book Agency, Calcutta, 1971, pp. 131-140.
- ⁶ . Eric A. Nordlinger, *On the Autonomy of the Democratic State*, Harvard Univ. Press, 1981, pp. 1-3.
- ⁷. Ibid. pp. 7-15.
- ⁸ . Atul Kohli, *Democracy and Discontent: India's Growing Crisis of Governability*, Cambridge Univ. Press, Cambridge, 1991, pp. 22-32.
- ⁹ . For a discussion of the range of studies in the liberal framework, see Theda Skocpol *et al* (Eds), *Bringing the State Back in*, Cambridge Univ. Press, Cambridge, 1985.
- ¹⁰ . For a discussion of the re-orientation in the liberal and structural-functional paradigms leading to an adoption of a state-oriented focus, see Atul Kohli, *State and Poverty in India*, Orient Longman, Delhi, 1987, pp. 15-32.

¹¹ See especially Goran Therborn, *What Does the Ruling Class do When it Rules?*, New Left Books, London, 1978; Nicos Poulanzas, *Political Power and Social Classes*, New Left Books, London, 1973; Ralph Miliband, *State in Capitalist Societies*, Basic Books, N.Y., 1969.

¹² Goran Therborn, op.cit., p. 132.

¹³ . Zoya Hasan, "Introduction: State and Identity in Modern India," in Zoya Hasan *et al* (Eds), *The State, Political Process and Identity: Reflections on Modern India*, Sage Pubs, Delhi, 1989, p. 10.

¹⁴ . *Politics in India*, Little Brown & Co., Boston, 1970.

¹⁵ . Francine Frankel, *India's Political Economy 1947-1977*, Oxford University Press (hereafter OUP), Delhi, 1978; Baldev Raj Nayar, *The Modernization Imperative and Indian Planning*, Vikas Pubs., Delhi, 1972; Reinhard Bendix, *Nation-Building and Citizenship: Studies of Our Changing Social Order*, Univ. of California Press, Berkeley, 1977, Chap. 7.

¹⁶ . Much of the current work in the non-Marxist literature on the state focuses on the need to shift attention away from the social determinants of political process to "a political logic that is not reducible or derivable from social variables," argues Kohli, *State and Poverty in India*, op.cit., p.20. No doubt, it is desirable to avoid the pitfalls of economic determinism provided it is not replaced with statism and reification of the state.

. The significance of autonomy of politics is clearly reflected in Kothari's statement: "If 'modernization' is the central tendency of our time, it is 'politicization' that provides its driving force," *Politics in India*, op.cit., p.1. Also see, by the same author, "The Crisis of the Moderate State and the Decline of Democracy," in James Manor & Peter Lyons (Eds), *Transfer and Transformation*, Leicester Univ. Press, Leicester, 1984.

¹⁸ . For an argument along lines of relative autonomy with reference to south Asia, see Hamza Alvi, "The State in Post-Colonial Societies," op.cit., and with particular reference to India, see Pranab Bardhan, *The Political Economy of Development in India*, OUP, Delhi, 1984, pp.32-39.

¹⁹ . Sudipta Kaviraj, "On State, Society and Discourse in India," *IDS Bulletin*, 1990, Vol. 21, No. 4.

²⁰ . Bhambhri, C.P., "The Indian State: Conflicts and Contradictions," in Zoya Hasan *et al* (Eds), op.cit., pp.74-75.

²¹ . Joel S. Migdal *et al* (Eds) in "Introduction: Developing a State-in-Society Perspective", in *State Power and Social Forces: Domination and Transformation in the Third World* Cambridge Univ. Press, N.Y., 1994, p.2.

²² . Marc Galanter, *Competing Equalities: Law and Backward Classes in India*. OUP, Delhi, 1984, p.1.

²³ . The policy is known by a variety of terms: "affirmative action" "reverse discrimination" and "redressive action/policies" are popular in the USA. "Positive discrimination" is commonly used in the U.K. Indian discussion usually refers to "special treatment." "concessions," "privileges," "special provisions," or "preferential treatment," for named groups. Scholars have inclined to use "protective discrimination," which was first used by Alexandrowicz in his 1957 book (*Constitutional Developments in India*, OUP, Bombay). More recently, scholarly writing has adopted the term "compensatory discrimination" (Paramananda Singh, "Equal Opportunity' and 'Compensatory Discrimination': Constitutional Policy and Judicial Control," *Journal of the Indian Law Institute*, 1976.

pp.300-19). Among the candidates that have failed to gain currency are "progressive discrimination" (Rudolph and Rudolph, 1967—on analogy to the progressive income tax) and "preferential opportunity" (M D Nandunjaswamy in Government of Karnataka, 1975, Vol.1). But the above names are not neutral. For instance, common usages like "special treatment" are accurate but omit any reference to the principles that animate the policies and distinguish them from other distributive schemes. "Protective discrimination" has a paternalistic and static quality. Whereas "compensatory discrimination" suggests that it employs a principle of selection that is akin to old discrimination. But the purpose is different: it is not exclusion or relegation but inclusion and recompensates both for historic deprivations and offsets present handicaps. However, the term "Reservation Policy" or simply "reservations" are more popular in India.

²⁴ . Sharma, B. A .V, *et al* (Eds), *Reservation Policy in India*, Light & Life Pubs., Delhi, 1982, p.4.

²⁵ .Maheshwari, S.R., "Reservation Policy in India: Theory and Practice," *Indian Journal of Public Administration*, July-Sept, 1997, No.3, p.663.

²⁶ . *Report of the Backward Classes Commission* (Chairman: B.P.Mandal), Vol. I, Government of India, 1980, p.5. (Hereafter: *Mandal Commission Report*).

²⁷ . Singh, S.N., *Reservation Policy for Backward Classes*, Rawat Publications, Jaipur, 1996,p.37.

²⁸ . *Mandal Commission Report*, Vol.1, p.5.

²⁹ .Ghanshyam Shah, "Social Backwardness and Politics of Reservations," *Economic and Political Weekly* (hereafter: *EPW*), March 1991 (Annual Number), p.606.

³⁰ . The word "caste" is not an indigenous Indian term but a graft via English (from the Portuguese *casta*). It is used to correspond to several Indian terms, but has no exact equivalent in Indian languages. Serious students of Indian society regard it as suspect on grounds of both its foreignness and its ambiguity. Thus Mandelbaum says: "It (the term caste) has been pinned to too many social entities—endogamous group, a category of such groups, a system of social organization. It seems best to use the term, apart from the direct connotation, as an adjective that refers to the highly stratified social system."

³¹ Weidenfeld & Nicholson, London, 1970.

³² . For example, Mandelbaum, *Society in India* (2 Vols.), Univ. of California Press, Berkeley, 1970; and Marriot, *Village India: Studies in Little Community*, Univ. of Chicago Press, Chicago, 1955.

³³ . *Caste, Class and Occupation*, Popular Prakashan, Bombay, 1969.

³⁴ . *Caste in India: Its Nature, Function and Origin*, OUP, Bombay, 1961.

³⁵ . Marriot (op. cit) and Inden, 1974.

³⁶ . Marc Galanter, op.cit., pp.7-8.

³⁷ . Ibid, pp.8-9.

³⁸ . Ibid.

³⁹ . Ibid. p. 10.

⁴⁰ .Ibid.,pp.12-13.

⁴¹ .Declan Quigley, *The Interpretation of Caste*, OUP, New York, 1993, p.6.

⁴² . *Mandal Commission Report*, Vol.1, p. 13.

⁴³ . Ghurye, G.S., *Caste and Race in India*, Popular Prakashan, Bombay, 1979, p.44.

⁴⁴ . *Mandal Commission Report*, Vol I, p. 14.

⁴⁵ . Panikkar, K.M., *Hindu Society at Crossroads*, Asia Pub. House, Bombay, 1964, p.26.

- ⁴⁶ . Srinivas, M.N., *Caste in Modern India*, Asia Pub. House, Bombay, 1964, p.26.
- ⁴⁷ . *Mandal Commission Report*, Vol.1, p. 17.
- ⁴⁸ . For instance, the Patidars of Gujarat were considered Shudras a few decades ago; but now they call themselves Vaishyas, and are acknowledged as such by others. It is significant that they are not have-nots. Similar is the case of Vokkaligas and Lingayats of Karnataka; Reddys and Kamins of Andhra Pradesh; Marathas of Maharashtra; and to some extent Yadavs of Bihar.
- ⁴⁹ . Ghanshyam Shah, op.cit. p.601.
- ⁵⁰ . Rao, M.S.A., *Social Movements and Social Transformation: A Study of Two Backward Classes Movements*, Manohar Pubs., Delhi, 1987, pp-xiv-xv.
- ⁵¹ . For a review of literature on various social movements, including the Backward Class movements, see: Ghanshyam Shah, *Social Movements in India: A Review of Literature*, Sage Pubs., Delhi, 1990.
- ⁵² .Ibid., p.605.
- ⁵³ . Most notably: Irschick, Eugene F., *Politics and Social Conflict in South India: The Non-Brahmin Movement and Tamil Separatism 1916-1929*, OUP, Bombay, 1969; and Arnold David, *The Congress in Tamil Nadu: Nationalist Politics in South India 1919-1937*, Manohar Pubs., Delhi, 1977.
- ⁵⁴ , The scheme of reservation is as follows: 1. Non-Brahmin Hindus: 42%; 2. Brahmins: 17%; 3. Muslims: 17%; 4. Anglo-Indians: 17%; 5. Depressed Classes: 8% (total 100%).
- ⁵⁵ .*Mandal Commission Report*, Vol. IV, p. 147,
- ⁵⁶ , A slow erosion of the ranks of the party and defections to the Congress had already begun in the twenties; and the non-Brahmin strategy was to infiltrate into the Congress and capture the organization from within.
- ⁵⁷ . Following the recommendations of the Tamil Nadu Backward Classes Commission (1970), the reservation scheme for the purposes of both Articles 15(4) and 16(4) was revised in 1947 as follows: open competition: 51%; backward classes: 31%; and scheduled castes and tribes: 18%. Even this reduction in the share of the open merit pool did not provoke any protest on the part of the non-Brahmin forward sub-caste groups.
- ⁵⁸ . *Mandal Commission Report*, Vol. IV, pp. 147-48.
- ⁵⁹ . Ibid., pp. 149-56.
- ⁶⁰ . Frankel, Francine, "Middle Classes and Castes in India's Politics: Prospects for Political Accommodation," in Atul Kohli (Ed) *India's Democracy: Changing State-Society Relations*, Princeton Univ. Press, Princeton, 1988, p.245.
- ⁶¹ .Between 1851 and 1881 reservations were made for non-Brahmins as the Brahmins had monopolized the services and professions. In 1895, appointments in police department were made on reserved posts in fixed proportions in favor of Brahmins, Muslims and other Hindu castes. But these early measures did not seriously affect Brahmin monopoly. In 1914, a system of recruitment by nomination was introduced by which posts of Assistant Commissioners were filled with members of the backward classes; but their position did not improve
- ⁶² . *Mandal Commission Report*, Vol. IV, p.151.
- ⁶³ . The Report shows that the Brahmin percentage in all grades ranged from 67% to 82% and even 100% in the grade of Rs 100 to Rs 200. The Committee opined that backward classes should include all communities other than Brahmins, Anglo-Indians and Europeans.

⁶⁴ .Singh, S. N., *Reservation Policy for Backward Classes*, Rawat Publications, Jaipur, 1996, pp.39-40.

⁶⁵ . *Mandal Commission Report*, Vol. IV, pp. 151-52

⁶⁶ . Ibid., pp. 153-54.

⁶⁷ . In Tamil Nadu, when M G Ramachandran government superimposed an income criterion of Rs 9,000 on the OBC list in 1979, the backward caste elite protested and the order had to be withdrawn.

⁶⁸ .For instance, the Gujarat Kshatriya Sabha which mobilized Kshatriyas—forward and backward—demanded backward caste status for all Kshatriyas before the First Backward Classes Commission in the 1950s. But having failed to get backward status for forward Kshyatriyas who dominated the caste organization, it demanded economic criteria to determine backwardness.

⁶⁹ . Ghanshyam Shah, op.cit.,605.

⁷⁰ . Francine R. Frankel & M S A Rao (Eds), *Dominance and State Power in India: Decline of a Social Order*, Vol. I, OUP, Delhi, 1989, p. 10.

⁷¹ .The Brahmin-non-Brahmin controversy in Bombay began in 1891 when R P Paranjpe with the new claim of the Maharaja of Kolhapur, a descendent of great Shivaji, to Vedic rites, as his Brahmin hereditary priest refused to allow this heterodox innovation, his hereditary landed property and allowances were confiscated and the dispute became acrimonious.

⁷² . Singh, S. N., op.cit. pp.36-37.

⁷³ .Gail Omvedt, *Cultural Revolt in a Colonial Society: The non-Brahmin Movement in Western India, 1873-1930*, Popular Prakashan, Bombay, 1976, p.34. Quoted in Singh, S.N., op.cit.

⁷⁴ *Mandal Commission Report*, Vol. I, p.5

⁷⁵ .Francine Frankel, op.cit., pp.11-12.

⁷⁶ *Mandal Commission Report*, Vol. I, p.11.

⁷⁷ .Francine Frankel, op.cit., pp.5-6.

⁷⁸ .The south Indian social hierarchy, in one basic respect, shared an important similarity with the *varna* system of north India. The ritual (and physical) distance between Brahmins and untouchables was rigidly enforced, and the distinction of purity and pollution dividing caste Hindus from untouchables was universally recognized.

⁷⁹ . Francine Frankel, op.cit., p.9.

⁸⁰ . "Caste, Land and Dominance in Bihar: Breakdown of the Brahminical Social Order" in Francine Frankel & M S A Rao (Eds), op.cit. p.54.

⁸¹ .For example: Kochanek, Stanley A., *The Congress Party of India*, Princeton Univ. Press, Princeton, 1969; John Osgood Field & Myron Weiner (Eds), *Studies in Electoral Politics in the Indian States*, Vol.4, Manohar Book Service, Delhi, 1977; and Blair, Harry W. "Rising Kulaks and Backward Classes in Bihar." *EPW*, 12 January, 1980. Kochanek's study shows that 46% of the ministers in the union cabinet were Brahmins and the forward castes (Brahmins, Kayashtas, Kshatriyas and Vaishyas) together constituted 46% of the members of the Congress Parliamentary Party as against the 10% Shudras. Nor was the situation any different at the State level. In the 1962 Uttar Pradesh Legislative Assembly, almost 63% of the Congress MLAs belonged to the elite castes and only 6.8% to the backward classes. In the same year, the Congress ministry in Bihar, as Blair's study shows, had 58% cabinet ministers from the forward castes and 8% from the backward castes.

⁸² .Rudolf, L .I. & S H Rudolf, *In Pursuit of Lakshmi: The Political Economy of the Indian State*, Orient Longman, Bombay, 1987, p.354.

⁸³ .Meenakshi Jain, "Backward Castes and Social Change in U.P. and Bihar," In Srinivas. M N (Ed), *Caste: Its Twentieth Century Avatar*, Viking (Penguin India), Delhi, 1996. pp. 138-39.

84 Zoya Hasan, "Power and Mobilization: Patterns of Resistance and Change in Uttar Pradesh Politics," in Francine Frankel & M S A Rao (Eds), *op.cit.*, p. 197.

⁸⁵ . Meenakshi Jain, *op.cit.*, pp. 141-42.

⁸⁶ .A study of the composition of these non-Congress governments would reveal the magnitude of the backward caste revolt. Backward castes constituted 30% of the ministers in Charan Singh's government and 34% of the B P Mandal ministry in Bihar. 45% of the ministers in Rao Birendra Singh's government in Haryana were Jats.

⁸⁷ .Blair, Harry W, "Rising Kulaks and Backward Classes in Bihar: Social Change in the late 1970s", *EPW*, Jan, 12,1980.

⁸⁸ . When the caste associations of Yadavas, Kurmis and Koeris had got going for some time, an attempt was made in 1920s to bring castes together into a political party called the *Triveni Sabha*. The *Sabha* contested the 1936 elections in Shahabad and Patna districts with disastrous results and soon withered away. This is in sharp contrast to the Justice Party of Madras and the *Praja Paksha* of Mysore.

⁸⁹ The percentage in the Congress legislature party in 1962 of the backwards was just 24.9%. This again contrasts with the success of the non-Brahmins in south India in ousting the Brahmins from the Congress and politics in general. In Bihar, the upper castes have been too well entrenched in politics and economy to be ousted by divided and imperfectly mobilized backwards.

⁹⁰ .It announced the following reservation scheme: Other Backward Classes: 8%; Most Backward Classes: 12%; Scheduled Castes: 14%; Scheduled Tribes: 10%; Women: 3%; and Economically Backward: 3%.

⁹¹ .The upper Shudras have so far shown reluctance to share power with their weaker brethren. The Lower Shudras, in fact, comprise 40% of the backward caste population. This can be concluded from the fact that representation of the lower backward castes in the State legislature (till 1977) never crossed four to five percent. Till 1983, their share in government posts never exceeded 7% even under backward caste governments. It was only in the 1985 Congress Ministry of Bindeshwari Dubey that they achieved 12% representation in the government. Simultaneously, Brahmin representation in Bihar Vidhan Sabha started registering a downward trend. Beginning with a high of 17% in 1962. their strength declined to 7% in 1977 assembly elections. Bhumihars, Rajputs and Kayashtas were, however, able to hold on to their respective positions (Frankel: 1989 and Blair: 1980)

⁹² .*Mandal Commission Report*, Vol. IV, pp.457-58.

⁹³ .*Ibid.*, p. 159.

⁹⁴ Rao, M. S. A., *Social Movements and Social Transformation*, Macmillan, Bombay, 1989, p.141.

⁹⁵ .*Mandal Commission Report*, Vol. IV, p.161.

⁹⁶ .Hasan, Zoya, *op.cit.*, pp. 179-79.

⁹⁷ Meenakshi Jain, *op.cit.*, 144-47.

⁹⁸ . Francine Frankel, "Introduction" in Francine Frankel and M.S.A.Rao (Eds), *Dominance and State Power in Modern India: Decline of a Social Order*, (Vol. I) op.cit p.1.

⁹⁹ . Dumont, Louis, *Homo Hierarchicus* (English translation), Chicago Univ. Press, Chicago, 1970, p.26.

¹⁰⁰ . These movements found expression in a variety of reformist sects such as Lingayatism in south India, the Varkari movement in the Marathi-speaking region, Vaishnavism in Orissa and Bengal, and in conversions to more egalitarian religions of Islam and Sikhism.

¹⁰¹ . The most striking examples of this kind of mobility were provided by the absorption of *kmbis* into the ranks of marathas (Maharashtra), *chasas* into the category of Khandayats (Orissa), and the transformation of the entire Sikh community into a martial class,

¹⁰² . Such social flux nevertheless represented a new political order across regions. The great *zamindars* no less than the cultivating *ryots*, who were made responsible for the payment of land revenue by officials of the British Raj, derived their politico-economic privileges not from superior ritual status, but from the legal rights conferred by the secular state. These new linkages between dominance and state power, which co-existed with traditional relations between dominance and ritual rank, created an opening for questioning the religious basis of the established social order.

¹⁰³ . Francine Frankel, "Conclusion: Decline of a Social Order," in Francine Frankel and M.S.A. Rao (Eds), *Dominance and State Power in India: Decline of a Social Order*, (Vol.11), OUP, Delhi, 1990, pp.484-86.

¹⁰⁴ . Atul Kohli, *Democracy and Discontent: India's Growing Crisis of Governability*, Cambridge Univ. Press, Cambridge, 1991, pp.4-6.

¹⁰⁵ . Thus, Indira Gandhi discovered India's poor when she was pressed politically by other members of the Congress elite. Devraj Urs and Karpooori Thakur similarly discovered the backward classes when they desperately needed to establish new ruling coalitions. The Akalis began stressing issues of Sikh nationalism only when thrown out of power.

¹⁰⁶ . The pattern, instead, has been one in which professional but opportunistic politicians have sensed some dissatisfaction and have mobilized it almost to the point of frenzy. Such mobilization, in turn, brings short-term partisan benefits at the expense of the political health of the whole. Atul Kohli, *Democracy and Discontent*, op.cit, pp.384-91,

¹⁰⁷ . Ayesha Jalal, *Democracy and Authoritarianism in South Asia*, Cambridge Univ. Press, Delhi, 1995, pp.204-5.

¹⁰⁸ . For the dominant position of the upper castes, see: Ghurye, G.S., *Caste and Class in India*, Popular Book Depot, Bombay, 1957; Srinivas, M.N., *Social Change in Modern India*. Univ. of California Press, Berkeley, 1966; Yogendra Singh, *Modernization of Indian Tradition*, Thompson Press, Delhi, 1977; Rajni Kothari (Ed), *Caste in Indian Politics*, Orient Longman, Delhi, 1970; Gail Omvedt, *Land, Caste and Politics in Indian States* (a Project of Teaching Politics) Dept. of Political Science, Univ. of Delhi, 1982.

¹⁰⁹ . The names of these castes and even their ritual status—whether twice-born or *sat-Shudra*—varied from region to region, as did the configuration of the coalitions they put together, but the pattern was similar enough to make it recognizable as the one-party-dominant "Congress system"

¹¹⁰ . Francine Frankel, "Conclusion: Decline of a Social Order," in Francine Frankel and M.S.A.Rao (Eds), Vol.11, op.cit. pp.502-3.

¹¹¹ . Charan Singh, the architect of the reforms in Uttar Pradesh, designed legislation to proliferate the number of rich and middle landowning peasants as a barrier against the "class war ideology" carried by the communists. This purpose is also discernable in the major provinces of Zaminadari Abolition Acts adopted in several States. Zaminadars who lost their rights of land revenue collection were permitted to retain their home farms without any upper limits.

¹¹² . Francine Frankel & M.S.A. Rao, "Conclusion", (Vol. II), op.cit p.504.

¹¹³ .Ibid.pp.508-9.

¹¹⁴ . Ayesha Jalal, op.cit, pp.210-11.

¹¹⁵ . On the other hand, the DMKs provided significant new opportunities of social mobility for individuals from the lower castes, particularly in urban areas, who found employment in white collar jobs. On the other hand, the ruling classes quietly made more places for *brahmins* and other upper castes excluded in the highly competitive "merit" recruitment to government educational institutions, through the device of permitting privately founded engineering and medical colleges (sustained by high capitation fees) to affiliate with the degree granting state universities. These policies, in combination with the munificent social welfare programs adopted by the state government, stabilized popular support, without threatening the economic interests of the landed upper castes or business classes, who supported the DMKs while remaining outside formal political office.

¹¹⁶ . Francine Frankel & M.S.A.Rao, "Conclusion", (Vol. II), op.cit. pp.508-11.

¹¹⁷ . Francine Frankel, "Introduction"; Zoya Hasan, "Power and Mobilisation: Patterns of Resistance and Change in UP Politics," in Frankel & Rao (Eds), Vol.1, op.cit,

¹¹⁸ .Frankel & Rao, "Conclusion", (Vol. II), op.cit.,pp.512-13.

¹¹⁹ . Ayesha Jalal, op.cit., pp.212-13.

¹²⁰ .Such efforts were symbolized by the unsuccessful attempt, in 1989, to unite the Bharatiya Kisan Union, anchored in the green revolution areas of north India and the Shetkari Sanghatana of Maharashtra.

¹²¹ , Francine Frankel & M.S.A.Rao (Eds), "Conclusion" (Vol. II), op.cit., pp.513-516.

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CHAPTER II

The Other Backward Classes: A Controversial Category

THE OTHER BACKWARD CLASSES; A CONTROVERSIAL CATEGORY

The Indian system of compensatory discrimination is unparalleled on the globe in its scope and extent. The country's arguably the most comprehensive regime of affirmative action encompasses a wide array of preferential schemes. The four major areas covered by the policy are: (i) political representation, i.e., reservation of seats in legislative bodies; (ii) employment under Government; (iii) educational institutions; and (iv) welfare programs like anti-poverty schemes. And the generic category of Backward Classes—Scheduled Tribes, Scheduled Castes, and Other Backward Classes—are not the only beneficiaries of this positive discrimination. The other categories of citizens that are entitled to benefits from the policy are: women, handicapped, freedom fighters, minorities, ex-servicemen, sportspersons and sons-of-the-soil.

But the broad category of Backward Classes—who comprise about three-fourths of the total population—are entitled to most of the reservational benefits. And the process of designation of the Backward Classes has not been totally free from controversy. A study of the efforts to identify the Backward Classes shows that the specification of the Other Backward Classes—the largest category of beneficiaries—has always been contentious, particularly at the national level. The designation of the other two components, i.e., SCs and STs, has been relatively easy and as a result, is almost non-controversial.

This Chapter charts the genesis and evolution of: the designation of the Backward Classes and the positive discrimination in their favour, with a special focus on the Constitutional scheme on which the policy is based. For one of the most perplexing problems before the framers of the Constitution was how to tackle the issues of satisfying aspirations of different sections of the society through distributing the reservational concessions. Perhaps it has become more perplexing problem in the present day India.¹

THE CONSTITUTIONAL DESIGN

The Constitution of India aims at achieving administrative and political unity and economic and social revolution under a democratic set up. And the philosophy underlying the Constitution is embodied in the Preamble. Constituting a perfect text of the character of a democratic state, the judiciously chosen words of the Preamble read:

We the People of India, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and opportunity; and to promote among them all

FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation.²

The justice and equality (of opportunity and status) as defined in the Preamble, according to G.S. Ghurye, "cut the very roots of our caste".³ It is the historical compulsion that led the founding fathers to reflect both on civil and political rights on the one hand and social and economic rights on the other. Indian Constitution embraces within its fold the political and civil rights movements of USA and the social and economic rights movements of USSR, aiming at radical social revolution in the country. Hence, under it both the Fundamental Rights and the Directive Principles of State Policy have assumed their significance. The relevant provisions of socio-economic rights enshrined in the Constitution can be classified under two categories: One is meant for, extending protection against exploitation and discrimination in any form on the grounds of untouchability and caste. The second comprises the provisions imposing obligations on the state to take positive actions for creating better socio-economic conditions, for the enjoyment of rights guaranteed under the Constitution.⁴

Directive Principles: An important aspect of the Constitution is the part (part IV) relating to the *Directive Principles of the State Policy*. The principles are the embodiment of the ideas and expectations of the people of India and the goal towards which they expect the state to inarch for their attainment. The Directives elaborate, reinforce and ensure to the people of India what has been proclaimed in the Preamble. They are ideals, not in the

sense that they are unattainable, but ideals of a Welfare State, the realization of which is dependent upon, primarily, finance and time factors. They are dynamic, as against Fundamental Rights which are static. Being so, they could neither be precisely worded nor could they be subjected to judicial review and enforcement. It was thought essential to incorporate these ideals, within the Constitution to impose, possibly, confidence in the minds of the people that what they had asked for, the state would strive after.⁵

The provisions contained in this Part (Articles 36-51) shall not be enforceable by any court, but these principles are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply them principles in making laws. Accordingly, Article 46 states:

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.⁶

Preferential Treatment in the Context of Fundamental Rights

The effort to secure equality by means of preferential treatment must be seen in its Constitutional context. In the Constitution, the compensatory theme appears juxtaposed with the theme of formal equality. The provisions for compensatory preference appear as exceptions within a framework of enforceable fundamental rights which attempt to curtail the significance of ascriptive groups and to guarantee equal treatment to the individual.⁷

The Constitution of India confers on all its citizens a fundamental right to be free of discrimination by the State on the grounds of race, religion, and caste. Governmental discrimination on these grounds is prohibited generally by Article 15(1) which states:

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.⁸

Constitution also guarantees equality of opportunity in matters of public employment. Article 16(1) says:

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

And clause 2 adds: No citizen shall, on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.⁹

But the Constitutional ban on discrimination in government employment is qualified by clause 4 of the Article 16 which states:

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 citizen which, in the opinion of the State, is not adequately represented in the services under the State.

Regarding the educational rights of the citizens, Article 29(2) of the Constitution says: No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.¹⁰

The general provisions banning discrimination by the Government (Article 15) and banning discrimination in government-aided educational institutions (Article 29 [2]) are similarly qualified by Article 15(4),¹¹ which provides:

*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.*¹²

These, along with specific provisions for reservation of seats in legislative bodies (which will be discussed shortly), are the core of the Constitutional commitment to compensatory discrimination.

The benefits of compensatory discrimination are extended to a wide array of groups. There are three major classes:¹³ The castes designated as Scheduled Castes (SCs) on the basis of their "untouchability"; the Scheduled Tribes (STs), who are distinguished by their tribal culture and physical isolation and many of whom are residents of specially protected Scheduled Areas; and there are the "Backward Classes" (or, as they are sometimes called, "Other Backward Classes"), a heterogeneous category, varying greatly from state to state, composed for the most part of castes (and some non-Hindu communities) low in the traditional social hierarchy, but not as low as the SCs. Also included among the Other Backward Classes (OBCs) are a few tribal and nomadic groups,

as well as converts to non-Hindu religions from the SCs, and in some areas the Denotified Tribes.¹⁴

For the most part, preferences have been extended on a communal basis. Members of specified communities are the beneficiaries of a given scheme, and all members of the community, however prosperous, are entitled to the benefits.¹⁵ However, some schemes use a means test to supplement the economic one—only members of the listed communities with incomes below the specified ceiling are eligible. In a few instances, the communal test has been replaced with an economic one—income or occupations or combination of the two—and a few schemes use tests neither communal nor economic.¹⁶

Types of Preferential Schemes: Preferences are of three basic types: First, there are reservations, which allot or facilitate access to valued positions or resources. The most important instance of this type are reserved seats in legislatures, reservation of posts in government service, and reservation of places in academic institutions (especially the coveted higher technical 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 programs involving expenditure or provision of services—e.g., scholarships, grants, loans, land allotments, health care legal aid—to a beneficiary group beyond comparable expenditures for others. Third, there are special protections. These distributive schemes are accompanied by efforts to protect the backward classes from being exploited and victimized. Forced labour is prohibited by the Constitution (Article 23[1]), and in recent years there have been strenuous efforts to release the victims of debt bondage, who are mostly Scheduled Castes and Tribes. Legislation regulating money lending, providing debt relief, and restricting land transfers attempt to protect SCs and STs from the economic oppression of their more sophisticated neighbours. Anti-untouchability propaganda and the Protection of Civil Rights Act attempt to relieve untouchables from the social disabilities under which they have suffered. This legislation is not "compensatory discrimination" in the formal sense of departing from equal treatment to favour these groups. But in substance, it is a special undertaking to remedy the disadvantaged position of the untouchables.¹⁷

BACKWARD CLASSES

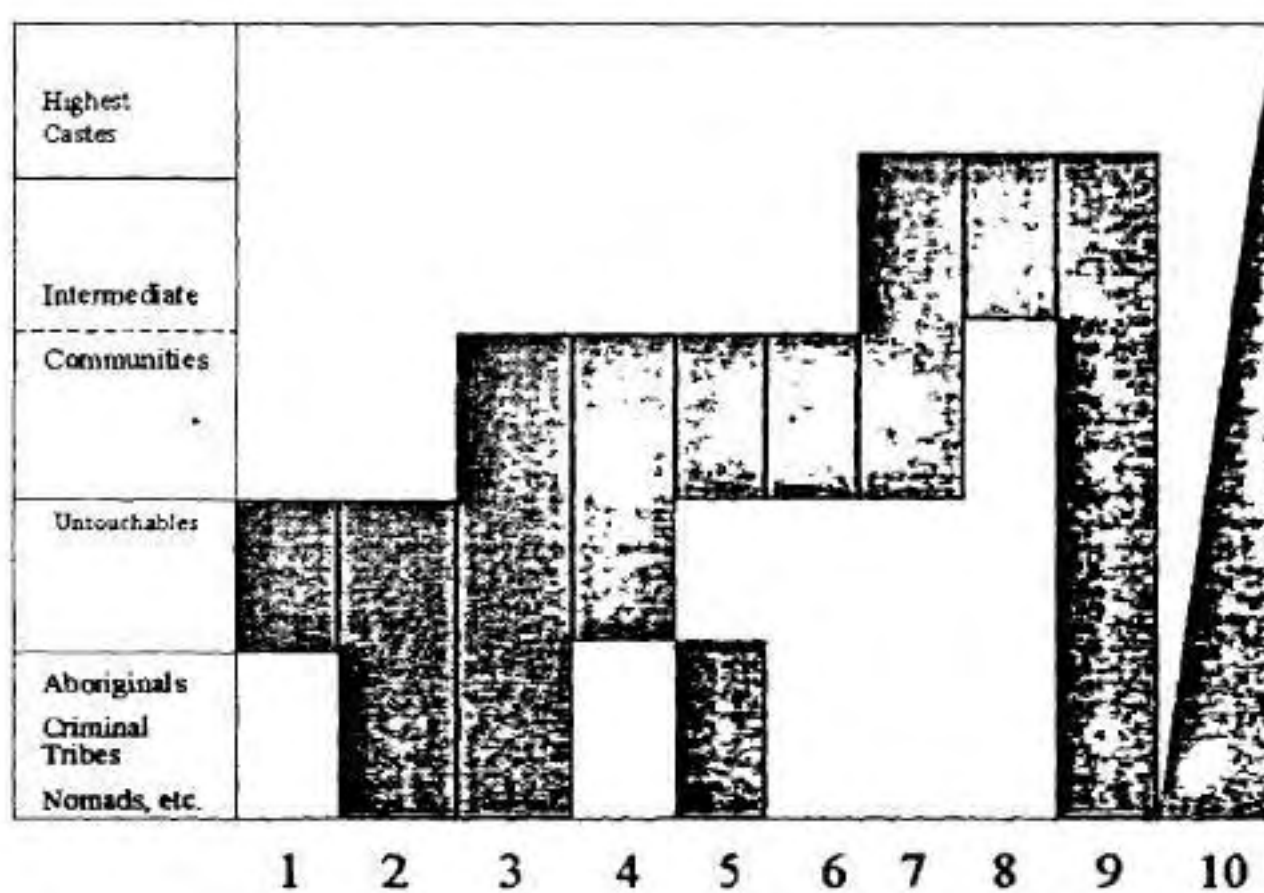
India can claim to have long and rich experience with a system of public policy which seeks to safeguard the interests of backward communities through preferential treatment. From the last decade of the Nineteenth Century to the present, it has remained an integral part of public policy of both British and Princely India. It has been found expedient to deal with the problems of castes and communities occupying low position in status hierarchy. The inherited injustices and oppressions of a traditional society spanning over many thousands of years necessitated a policy of preferential treatment to bring them on par with other advanced sections of society.^{1ft}

India's system of preferential treatment for historically disadvantaged sections of the population is unprecedented in scope and extent. India embraced equality as a cardinal value against a background of elaborate, valued, and clearly perceived inequalities. Her Constitutional policies to offset these inequalities proceeded from an awareness of the entrenched and cumulative nature of group inequalities. These compensatory discrimination policies entail systematic departures from norms of equality such as merit, even-handedness, and indifference to ascriptive characteristics. It is for over a hundred years that Provincial Governments in India have been implementing special programs for the welfare of the deprived and depressed sections of society. The first such decisive step was taken by Madras Government with the framing of Grant-in-Aid Code in 1885 to regulate financial aid to educational institutions, providing special facilities for students of depressed classes.²⁰

Since then (1885), the policy of protective discrimination, in particular job reservations, has shown an irreversible trend. Beginning with reservation of posts in public services, it extended to reservation of seats in legislative and other representative bodies, to preferential treatment in admission to educational institutions and ameliorative measures for their economic advancement. Thus from the last decade of Nineteenth century to the present, the schemes of positive discrimination have remained an integral part of public policy of both the British and free India. Thus, the reservation policy encompasses: (I) political representation; (ii) employment under government (iii) education; and (iv) economic uplift.²¹

The first question that arises about India's policy of compensatory discrimination is: "who are the legitimate beneficiaries?" Historically, the process is very complex the identification of some groups as requiring and deserving special treatment gives rise to concept of compensatory treatment, and this in turn provides controversies about those who should be included within its scope. Even after compensatory program is firmly established, who is to benefit continues to be a central question in designing and administering programs—and crucially important for the continuing justification of these programs to others. For the Constitution authorizes preferential treatment only for the limited purpose of advancing the backward. Public and professional discourse about the identity of the beneficiaries is thus an integral part of the operation of these programs.²² The following figure shows the different usages of the term Backward Classes:

FIGURE:1



Various Denotations of the "Backward Classes"

1. As a synonym for Depressed Classes, untouchables, Scheduled Castes.
2. As comprising the untouchable, aboriginal and hill tribes, criminal tribes, etc.
3. As comprising all the communities deserving special treatment, namely those included in (2) above and in addition the lower strata of non-touchable communities.
4. As comprising all non-tribal communities deserving special treatment.
5. As comprising all communities deserving special treatment except the untouchables.
6. As comprising the lower strata of non-untouchable communities.
7. As comprising all communities above the untouchables but below the most "advanced" communities.
8. As comprising the non-touchable communities who were "backward" in comparison to the highest castes.
9. As comprising all communities other than the highest or most advanced.
10. As comprising all persons who meet given non-communal tests of backwardness (e.g., low income).

Note: This figure portrays varying usages of "Backward Classes". Exact specifications may differ along other dimensions as well—e.g., whether non-Hindus are included or whether prosperous families within these groups are excluded.

Source: Marc Galanter, *Competing Equalities: Law and Backward Classes in India*.

The Constitution names as the permissible recipients of preferences, not backward individuals or families, nor backward castes, religious communities, occupational or regional groups, but backward "classes" of citizens. These "classes" are restricted neither to economic classes nor to classes in the senses familiar to modern social sciences.²³ The term seems to be used in the broad connotation of any group of persons having certain common characteristics. In particular, it would seem to include, though it is not confined to, those classifications otherwise forbidden in Articles 15, 16 and 29(2)—e.g., racial, religious and caste groups. This is so because Article 15(4) and 16(4) are exceptions or provisos to these Articles, limiting the operation of their provisions. If the proviso that "nothing in this article" shall prevent the State from making preferences for backward classes is not broad enough to authorize the use of the forbidden classifications, then it was unnecessary to have any proviso at all, since other classifications would be permissible without it. Furthermore, the history of Articles 15(4) and 16(4) indicates that they were included for this purpose.²⁴

The Backward Classes provide a window into modern Indian society as a whole. The problem of Backward Classes is, in the most general form, the problem of achieving

equality in a world permeated by inequality. The significance of the category "Backward Classes" lies not only in its size and extent, but also uniquely Indian way of defining its boundaries. This uniqueness is a reflection of specific social and historical conditions. In India, unlike the other societies, "backwardness" is viewed as an attribute not of individuals but of communities which are, by their nature, self-perpetuating. In ordinary sociological discourse, a class is a set of individuals—or, at best, families—sharing certain life chances in common that they may or may not owe to their ancestors, and that they may or may not transmit to their descendants. By the terms of that discourse, the Backward Classes are not classes at all, but groups of communities. In many ways the Backward Classes occupy such a privileged position in contemporary Indian society from the point of view of method.²⁵ In the Constituent Assembly, justice K. Subba Rao defined "Backward Classes" as an ascertainable and identifiable group of persons based on caste, religion, race, language, occupation and such others with definite characteristics of backwardness in various aspects of human existence—social, cultural, economic, political and such other.

Similarly, there is no unanimity regarding the number of Backward Classes also. The Backward Classes are a large and mixed category of persons with boundaries that are both unclear and elastic. Together, they comprise roughly one-third of the total population of the country.²⁷ Two-thirds or more of the population of India are very backward, being illiterate and living in utter poverty. Their disadvantages derive from the fact that their status is ascribed to them by birth in certain castes, creeds and tribes. Their problem can be understood only in terms of the basic character of Indian society which consists of *closed* status groups with unequal rank, each with its own privileges and disabilities supported by traditional sanctions. Thus it must be recognized that the term *Class* is not appropriate since the term is associated with an economic category and indicates an *open* status group. By contrast, the backward classes in India form an aggregate closed status groups; they belong to these groups by birth, not because of their individual economic characteristics.²⁸

The Constitution itself does not recognize these groups (backward classes), nor does it provide detailed standards by which they may be determined.²⁹ In the case of the Scheduled Castes and Tribes, it does prescribe an agency and a method for designating

them. Not only are Backward Classes left undefined in the Constitution, but no such method or agency for their determination is provided.³⁰

While the term "backward classes" has not been defined by the Indian Constitution, the characteristics of backwardness are described here and there and also sometimes the categories are mentioned. Article 15(4) speaks of the *socially and educationally backward classes*. Article 16(4) uses the term *backward class* and speaks of inadequate representation in services. Article 17 abolishes *untouchability*.³¹ Article 23 prohibits forced labour.³² Article 45 mentions free and compulsory education.³³ Article 46 mentions the *weaker sections* of the people and also includes the expressions Scheduled Castes and Scheduled Tribes.³⁴

Article 340 empowers the state to investigate the conditions of backward classes and take steps for their upliftment. Article 340 clause (1) states: "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...."³⁵

The Backward Classes constitute a category of people who are for the most part officially listed and given special recognition in a variety of contexts. In every complex society, of course, there are individuals who may be considered as economically or educationally backward; generally, such people also have low social status. However, backwardness as understood in the Indian context has a number of distinctive features. Firstly, it is viewed as an attribute not of individuals but of certain clearly defined social segments in which membership is generally acquired by birth; thus, the Backward Classes may in theory include individuals who are highly advanced both educationally and economically. Secondly, membership of the Backward Classes entitles one to certain advantages and concessions conferred by the Government, There is a good deal of overlap in reality between the Backward Classes and certain economic categories such as the agricultural labourers. But it would be a mistake to view the problems of the two as identical. The Backward Classes have, as a set of communities, certain distinctive problems which derive from the status ascribed to them in traditional Indian society. The **very** nature of the Backward Classes and most of their special problems can be understood only in terms of the basic character of Indian society, namely, its division into a multitude

of closed status groups of unequal rank, each associated with a variety of privileges and disabilities supported by traditional sanctions.³⁶

Explaining the relationship between caste and class, Thimmaiah says: "Though class has been defined by Marxists in terms of ownership of the means of production. I have used it to indicate a group of castes or communities with some common social and economic status. 'Class' refers to a group of castes who are socially, educationally, and economically backward". It has been pointed out by Anirudh Gupta that: "Colonialism brought into being a number of social groups which approximated, but did not become, classes in the sense that we know them in the West. Class formation in India was marked by an element of ambiguity which made the behavior of classes unpredictable. This has been mainly because class was built into the traditional caste system. As a result, members of some castes perceive themselves as belonging to a class as well. Even this explanation is not unambiguous. Perhaps it would be better to define caste specifically by referring to the scope of the concept used in Karnataka by successive Committees and Commissions appointed by the State government. Initially, when the backward class movement started in south India (and more specifically in erstwhile Mysore State), it included all the non-Brahmin casts and communities other than European and Anglo-Indians. Accordingly, the term 'Backward Classes' included all the non-Brahmin castes and communities (from among Hindus), Muslims and Christians".³⁷

It may on a first examination appear tempting to restructure the definition of the Backward Classes and to view their problems principally in economic terms. This would, however, divert attention from the specific nature of backwardness in Indian society. In the first place, the Backward Classes are by no means homogeneous economically. Secondly the Backward Classes as officially viewed are part and parcel of modern Indian social and political reality. They are a product of forces which are in many ways unique and distinctive to Indian history. Their identity does not derive solely, or even primarily, from a common economic experience but from the very nature of the traditional system of stratification to which economic, political and ritual factors have contributed in various ways. The word "class" suggests not only an economic category but also one which is relatively open. In reality, the Backward Classes are not classes at all but an aggregate of closed status groups. One's economic position is not a determining factor in one's

membership of the Backward Classes; rather membership is determined generally by birth.³⁸

The backward classes are made up of three principal components: Scheduled Tribes, Scheduled Castes, and Other Backward Classes. The Scheduled Tribes and Scheduled Castes are well-defined categories, comprising respectively around 7 and 15 percent of the population. The Other Backward Classes are a residual category; their position is highly ambiguous; and it is impossible to give an exact statement of their number.³⁹

The term "backward classes" is commonly used in two senses: (i) as a generic term including the Scheduled Castes and Scheduled Tribes as well as the so-called Other Backward Classes; or (ii) as a designation of those backward groups not included in either of the first two categories, i.e., as equivalent to "Other Backward Classes".⁴⁰ The Backward Classes together account for more than 30% of the total population of India. They are not a homogeneous category but consist of three broad divisions, each having its own distinctive background and, to some extent, its own problems of transformation. They are: the Scheduled Tribes, the Scheduled Castes and the Other Backward Classes. The OBCs are the least homogeneous and the most loosely defined of the three sub-divisions. Their problems also are in many ways different from those of the first two and it may be misleading to consider the three together beyond a certain point.⁴¹

The backward classes as the genus can be divided into three categories: (a) Scheduled Castes, (b) Scheduled Tribes, and (c) the Other Backward Classes.⁴² The term OBCs is used for backward classes as residue of unimpeachable backward classes, i.e., backward classes other than SCs, STs, and Denotified, Nomadic and Semi-nomadic communities. OBCs may be recognized for preferential treatment as backward or may not be recognized as backward on the list of social and educational backwardness. Economically well-off communities may not remain backward despite their lower hierarchical structure in caste ridden society, e.g., Banias, Likewise, educationally alert and well-read communities of Sudras also may not claim the benefit of preferential treatment, e.g., Kayasthas. Banias became forward on the basis of economic betterment and Kayasthas on the basis of educational achievements.⁴³

There are three broad divisions among the backward classes: (a) the Scheduled Tribes (*Girijans*), (b) the Scheduled Castes (*Harijans*), and (c) the Other Backward Classes. The first two groups are listed in the Constitution, while the third group is unlisted and loosely defined; it is the least homogeneous. As a result, the problem of the Other Backward Classes is very complicated and very difficult to deal with. While it is possible to have an all-India list of the Scheduled Castes on the basis of untouchability and the Scheduled Tribes on the basis of their way of life, it is impossible to have any such list for Other Backward Classes.⁴⁴

It should be mentioned here that technically, the concept of Backward Classes in a broad sense includes three principal components: The Scheduled Tribes (STs), the Scheduled Castes (SCs) and the Other Backward Classes (OBCs). But in the contemporary discourse on the subject, both academic and popular, the expression Backward Classes basically refers to the Other Backward Classes. Because during the pre-Independence period, the term Backward Classes generally subsumed the Scheduled Castes and Tribes also. In peninsular India, where Backward Classes movements originated, and due to the polarization between Brahmins and non-Brahmins, almost all non-Brahmins were known as Backward Classes. For the OBCs had not emerged as a distinct category. The emergence of OBCs at the national level is essentially a post-Independence phenomenon.

Therefore, though the two terms—Backward Classes and Other Backward Classes—are generally used interchangeably, the concept of OBCs is more specific which refers to the backward classes *other than* the Scheduled Castes and Tribes. The OBCs are also known as—after the Constitutional reference to them—the "Socially and Educationally Backward Classes" (SEBCs). More to the point, the expression *class* or *classes* is commonly used to refer to the OBCs as the other two primary categories are generally referred as Scheduled *Castes* and Scheduled *Tribes* and not *classes*. So this study uses the concepts of Backward Classes, Other Backward Classes and Socially and Educationally Backward Classes—depending upon the context—interchangeably, unless clarified otherwise. Though the focus of the present study is on the OBCs, the categories of SCs and STs are also discussed briefly in the following sections, to bring out the controversial nature of the identification of the OBCs.

THE SCHEDULED CASTES (SCs)

"Scheduled Castes" is the most recent of a long line of official euphemisms for "untouchables". The Scheduled Caste category is intended to comprise those groups isolated and disadvantaged by their "untouchability"—their low status in the traditional Hindu caste hierarchy which exposed them to invidious treatment, severe disabilities, and deprivation of economic, social, cultural, and political opportunities.⁴⁵ The concept of Scheduled Castes was first used in Government of India Act, 1935; they were broadly known as "untouchables". Untouchables were also officially described as "depressed classes" which was mentioned in the Census Report, 1921, but they were not defined. But since the enactment of Government of India Act, 1935, the "depressed classes" are consistently referred to as "Scheduled Castes".⁴⁶

Subsequently, the British Government issued the Government of India (Scheduled Castes) Order, 1936, specifying certain castes, races, and tribes. Later on, the above list was revised in 1950 in accordance with Article 341 of the Constitution of India. The criterion for including castes in the list apparently was the social, educational, and economic backwardness arising out of the exploitation based on the concept of ritual purity. These groups have been listed in the Schedule of Government of India, in 1950 for the special treatment. In this way, this social group is known as "Scheduled Castes".⁴⁷

The Government of India Act, 1935 states: "The Scheduled Castes' means such castes, races or tribes or parts of or groups within castes, races or tribes being castes, races, tribes parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as 'the depressed classes' as His Majesty in Council may specify".⁴⁸ According to Indian Statutory Commission, 1930 (also known as Simon Commission), the population of untouchables varied from 8% to 26.5% in different Provinces of British India.⁴⁹ Behind the social growth of "Scheduled Castes" lies the phenomenon of "untouchability". "The Hindu society insists on the segregation of untouchables and does not allow them to live inside their main residential areas. Untouchability refers to denying even human status to a group of human beings, this group is not even allowed the consideration which may be shown to creatures like animals".³⁰

Untouchability is a feeling of pollution, defilement or contamination entertained by non-Scheduled Castes towards Scheduled Castes and is caused by, (a) touch, (b) sight, and (c) or mere physical proximity. This pollution concept is institutionalized in the Hindu society through caste system.⁵¹ The low social status attached to certain occupations is the cause of Untouchability. It relates to impure occupations such as removal of carcass, skinning, tanning, scavenging, etc. J.H. Hutton while analyzing the origin of castes suggests that "ideas of Untouchability" arose from ideas of ceremonial purity first applied to aboriginals in connection with sacrificial, ritual and the theoretical impurity of certain occupations.⁵²

The Scheduled Castes do not constitute a homogeneous category. They belong to different ethnic and cultural groups, but segregated together on the basis of Untouchability. they are all often pushed to live in a distant part of a village or ghettos of a city. It is an accepted phenomenon that the Scheduled Castes are still lagging behind in almost all fields and undergoing hardships, sufferings and oppressions.

Scheduled Castes and the Constitution: The Constitution makers eschewed any attempt at a connotative definition of Untouchability and adopted the same sort of solution as had the British. Rather than provide any standard of selection for these groups beyond the general understanding that they were the "untouchables", the Constitution provided only the procedure for designating them. Article 341 (1) states: "The President may with respect to any State or Union Territory, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory. as the case may be".⁵³ Once promulgated, this list can be changed only by an Act of Parliament.⁵⁴

A Scheduled Castes Order was promulgated by the President in 1950 which basically reenacted the 1936 list. The major additions were four Sikh castes and the provision for the first time of lists for areas which had none previously (notably, Rajasthan, Gwalior, and Madhya Bharat).⁵⁵ One of the (Article 46) Directive Principles of State Policy mentions specifically the Scheduled Castes and Tribes among the "weaker sections of society" whose educational and economic interests the State must endeavor to promote.

Articles 330 and 332 of the Constitution lay down that there shall be reservation of seats in the *Lok Sabha* (Article 330) and State Legislative Assemblies (Article 332) in proportion to their number in the various States. Article 338 provides for the appointment of a special officer by the President. This officer will investigate and report to the President on matters relating to the above safeguards.⁵⁶

Under Article 338, the first Special Officer for Scheduled Castes and Scheduled Tribes was appointed by the President in 1950.⁵⁷ The President is expected to present the Commissioner's report to the Parliament. Similarly, a Commission has been appointed, recently, to assist the Government in matters affecting the Scheduled Castes and Scheduled Tribes. The Home Ministry has a special wing to deal specifically with problems of the SCs and STs. A resolution, to give effect to the above provision, was passed on July 21, 1978. Accordingly, the Commission, comprising a chairman and four other members, including the special officer, was appointed under Article 338.⁵⁸

Reservation Policy: The policy has three major components: (i) Reservations in government appointments; (ii) Reservation in admission to educational institutions; and (iii) Reservation of seats in the House of People (*Lok Sabha*), and the Legislative Assemblies (*Vidhan Sabhas*) of States,

Under educational preferences, at the pre-primary and primary levels, the States have adopted several measures like: provision of books or book grant; educational equipment; special hostels; mid-day meals; stipends; uniforms, etc. About 15% (generally in proportion to their population) of seats are reserved for students belonging to the SCs in: public and residential schools; professional colleges like Medical, Engineering and Indian Institutes of Technology (IITs); Industrial Training Institutions (ITIs); and Universities.⁵⁹

Political mobility and participation is provided through reservation of seats in Parliament and State Legislatures. According to the latest position, 79 out of 542 seats in the House of People and 541 out of 3,997 seats in all the States' Legislatures are reserved for them. Initially, the political reservations were applicable only for ten years. Subsequently, as a result of the Constitution Amendment Act, 1959, the period of extension was extended for another 10 years. Since then, the period has been extended, 10 years at a time, till 2000 through another Constitutional Amendment in 1990.⁶⁰ Article

16(4) of the Constitution permits reservation in favour of backward classes, who may not be adequately represented in the services. The Scheduled Castes and Scheduled Tribes have, in direct recruitment on an all-India basis by open competition, reservation of 15% and 7.5% respectively.⁶¹ Reservations for the SCs and STs are also applicable to promotions in all grades and in all groups.

For direct general recruitment to services, the SC and ST candidates are given five years relaxation. For admission to any examination, the candidates will have to pay one-fourth of the fee amount fixed for general candidates. The candidates belonging to SCs and STs are exempted from requisite experience in case the Ministry or Department concerned feels that it will not be inconsistent with efficiency. Interviews for the SC and ST candidates are held on a day of sitting of the selection committees other than the day on which general candidates are to be interviewed. It helps the selection committee in judging the SC and ST candidates by relaxed standards.⁶²

THE SCHEDULED TRIBES (STs)

There has been much less dispute about the identification of the Scheduled Tribes (STs) than about the Scheduled Castes or the Other Backward Classes. The general notion is that this category should include those groups distinguished by "tribal characteristics" and by their spatial and cultural isolation from the bulk of the population.⁶³ The British attempted to protect these "aboriginal" people by placing areas in which they were concentrated outside of ordinary administration to permit a policy of insulating them from exploitative or demoralizing contact with more sophisticated outsiders. In the 1935 Act, for the first time, provision was made for some representation for "Backward Tribes" in the Legislatures,⁶⁴ and a list of Backward Tribes was promulgated in 1936. The 1941 Census counted 25.4 million tribal people (6.58% of the total population).⁶⁵

The Constitution carried forward this dual treatment of tribal areas and tribal people in a set of provisions for their protection and advancement far more elaborate and detailed than the provisions for the other categories of backward classes. Along with reservations in legislatures and services comparable to those for the Scheduled Castes, there are provisions for direct Central control over administration,⁶⁶ for direct Central financial

responsibility,⁶⁷ for annual reports by the Government to the President,⁶⁸ for extensive executive power over Scheduled Areas to insulate them from the application of inappropriate law and to fashion protective regulation (especially regarding allotment and transfer of land and money-lending), and for the formation of Tribal Advisory Councils to participate in the formulation of policy.⁶⁹

The formal mechanism of designating the Scheduled Tribes is identical with that for Scheduled Castes. The President specifies the "tribes and tribal communities or parts of or groups within tribes or tribal communities" to be the Scheduled Tribes for each State.⁷⁰ The Scheduled Areas are to be awarded by the President, who retains the power to alter or de-schedule them.⁷¹

In 1950, for the first time, the President promulgated the list of Scheduled Areas and a list of Scheduled Tribes. Although the lists contain groups throughout the country, the tribal population is heavily concentrated in central, eastern, and northeastern India. Unlike the relatively dispersed Scheduled Caste population, about 90% of the tribals are found in nine states. The Scheduled Tribes are defined partly by habitat and geographic isolation, but even more on the basis of social, religious, linguistic, and cultural distinctiveness—their "tribal characteristics". Just where the line between "tribals" and "non-tribals" should be drawn has not always been free from doubt. In any event, not all tribal people were listed, but only those whose primitiveness, backwardness, or isolation made them deserving of special treatment. No religious test was specified. A recent attempt to exclude converts failed to gain acceptance.⁷²

The Scheduled Tribes or *Adivasis* are believed to constitute the aboriginal element in Indian society. They are generally concentrated in the hill and forest areas and until recently the political system of the different tribes enjoyed a certain amount of autonomy. Today, however, it is difficult to define the tribal people of India in terms of any single set of formal criteria although attempts have been made at such a definition. Elements which would have to be taken into account in such a definition are the ecological isolation of the tribal people, the relative autonomy of their political and cultural systems and the antiquity of association with their present habitat. The tribal population is concentrated in certain geographical areas. Speaking very broadly, they may be divided into three groups according to their distribution, namely, the tribes living in the Northern and North-Eastern

zone in the mountain valleys and eastern frontiers of India. There is a second group which occupies the Central belt of the older hills and plateaus along the dividing line between Peninsular India and the Indo-Gangetic Plains. In addition, there are tribes scattered over the extreme corners of South-Western India in the hills and the converging lines of the Ghats.⁷³

One of the crucial problems faced by all tribal communities in India is the problem of integration into the wider social, economic and political system. The Scheduled Castes have not had a history of isolation comparable to that of the Scheduled Tribes. They have been segregated rather than isolated. The different distributional characteristics of the SCs and the STs lead to certain differences in their transformation. It is easier to implement special programs of development for the STs who live in compact blocks than for the SCs who are geographically scattered. On the other hand, the concentration of the tribal population in particular areas provides better scope for the development of separatist political movements among them.⁷⁴

The Commissioner for Scheduled Castes and Scheduled Tribes (1951) after surveying the divergent responses, which included racial, religious, linguistic and cultural tests as well as tests of political, economic, and social organization, and the degree of contact, isolation or assimilation/distinctiveness, proposed as the common elements for distinguishing the STs: tribal origin, primitive way of life, remote habitation, and general backwardness in all aspects.⁷⁵ The Anthropological Survey of India (ASI) studied, under the project *People of India*, all tribal communities in India. The total number of the tribes studied by the Survey is 635. They are spread over all the States except Punjab and Haryana and over all of the Union Territories except Chandigarh, Delhi and Pondicherry. Out of their total population, 93.80% are returned from rural areas, the rest (6.20%) is urbanized. The largest concentration is in Madhya Pradesh and the smallest population is returned from Goa, Daman and Diu (0.02%).⁷⁶

There are communities with very large populations of 3 to 7 million. The largest tribes are the Gond (7,449,193), the Bhil (7,367,973), the Santhal (4,260,842), the Mina (2,087,075), and the Oreon (1,865,995). As many as 294 tribes (46.2%) are found within the boundaries of existing States/Union Territories. 326 communities (51.3%) are spread over two States, and 89 of them (14%) are distributed across the States. The tribes have

generally remained outside the *varna* system. Almost all tribal communities have divisions and a notion of hierarchy based on ecology, descent, ranking, status, and so on. On the basis of religion, a two-fold classification of the tribes can be made. The first deals with the tribes who follow only one religion: Hinduism (378 tribes, 59.4%), Christianity (149 tribes, 23.4%), Islam (19 tribes, 3%), Buddhism 44 tribes, 6.9%) and tribal religion (292 tribes 45.9%). However, many tribes followed more than one religion such as Hinduism and tribal religion.⁷⁷

The impact of development processes, particularly education, has created a new stratum of entrepreneurs/businessmen, teachers, administrators, engineers/doctors and members of defense services. There has also been a rise in the political leadership at all levels. The rural employment programs have made a very significant impact. Many tribal communities are aware of and participate in several self-employment schemes.⁷⁸

The provisions for the advancement of Scheduled Tribes are distinct which aim at the preservation of their separate identity, rather than complete assimilation. In the case of the Scheduled Castes and the Other Backward Classes, it is hoped that the disabilities and the disadvantages that separate them from their compatriots will eventually be overcome by the preferential treatment. The aim of the policy is to eliminate the differences that set them apart from other Indians. The aim of Scheduled Tribes' policy is more complex—to balance improvement of their condition and a degree of assimilation with preservation of their distinctiveness and a measure of autonomy.⁷⁹

Although the STs share with the SCs a variety of reservations, the principal schemes for the tribes have been protective and developmental (economic, educational, health, and communications). Tribal aspirants have not pressed hard on the reservations; many have gone unfilled. With the exception of a few election cases raising problems of tribal membership, tribes have been little involved in litigation about compensatory discrimination. They have had little effect on the law, which is being developed in cases involving the Scheduled Castes and the Other Backward Classes.⁸⁰

THE OTHER BACKWARD CLASSES (OBCs)

It is for over a hundred years that Provincial Governments in India have been implementing special programs for the welfare of depressed or deprived sections of society. The first such step was taken by Madras Government with the framing of Grant-in-Aid Code in 1885 to provide special facilities for the students of depressed classes. Subsequently, in 1921, acting on a resolution passed by the state Legislative Council, Madras government took steps for higher representation of non-Brahmins in Government services.⁸¹ In the second and the last quarter of the Nineteenth century, Jyotirao Phule of Poona advocated adequate representation for all castes in the public services. His demand went unheeded till the 1880s when Shahu Chatrapati, the Maharaja of Kolhapur, took up the cause advocated by Phule. The Maharaja was instrumental in securing special representation for non-Brahmin classes under the Montague-Chelmsford Reforms of 1919.⁸²

For the first time, in the Census of 1881 people were enrolled on the basis of caste and caste hierarchy. In 1909, Morley-Minto recognized special representation of the depressed classes which encouraged the social movement for the formation of caste associations with an objective to demonstrate backwardness of the caste and press for preferential treatment. Communal representation was conceded by the Government in favour of Muslims, Sikhs, Anglo-Indians, Indian Christians, Depressed Classes and aborigines under the Government of India Act, 1919. The policy of British government pursued prior to 1919 led the formulation of concessions in favour of different communities.⁸³

In Bombay Province, people were divided into three groups and the first group consisted of the Intermediate and Backward Castes. Other Provincial Governments also adopted this policy of reservation of a percentage of posts in government service to non-Brahmin castes. In Madras the anti-Brahmin Justice Party, which came into power under Montague-Chelmsford Reforms, vigorously pursued the system of communal rotation to accord representation to all the recognized backward class groups and thereby attempted to remove inequalities of representation in public services.⁸⁴

Among the Princely States, Mysore recognized the problem early. In 1895 orders were issued for reservation of posts for all communities except Brahmins. The Government of Travancore and Cochin adopted a similar policy of according representation to several communities in the State, approximately in proportion to their population before Independence. The undivided Bombay and the Southern States were, thus, the first to recognize the claim for representation of backward classes in the public services.⁸⁵

On the basis of representations received from aggrieved communities, in 1918 the Maharaja of Mysore appointed a Committee under the chairmanship of Sir L.C. Miller to recommend steps for adequate representation for non-Brahmins in the services of the State. On the basis of the Committee's report, the Government of Mysore issued orders in 1921 extending special facilities to backward communities with regard to education and recruitment in State services. In 1928, the Bombay government set up a Committee under the chairmanship of Mr. O.H.B. Starte to identify backward classes and recommend special provisions for their advancement. In its report submitted in 1930, this Committee classified backward classes into three categories, i.e., "depressed classes", "aboriginal and hill tribes" and "other backward classes". The Committee recommended the provision of special facilities regarding education and recruitment in Government Services to the members of the above three categories.⁸⁶

Reservation of posts under the Government of India was also not an unknown phenomenon in the pre-Independence days. At the all-India level, the first systematic attempt at the welfare of "depressed classes" was made with the introduction of Montague-Chelmsford Reforms of 1919, when separate representation on a number of public bodies was given to members of these classes. The term "depressed classes" included "Scheduled Castes", "Scheduled Tribes", and "Other Backward Classes".⁸⁷ In 1925, the Government of India initiated the policy of reserving a certain percentage of direct appointments in government service to the minority communities like Muslims. Thus, before Independence the system of reservation in Government service for minority communities and depressed classes was an established fact.⁸⁸

By the time of the Constituent Assembly, the usage of the term "Backward Classes" to refer to some larger or smaller portion of the population deserving of special

treatment was familiar in many parts of the country. In the Assembly, delegates from the north expressed puzzlement at the provisions for "Backward Classes" (in what came to be Article 16[4]). It struck them as vague, and some thought it was meant merely as a synonym for the Scheduled Castes, while others were concerned that it might mean more. But representatives from Madras, Mysore, and Bombay assured their colleagues that Backward Classes is a distinct term with a technical meaning. Examples were given of Mysore where Backward Classes included all but Brahmins, of Madras where it included not only Scheduled Castes and Tribes but others who are economically, educationally, and socially backward. A representative from Bihar (which had the most active backward classes movement in the north) explained that Backward Classes were a section of society between the highest castes and the Scheduled Castes, "the third (section) occupying the middle position and consisting of a large portion of our people is what may be termed the backward classes... no doubt they are not treated as untouchables".⁸⁹

It was anticipated, then, that the backward classes other than the Scheduled Castes and Tribes were to be designated at the local level. The delegation to local authorities undoubtedly reflected an acceptance (at least temporarily) of the divergence of existing difficulties of prescribing universally applicable tests of backwardness in view of the varying local conditions. It may also have been that "Backward Classes" were sufficiently potent politically to look after their own interests on a local level, and unlike Scheduled Castes and Tribes, Central control of their designation was required to insure the inclusion of the deserving. However, Central government was not entirely excluded from the process. Even before the Constitution came into force, there was a great expansion in the employment of the Backward Classes category. Several States created such a category for the first time,⁹⁰ and of those who already had it, several expanded the benefits conferred upon the Backward Classes. The Central government was pressed to expand its scheme of post-matriculation scholarships to the Other Backward Classes,⁹¹ and when it did so, it compiled lists of Backward Classes in each State for this purpose. Backward Classes organizations emerged,⁹² and a national federation was formed. The following table shows the estimated population of OBCs in early 1950s:

TABLE: 1
ESTIMATES OF POPULATION OF OTHER BACKWARD CLASSES
EARLY 1950s *

1951 Census						Backward Classes Commission	
STATE	Total Population in(Lakhs)	Enumerated Pop. Of OBC	% of Enum. Of OBC	Estimated Pop. Of OBC	% of Est. to Total Pop.	Estimated Pop. Of OBC	% of Est.to Total Pop.
Assam	90.44	18.84	20.8	26.15	28.9	2866	31.7
Bihar	402.26	62.76	15.6	66.90	16.6	15321	38.1
Bombay	359.56	44.90	12.5	16.13	4.5	110.10	30.6
Madhya Pradesh	212.48	66.48	31.3	56,04	26.4	79,03	37.2
Madras (& Andhra)	370.16	197.16	34.6	263.95	46.3	126.81	22.2
Orissa	146.46	41.73	28.5	15.85	10.8	13.56	9.3
Punjab	126.41	N.A.	N.A.	7.89	6.2	25.56	20,2
Uttar Pradesh	632.16	41.51	6.6	41.51	6.6	269.10	42.6
West Bengal	248.10	13.59	5.5	1.81	0.7	2266	9.1
Hyderabad	186.55	94.13	50.5	122.85	65.9	137.66	738
Madhya Bharat	79.54	13.68	17.2	13.25	16.7	19.37	24.4
Mysore	90.75	17.53	19.3	20.62	22.7	59.64	65.7
P.E.P.S.U.	34.94			3.79a	10.8	4.42	12.7
Rajasthan	152.91	32.16	21.0	34.30a	22.4	34.31	22.4
Saurashtra	41.37	15.78	38.1	11.06	26.7	12.16	29.4
Travancore Cochin	92,80	4.16	4.5	2.85	3.1	9.12	9.8
Ajmer	6.93	0.35	5.1	0,35	5.1	2.98	42.9
Bhopal	8.36	1.25	14.4	1.35	13.5	2.98	35.2
Himachal Pradesh & Bilaspur	11.09			2.38a	21.4	3.15	28.4
Coorg	2.29	0.69	30.3	0.68	29.7	0.64	27.8
Delhi	17.44	N.A.	N.A.	2.41a	13.8	3.18	18.2
Kutch	5.68	0.01	0.2	1.08	19.0	2.01	35.4
Manipur	5.78					0.35	6.1
Tripura	6.39	0.30	4.7	4.12	64.5	0.69	10.1
Vindhya Pradesh	35.75	7.40	20.7			13.56	38.5
Andamans & Nicobars	.30						
India	3568.29	674.39	18.9	730.01	20.5	1135.10	31.8

* All figures in Lakhs

Source: Marc Galanter, *Competing Equalities: Law and Backward Classes in India*

Apart from the Central scholarships, provisions for Other Backward Classes roughly followed a regional pattern as indicated by the following Table. In South India and Bombay, provisions for Other Backward Classes flourished. In the north, there were mostly a scatter of educational concessions, and many states did not have any lists at all (other than those compiled for the purposes of the central post-matriculation scholarship scheme). But it remained unclear just how many people were included in the Backward Classes category. The never-completed 1951 Census enumeration, based in part on the existing state lists, counted 67 millions (18.9% of the total population).

TABLE: 2
CONCESSIONS FOR OTHER BACKWARD CLASSES, 1951-1952

STATE	Education: Fee concessions, stipends, training, facilities, etc.	Reservations in Educational Insts.	Other Welfare	Recruitment to Government Posts	Expenditures 1951-52(Lakhs)	Expenditures 1953-54
Andhra	-	-	-	-	-	4.36
Assam	X	O	O	O	18.04	2.49
Bihar	X	O	O	O	6.22	10.26
Bombay	X	X	X	X	24.95	50.15
Madhya Pradesh	O	O	O	O	O	0.77
Madras	X	X	X	X	13.04	41.25
Orissa	O	O	O	O	O	O
Punjab	O	O	O	O	O	O
Uttar Pradesh	X	O	O	O	4.75	6.29
West Bengal	X	O	O	O	...	5.86
Hyderabad	O	O	X	O	36.27	1.70
Madhya Bharath	O	O	O	O	O	O
Mysore	X	?	X	X	?	9.14
P.E.P.S.U	O	O	O	O	O	O
Rajasthan	X	O	O	O	0.29	...
Saurashtra	O	O	O	X	O	6.44
Travencore						
Cochin	X	?	?	X	7	8.71
Ajmer	X	O	O	O	O	O
Bhopal	O	O	O	O	0.05	0.05
Bilaspur	O	O	O	O	?	...
Coorg	O	X	O	O	...	0.06
Delhi	X	O	O	O	...	.
Himachal Pradesh	O	O	O	O	3.47	...
Kutch	O	O	O	O	...	3.7
Manipur	O	O	O	O	...	
Tripura	O	O	O	O	O	...
Vindhya Pradesh	O	O	O	O	...	...
Central Government	X	O	X?	O		

Source: Marc Galanter, *Competing Equalities: Law and Backward Classes in India*

Note: OBC lumped together with SCs and STs.

The Planning Commission in July 1951 estimated that the Other Backward Classes were approximately 20% of the population, but in late 1952 noted that "these other backward classes... are believed to number about 54.6 millions". Other observers predicted a smaller list, but the President in his address to the inaugural meeting of the Backward Classes Commission is reported to have mentioned the figure of 70 millions.⁹⁴

OBCs at the Independence: Beginning of Attempts at Centralization

At the time of Independence, who constituted the (Other) Backward Classes remained unclear and contentious, particularly at the national level. And a pair of Supreme Court decisions in April 1951 shattered the legal foundation of the system of communal quotas which prevailed in South India: *State of Madras vs Champakam Dorairajan* struck down the Madras reservations in educational institutions; and *Venkataramana vs State of Madras* struck down the Madras quotas in government posts for all groups other than the Scheduled Castes and "Backward Hindus," confining potential recipients to those who could qualify as the "backward classes" mentioned in Article 16(4). These decisions caused a political furore in south India and occasioned the prompt addition of Article 15(4) through a Constitutional Amendment. The debate over the Amendment centered on the desirability of providing educational preferences to the Backward Classes, their identity and the possible abuse of the new provisions by advanced groups. In an attempt to confine the possible meaning of Backward Classes, the wording of Article 15(4) was keyed to that of Article 340 which provided that the not yet established Backward Classes Commission should list the "socially and educationally backward classes of citizens". An examination of the debate leaves it abundantly clear that the Backward Classes, by whomever designated and according to whatever tests they were chosen, were expected to be a category of castes or communities.⁹⁵

The term Other Backward Classes was widely used by the British administration but had come to mean "Other Backward Castes" in administrative usage. It is used in the Constitution to designate Backward Classes other than the SCs and STs. Article 15(4) refers to them as "socially and educationally backward classes of citizens" and Article 340

as "socially and educationally backward classes". Article 16(4) mentions "backward class of citizens". And Article 46 refers to "the educational and economic interests of the weaker sections of the people".

In view of the precedents under the Government of India Act, 1935, the identification of Scheduled Castes and Scheduled Tribes has been relatively easy. The identification of OBCs, however, bristles with problems. During the British rule, a number of non-Untouchable castes were identified as Backward Classes in different provinces and states under government orders at different times. But after Independence, the State governments, mainly in southern and western India, have been constrained to identify OBCs through specially appointed Commissions. At the all-India level, however, they have to be identified by a commission appointed by the President. The British administrative usage of the term OBCs in the sense of Other Backward Castes has not only persisted, but the law Courts have also from time to time justified it.⁹⁶

Therefore, the controversial category of OBCs had remained unidentified at the national level till Independence, though several States, especially the southern ones, made half-hearted attempts to designate them and conceded certain reservational benefits. Because the social contradictions—which are inevitable products of historical process—in the south manifested themselves in the form of Backward Class upsurge. The social conflict had not come to the surface at the national level till Independence. So the efforts at centralization of the policy began only after Independence by invoking Article 340. The following Chapter focuses on the Union Government's endeavors, under different circumstances, to identify the OBC at all-India level. As it will be seen, the Center's initiatives in this direction, spanning almost four decades, had only succeeded in specifying the communities; they had not resulted in the centralization of the OBC reservations till 1990.

NOTES

- ¹. Anirudh Prasad, *Reservation Policy and Practice in India A Means to An End*, Deep & Deep Publications, Delhi, 1991, p.93.
- ². Basu, D.D., *Constitutional Law of India*, Prentice Hall of India, Delhi, 1978. p.1. Complete Preamble not quoted.
- ³. Ghurye, G.S., *Caste and Race in India*, Oxford Univ. Press (hereafter: OUP), Delhi, 1978, p.387.
- ⁴. Sandanshiv, D.N., *Reservations for Social Justice*, Current Law Publishers. Bombay, 1986, p.136.
- ⁵. Markandan, K.C., *Directive Principles of State Policy in the Indian Constitution*. ABS Publications, Jalandhar, 1987, p. vi. (preface).
- ⁶. Basu, D.D., op.cit. p. 142. Italics added.
- ⁷. Marc Galanter, *Competing Equalities: Law and Backward Classes in India*, OUP. Delhi, 1984, p.364.
- ⁸. Basu, D.D., op.cit, p.29.
- ⁹. Ibid., p.31.
- ¹⁰. Ibid., p.89,
- ¹¹. Added by the First Amendment to the Constitution in 1951.
- ¹². Basu D.D., op.cit. p.29. It should be mentioned here that the scope of the above provisions is limited, to some extent, by Article 335, which states: "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State". This Article applies to Scheduled Castes and Scheduled Tribes only and does not include the Other Backward Classes.
- ¹³. Temporary preferences for yet another group, the Anglo-Indians, were not based on their backwardness but were designed to cushion the loss of privileged position they had formally enjoyed. Reserved posts in certain services and special grants to Anglo-Indian educational institutions were guaranteed by Articles 336(1) and 337.
- ¹⁴. Marc Galanter, op.cit., pp.42-43.
- ¹⁵. This practice was declared unconstitutional, by the Supreme Court of India, as far as the Other Backward Classes (OBCs) are concerned, in its historic verdict in *Mandal Commission Case*. The Court put forward the concept of "creamy layer", i.e., the advanced sections of the OBCs, and directed that the creamy layer should be removed from the beneficiaries. But this stipulation does not apply to the SCs and the STs. See Chapter on Judiciary.
- ¹⁶. Marc Galanter, op.cit, p.43.
- ¹⁷. Ibid. pp. 43-44.
- ¹⁸. Sharma, B.A.V., and Madhusudan Reddy, K., (Eds), *Reservation Policy in India*, Light & Life Publishers, Delhi, 1982, p.1.
- ¹⁹. Marc Galanter, op.cit, p.1.
- ²⁰. *Report of the Backward Classes Commission* (Chairman: B.P.Mandal), Vol.I, Govt. of India, 1980, p. 12. (hereafter: *Mandal Commission Report*)
- ²¹. Sharma & Reddy (Eds), op.cit. pp. 1-2.
- ²². Marc Galanter, op.cit. p.1 19.

- ²³. Article 23(2), where class is used in what appears to be an economic sense.
- ²⁴. Marc Galanter, op.cit. p. 189.
- ²⁵. Andre Beteille, *The Backward Classes in Contemporary India*, OUP, Delhi, 1992, p.3.
- ²⁶. Padhy, K.S., and Jayashree Mahapatra, *Reservation Policy in India*, Ashish Pub. House, Delhi, 1988, p.47.
- ²⁷. Andre Beteille, op.cit, p.3.
- ²⁸. Kuppaswamy, B., *Social Change in India*, Concept Pub. House, Delhi, 1992, p.201.
- ²⁹. Section (24) of Article 366 defines Scheduled Castes as those so designated under Article 431. Section (25) of Article 366 defines Scheduled Tribes as those designated under Article 342. No definition of "Backward Classes" appears at any point in the Constitution.
- ³⁰. Marc Galanter, op.cit., p.121.
- ³¹. It says: "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with the law.
- ³². It reads: "Traffic in human beings and *begar* and other similar form of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law".
- ³². It reads: "The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years".
- ³⁴. Kuppaswamy, B., op.cit., p.201.
- ³⁵. Basu, D.D., op.cit. p.412.
- ³⁶. Andre Beteille, *Society and Politics in India: Essays in Comparative Perspective*, OUP, Delhi, 1992, pp. 151-52.
- ³⁷. Thimmaiah, G., *Power Politics and Social Justice: Backward Classes in Karnataka*, Sage Pubs., Delhi, 1993, pp.35-36.
- ³⁸. Andre Beteille, *Society and Politics in India: Essays in Comparative Perspective*, op.cit, pp. 152-53.
- ³⁹. Andre Beteille, *The Backward Classes in Contemporary India*, op.cit., p.3.
- ⁴⁰. Marc Galanter, op.cit., p. 121.
- ⁴¹. Andre Beteille, *Society and Politics in India: Essays in Comparative Perspective*, op.cit., p. 153.
- ⁴². Harooobhai Mehta and Hasmukh Patel (Eds), *Dynamics of Reservation Policy*, Patriot Pubs, Delhi, 1985, p.63.
- ⁴³. Anirudh Prasad, op. cit, p.7.
- ⁴⁴. Kuppaswamy, B., op.cit, p.201.
- ⁴⁵. Marc Galanter, op.cit., p. 122
- ⁴⁶. Joseph Benjamin, *Scheduled Castes in Indian Politics and Society*, Ess Ess Pubs, Delhi, 1989, p.10.
- ⁴⁷. Ibid. p.11.
- ⁴⁸. Anirudh Prasad, op.cit., p.43.
- ⁴⁹. Joseph Benjamin, op.cit, p.11.
- ⁵⁰. Ibid.

- ⁵¹, Hanumantha Rao, G., *Caste and Poverty A Case Study of Scheduled Castes in a Delta Village*, Savithri Pubs., Mulikipuram, 1977, p.254.
- ⁵². Button, J.H., *Caste in India*, OUP, London, 1969, p. 179. In the most celebrated attempt to specify criteria by which to identify untouchable groups. Mutton (1931 Census Commissioner) proposed a series of tests which revolved around the incidence of several disabilities. See the above book.
- ⁵³, Basu, D.D., op.cit., p.412
- ⁵⁴. Article 341(2), which says: "Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (I)..."
- ⁵⁵. Marc Galanter, op.cit. p. 132.
- ⁵⁶. Joseph Benjamin, op.cit., p.36.
- ⁵⁷. He is now designated as Commissioner for Scheduled Castes and Scheduled Tribes.
- ⁵⁸ Joseph Benjamin, op.cit., pp.36-7.
- ⁵⁹. ibid.
- ⁶⁰. ibid.
- ⁶¹. *Facilities for SCs and STs*, Government of India (Ministry of Information & Broadcasting), 1985, p.21.
- ⁶². Joseph Benjamin, op.cit., p.39.
- . In the early 20th Century, tribals were sometimes included within the Depressed Classes, but by 1930 they were carefully distinguished. The first serious attempt to identify the "primitive tribes" was in the 1931 Census, which counted 24,613,848.
- ⁶⁴. The quantity was only token: a total of 24 of 1,535 seats in the provincial legislatures were reserved.
- ⁶⁵. Marc Galanter, op.cit, pp. 147-8.
- ⁶⁶. Article 339(1); clause (2) of the same Article says: "The executive power of the Union shall extend to the giving of directions to a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State; Fifth Schedule of the Constitution contains provisions on the administration and control of Scheduled Areas and Scheduled Tribes.
- ⁶⁷. Article 275(1).
- ⁶⁸. Fifth Schedule.
- ⁶⁹. Fifth Schedule.
- ⁷⁰. Article 341(1).
- ⁷¹. Article 244, Fifth Schedule .
- ⁷². Marc Galanter, op.cit., pp. 150-1.
- ⁷³. Andre Beteille, *Society and Politics in India: Essays in Comparative Perspective*, op.cit., pp.154-55.
- ⁷⁴. Ibid.
- ⁷⁵. Marc Galanter, op.cit, p. 152.
- ⁷⁶. Singh, K.S., *The Scheduled Tribes* (People of India, National Series Vol. III), OUP, Delhi, 1994, pp.2-3.
- ⁷⁷. Ibid., pp.3-11.
- ⁷⁸. Ibid., pp.13-14.
- ⁷⁹. Just what the mix of assimilation and distinctiveness should be has long been a matter of dispute.

- ⁸⁰. Marc Galanter, op.cit, p. 153.
- ⁸¹. *Mandal Commission Report*, (Vol.1), p.23.
- ⁸² Sharma, B.A.V., & Reddy, M., (Eds), op.cit, p.1-2.
- ⁸³. Anirudh Prasad, op.cit., p.93.
- ⁸⁴. Ibid. p.95.
- ⁸⁵. *Report of Backward Classes Commission* (chairman: Kaka Kalelkar), Vol.1., Govt of India, Delhi, 1955, p. 130.
- ⁸⁶. *Mandal Commission Report*, p. 14.
- ⁸⁷. Sharma, B.A.V., & Madhusudhan Reddy, K., (Eds), op.cit., pp.2-3.
- ⁸⁸. Ibid.
- ⁸⁹. *VII Constituent Assembly Debates*, quoted in Marc Galanter, pp. 159-60.
- ⁹⁰. E.g., the Bihar government made provisions in 1947 for Other Backward Classes in post-matriculation studies and on the basis of the Ministry of Education's list, propounded its list of Backward Classes in 1951. It was estimated that these groups made up 60% of the State's population. Educational concessions for OBCs began in U.P. in 1948. The list of 56 castes was estimated to make up 65% of the population.
- ⁹¹. Requests were made to the Central Government in March, 1948. The request was accepted by the Center and OBCs were added to the list (of SCs and STs) for award of scholarships for the first time in 1948-49.
- ⁹². The Bihar State Backward Classes Federation was founded in 1947.
- ⁹³. In 1954, there were 88 organizations working for the Backward Classes in 15 States. To some extent, at least, the national Backward Classes movement represented a coming together of remnants of the non-Brahmin movements of the South and Bombay with the less successful Backward Classes movements of the north (especially U.P. and Bihar). Their relative success is reflected in the disparate benefits afforded by the States as shown in Table (see Appendix No: III). The chief spokesman for the OBCs at the national level was Dr. Punjarao Deshmukh of Madhya Pradesh (minister of agriculture in 1950s). The All-India Backward Classes Federation came into existence on January 26, 1950, the day on which the Constitution came into force. Marc Galanter, pp. 160-62.
- ⁹⁴. Ibid.
- ⁹⁵. Marc Galanter, op.cit., pp. 164-65.
- ⁹⁶. Shah, A.M., "The Judicial and Sociological View of Other Backward Classes," in Srinivas, M.N., (Ed), *Caste: Its Twentieth Century Avatar*, Viking (Penguin) Books, Delhi, 1996, pp. 174-5.

CHAPTER III

Mandal Commission: The Advent of a New Era

MANDAL COMMISSION: THE ADVENT OF A NEW ERA

The identification of the Other Backward Classes, as discussed in the foregoing Chapter, had been contentious, in north India in general and at the national level in particular. So no reservational schemes could be adopted for them at the Central level till Independence. The SEBCs constitute the largest and arguably the most heterogeneous category of beneficiaries with boundaries that are blurred and elastic. Because these "middle castes" are located between the "twice-born" (*Dwijja*) higher castes and the "untouchables" (Scheduled Castes). Moreover, the Constitution neither defines the SEBCs nor provides the criteria for their identification. Resultantly, the efforts to centralize reservational programs for the OBCs had been unsteady and half-hearted. But the peninsular India has been implementing such programs since pre-Independence period due to the movements launched by the Backward Classes. More importantly, the origins of political mobilization of OBCs at the national level go back to the early years of post-Independence period. So the Center had initiated the efforts to designate the SEBCs only after Independence. And the constitution of Mandal Commission marks the beginning of a new era in the history of Backward Classes and compensatory discrimination. Therefore, this Chapter begins with a discussion of the first decisive attempt by the Union Government at specifying the OBCs, i.e., the setting up of the first national Backward Classes Commission.

In view of the varied conditions of development among the different communities of India, from the primitive to the most advanced, the framers of the Constitution deemed it necessary to make adequate provisions for the protection and uplift of the backward classes and to afford equal opportunities for their advancement in order to bring them up to a common level. The Constitution envisages the establishment of a "classless and casteless society", free from all kinds of exploitation. The Preamble of the Constitution makes it abundantly clear, and the relevant provisions are included in Articles 15(4), 16(4), 38, 39(c), 41, 43, 45, 46, 330 and 344.

The claims of the Scheduled Castes (SCs) and the Scheduled Tribes (STs) for political representation and for special aid for the speedy amelioration of their conditions were recognized and adequate safeguards were incorporated in the Constitution.

Besides these groups, there were other communities, castes or social groups which were also backward socially and educationally, No definite provision could be made for these social groups on account of paucity of information regarding their backwardness. It was thought necessary, therefore, to collect data regarding the conditions of these communities.¹

Article 340 of the Constitution pertains specifically to the Other Backward Classes (OBCs) and contains the following provisions:

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 labor and to make recommendations as to the steps that should be taken 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. The 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.

It was only after Independence that the Central Government tried to define the OBCs with a view to making special provisions for their advancement. Articles 15(4) and 16(4) refer to the making of such provisions for the advancement of SEBCs, It was with this objective that the President, in pursuance of Article 340, appointed the Backward Classes Commission, the first national inquiry of its kind, under the chairmanship of Mr. Kakasaheb Kalelkar (M.P.).³ The *terms of reference* of the Commission as announced in the Notification, *inter alia*, are:

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 SCs and STs) should be treated as socially and educationally backward classes; and, in accordance with that criteria, prepare a list of such 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 labor;
- (c). And make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties or to improve their conditions;
- (d). The Commission shall endeavor to present their report to the President not later than the 31 January, 1954.⁴

On 18 March, 1953, the President inaugurated the Commission. Speaking on the occasion, both the President and the prime minister expressed the hope that the labors of the Commission pave the way for a classless society. The prime minister disliked the term "backward classes" and remarked that it was basically wrong to label any section of the people as backward even if they were so, particularly when 90% of the people in the country were poor and backward.

According to the terms of reference, the innumerable Other Backward Classes and not the Scheduled Castes and Scheduled Tribes, were the chief concern of the Commission. This position had to be explained to the general public in clear terms time and again. In spite of such clarifications, however, there had been a persistent misunderstanding about the scope of the Commission.

The Commission prepared an exhaustive questionnaire of nearly 200 questions. Though the questionnaire set the people thinking, the replies received from the State governments were not uniformly satisfactory. The replies and the memoranda received from various individuals and organizations of the backward classes also showed lack of study and revealed their inability to furnish full information. From the replies, it was evident that there was very little original or radical thinking on their part. There was a dull mechanical uniformity in the demands put forward and every community pleaded it was extremely backward and it needed all positive help in various spheres.

Initial Handicap: The Commission experienced a great handicap almost at the outset. It expected that all the statistics would be available with the State governments. "We discovered that the relevant data so necessary for our inquiry were not available with the State governments. The plea advanced was that no caste-wise statistics had been collected during the Census of 1951. So the only course open to us was to rely on the statistics available with the various governments and the previous Census Reports, and to go by the

general impressions of government officers, leaders of public opinion and the social workers. The Census Department had furnished us with approximate population figures for most of the communities, but we assume no responsibility for the reliability or finality of these figures. We feel, however, that the conclusions that we have drawn from the mass of material collected by us are fairly satisfactory".⁵

After sifting and sorting the facts collected, the Commission formulated the following criteria for identifying SEBCs:

- (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 fields of trade, commerce and industry.

It also prepared a list of 2,399 backward castes or communities for the entire country, and 837 of these were classified as "most backward".⁶

Salient Conclusions and Recommendations

The recommendations of the Kalelkar Commission for the upliftment of the backward classes are extremely wideranging and comprehensive, The following is the summary of the important conclusions and recommendations of the Commission:

1. Census and Caste: All facts about caste have to be collected (through Census) and classified in a scientific manner taking help from ethnologists and sociologists.
2. Special Groups: All *Muslims* are not socially and educationally backward. But there are a number of communities among them that are suffering from backwardness. Such communities are included in the list of OBCs. *Christianity* has consistently refused to recognize caste. But, in practice, the segregation of converts from Scheduled Castes still prevails, particularly in south India. The Commission had included such communities in the list of OBCs. If the SC converts to Christianity in other parts of the country also suffer from similar social disabilities, they should also be included in the OBCs list. *Anglo-Indians* cannot be classed as backward, either educationally or socially. *Sikhs* constitute an integral part of the Hindu religion. Although, in theory, Sikhs do not subscribe to caste

system, in reality they cling to many Hindu practices. The communities who are treated as "untouchables" among Sikhs should be included in the list of Scheduled Castes; any distinct community among them found to be socially and educationally backward must be included in the list of OBCs. *Women*, who live under great social handicaps, must be regarded as backward. But as they do not form a separate community they cannot be included in the list of backward classes. The condition of backward class women is worse. So special measures for the advancement of women in the fields of education, politics, employment, etc., should be taken up. *Backward areas* in different States should be developed through specially designed developmental schemes.

3. Criteria of Backwardness: A variety of causes—social, environmental, economic and political—have operated both openly and in a subtle way for centuries to create the present classical problem of backwardness. The Commission is justified in interpreting the terms of reference as mainly relating to social hierarchy based on caste. So the Commission adopted four criteria of backwardness for general guidance. The same criteria was also employed to further classify (see supra) the backward classes.

4. Backwardness and Its Removal: Adult franchise has given to the masses the most potent and powerful instrument with which to shape their destiny. So their hands have to be strengthened through education instead of offering another weapon to weak hands. Therefore, "it would be suicidal to accord any additional/special political representation to any community". There are disruptive forces that are trying to entrench themselves by exploiting the prevailing social conditions. The objective should be full employment and the removal of economic inequalities. Conditions must be recreated in which the development of backward classes takes a natural growth. The main solution, therefore, is not so much to wait for the creation of new avenues of employment, as to provide favorable conditions in which their lost or decaying occupations could be revived; this would relieve the pressure on land.

5. Land Policy: All kinds of intermediary tenures should be abolished to help the formulation and implementation of a national land policy. "Fixing a ceiling on landholding is a necessary social principle to remove the existing social inequality in the countryside".

It should be followed immediately by placing limits on incomes from other fields of national economy.

6. Reservations (educational): In all science, engineering, medical, agricultural, veterinary and other professional and technological institutions, a reservation of 70% seats should be provided for the qualified students of backward classes till such time as accommodation is provided for all the students eligible for admission. In making selections to the reserved seats, candidates from extremely backward classes should be preferred; the principle of favoring the lower of the two claimants should be followed. A Selection Committee consisting of the representatives from all communities should be set up to assist the educational authorities in the selection of candidates. *Employment:* prestige, power, scales of pay, security and scope to distribute patronage—make government service attractive. So long as it continues to be so, the claims of OBCs for adequate representation in the services should be recognized by providing reservation of definite quota of vacancies in each class. To lessen the keen desire for government services on the part of the OBCs, one way to render them as unattractive as possible is to reduce the emoluments attached to them. The interests of the state, the efficiency of administration and the increasing role of welfare which the services have to play in relation to the masses of the country—all these demand that reservations should be in proportion to the population of the OBCs. Therefore, in all government and local body services, the basis of representation of OBCs should be: *Class I:* 25% of vacancies; *Class II:* 33.5% of vacancies; and *Class III & IV:* 40% of vacancies. This percentage would be in addition to that which has already been conceded by the government to the SCs and STs. At the end of ten years, the adequacy of the representation of OBCs should be reviewed. While recognizing the desirability of selecting the best possible candidates in technical services, the OBCs should be increasingly given facilities in technical (educational) institutions. A permanent Board should be set up to enforce full and proper implementation of the reservation policy.

7. Separate Ministry: A new Ministry should be created, one at the Center and one in each State, to effectively address the problems of backward classes.⁷

Minutes of Dissent

It is pertinent here to note that the Kalelkar Commission could not present a unanimous report. In fact five of its members recorded minutes of dissent. Messrs. Anup Singh. Arunangshu De and P.O. Shaw were opposed to the view of linking caste with backwardness; and reservation of posts on caste basis. But Mr. Chaurasia strongly advocated the acceptance of caste as the criterion for backwardness in his 67 page minute of dissent. Mr. Mariappa's minute of dissent was concerned only with the inclusion of a couple of castes in the list of SEBCs.

Chairman Kalelkar took rather equivocal stand on the issue. Interestingly, in a last-minute *volte face*, he virtually repudiated the Commission's work. Though he did not record a formal minute of dissent, in his 29-page *Forwarding Letter* to the President, he opposed the acceptance of caste as the basis of backwardness. He also expressed his reservations regarding several other important recommendations made by the Commission.⁸

The following extracts from the chairman's letter are noteworthy:

"Being convinced that the upper castes among the Hindus have to atone for the neglect of which they were guilty towards the 'lower' classes, I was prepared to recommend to the Government that all special help should be given only to the backward classes. My eyes were however open to the dangers of suggesting remedies on the caste basis when I discovered that it is going to have most unhealthy effect on the Muslims and Christian sections of the nation... This was a rude shock and it drove me to the conclusion that the remedies we suggested were worse than the evil we were out to combat...."

"This painful realization came to me almost towards the end of our labors. I could not stem the current of opinion within the Commission itself and ultimately decided to side with the majority with whom I cooperated throughout in formulating remedies on caste basis. It is only when the Report was being finalized that I started thinking anew and found that backwardness could be tackled on a number of bases other than that of caste. I only succeeded in raising the suspicion of the majority of my colleagues that I was trying to torpedo the recommendations of the Commission. This was another reason why I signed the Report without even a minute of dissent..."

"...If such communities have neglected education it is because they had no use for it. Now that they have discovered their mistake, it is for them to make necessary efforts for making up the leeway....Till recently, good many communities were organizing caste conferences and collecting funds for granting scholarships to boys and girls of their community. That was a good lesson in self help. But now all burden is sought to be thrown on the common exchequer and those who have thoughtlessly neglected education in the past are now seeking preferential treatment in Government services. This is anything but fair"

"I am definitely against reservation in Government services for any community for the simple reason that the services are not meant for the servants but they are meant for the service of society as a whole....I believe that in Class I and II Services, the backward classes will stand to gain, both morally and materially, if they do not demand a reservation percentage in the vacancies and simply rely on the fair-mindedness of the administration to use their preferences in favor of the backward classes"⁹

The above extracts form an eloquent testament of Mr. Kalelkar's views on backwardness and social justice. It must have caused this gentle Gandhian no end of anguish to refrain from recording a formal note of dissent to a Report which recommended caste as one of the main criteria for determining social backwardness. Despite giving such clear expression to his views, he observed, in his letter: "Following the analogy of the proverb, i.e., 'use the thorn to remove a thorn, we held that the evils of caste could be removed by measures which could be considered in terms of caste alone". Here, the strain of squaring the circle becomes so palpable that one can only sympathize with Mr. Kalelkar in his predicament.¹⁰ The chairman's last-minute desertion foreshadowed (and perhaps augmented) the negative reception that awaited the Report. The spectacle of numerous groups vying to display their backwardness, the perception that caste classifications were divisive and unfitting, the casualness of the Commission's application of its criteria, the vastness of the number they found backward, and the expansiveness of the preferences they proposed exposed their work to widespread criticism.¹¹

Government Action on Kalelkar Commission Report

After a detailed examination of the Commission's Report, the Government laid its copy together with a Memorandum of action taken in each House of the Parliament on 3 September, 1956. In this Memorandum, it was observed: "For the purpose of the inquiry specifically contemplated in Article 340 of the Constitution it was necessary to consider whether these other backward sections could be properly classified and the Commission had to find objective tests and criteria by which such classifications were to be made. They had to find indisputable yardsticks by which social and educational backwardness could be measured. The report of the Commission has not been unanimous on this point, in fact, it reveals considerable divergence of opinion". It was further stated: "The Commission's list contains as many as 2,399 communities out of which 930 alone account for an estimated population of 11.5 crores; Scheduled Castes and Tribes will make up another 7 crores." (on the basis of 1951 Census). Regarding the acceptance of caste as criteria for backwardness, it was stated: "It cannot be denied that the Caste system is the greatest hindrance in the way of one's progress towards an egalitarian society, and recognition of the specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of castes."

Regarding the recognition of a large number of castes and communities as backward, it was pointed out: "If the entire community, barring a few exceptions, has thus to be regarded as backward, the really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance, nor would such a dispensation fulfill the conditions laid down in Article 340 of the constitution.

In view of the above, the Government considered it necessary that "some positive and workable criteria should be devised for the specification of the socially and educationally backward classes" and to undertake further investigations "so that deficiencies that have been noticed in the findings of the Commission are made good..." It was also pointed out in the Memorandum that the Planning Commission had already formulated the development programs for the removal of backwardness and "the main point to be stressed was whether the special needs of the backward classes could be intensively and effectively served by appropriate shifts of emphasis or by rearrangement of

priorities within the framework of the existing programs or whether additional programs needed to be drawn up".¹²

Incidentally, the Commission's Report was not discussed by the Parliament.

After presenting the Memorandum to the Parliament, the Government made efforts "to discover some criteria other than caste which could be of practical application in determining the backward classes". The Deputy Registrar General was asked to conduct a pilot survey to see if backwardness could be linked to occupational communities instead of caste. Such a survey was undertaken but it failed to throw up the desired criteria. The matter was also discussed at a conference of State representatives on 7 April, 1959 and subsequently reviewed at a meeting of State Officers convened by the Ministry of Home Affairs; but no consensus emerged as a result of these efforts.

The Central Government ultimately took a decision that no all India lists of backward classes should be drawn up, nor any reservation made in the Central Government service for any group of backward classes other than the SCs and STs. Consequently, on 14 August, 1961, the Home Ministry addressed all State governments stating: "While the State governments have the discretion to choose their own criteria for defining backwardness, in the view of the Government of India, it would be better to apply economic tests than to go by caste". Regarding the preparation of lists of backward classes it was observed: "Even if the Central Government were to specify under Article 338(3) certain groups of people as belonging to 'other backward classes', it will still be open to every State government to draw up its lists for the purposes of Articles 15 and 16. As, therefore, the State governments may adhere to their own lists, any all-India lists drawn up by the Center would have no practical utility".¹³

Though the above failings are serious, yet the real weakness of the Report lies in its internal contradictions. As discussed above, three of the members were opposed to one of the most crucial recommendations of the Report, that is the acceptance of caste as a criterion for social backwardness and the reservation of posts in Government services on that basis. This degree of diffidence greatly compromised the force of the Commission's recommendations. But it was the 29-page forwarding letter of the Chairman to the President which demolished the very basis of the Report. Thus, the matter went back to the

States; the Commission's Report remained on the table, and despite occasional agitations, was not taken up by the Parliament until 1965,

Some Observations on Government Action

Whereas the Kalelkar Commission Report received the closest attention of the Government right up to the highest level, there is one aspect of its examination which merits special attention. Despite referring to various Constitutional provisions and accepting the need to give special relief to SEBCs, in the overall context, the Government thinking was mainly conditioned by the national imperative of reducing economic disparities between different classes of society. This approach is clearly summed up in the letter that Home Ministry addressed to all the State governments after full examination of the Report.

As the main thrust of the Government's development programs has always been the removal of mass poverty, this preoccupation with economic criteria in determining the backwardness is quite understandable. But howsoever laudable the objective may be, it is not in consonance with the spirit of Article 340, under which the Commission was set up. Both Articles 15(4) and 340(1) make a pointed reference to *socially and educationally backward classes*. Any reference to "economic backwardness" has been advisedly left out of these Articles. It may be pertinent to point out that in giving primacy to "economic tests" in determining the type of backwardness referred to in Article 340(1), the Government has, perhaps inadvertently paid less than adequate attention to the constitutional requirements in this matter. It may be possible to make out a plausible case for not accepting caste as a criterion for defining "social and educational backwardness". But the substitutions of caste by economic tests will amount to ignoring the genesis of social backwardness in the Indian society.¹⁴

In 1957, the Government of India instructed all State governments to extend the benefits of various welfare schemes to the OBCs, using the Ministry of Education lists, pending finalization of a list of OBCs. But by the beginning of the 1960s the tide was running strongly against definition of the Backward Classes by community. Opposition within the government was augmented by criticism from academics and much of the national press, who voiced a common suspicion of the caste criterion.¹⁵ Consequently, a

number of State governments set up their own Commissions or Committees for defining criteria for backwardness and recommending measures for its removal. Till 1979, ten States had set up fifteen Commissions/Committees in this behalf Further eight other States and Union Territories had notified lists of OBCs for the grant of various educational, employment and other benefits.¹⁶

As the Center's role in the designation of Backward Classes moved from an attempt to prepare a single nationwide list to suggesting standards to the States, Courts involved in litigation (over Backward Classes) made it clear that the Constitution did not confer on these Central proposals any inclusiveness in the identification of the Backward Classes. Indeed, the state may not rely on the findings of the Backward Classes Commissions to establish conclusively that a given class is backward. With the abandonment of the Central attempts to define the OBCs, and the relinquishment of whatever control might accompany Central funds for the OBCs, the scope of preferential programs, and the level of benefits continued to vary widely from State to State.¹⁷ Thus, the question of who were the Scheduled Castes was debated and roughly settled before Independence within the executive and without the participation of the Courts. But who are the Backward Classes is a post-Independence question which the Constitutional recognition of the category made one of all-India scope. The Constitution left the matter with the executive at the State level with an option for the Center to unify it. When the executive at the Center first failed and then declined to provide a resolution, the question reverted to the States.¹⁸

THE MANDAL COMMISSION: INCEPTION OF A NEW ERA

The recommendations of the First Backward Classes Commission (1953-1955) had not been accepted by the Central Government on the ground that the Commission had not applied any objective tests for identifying backward classes. The Government was also opposed to the adoption of caste as one of the criteria for backward classes and preferred the application of economic test¹⁹

The Article 340 has been invoked twice: in 1953 (Kalelkar Commission) and in 1979 (Maandal Commission). But the sobering fact remains that the Union of India decided

not to adopt any policy measures for four decades after independence. The reasons were many and complex. The Kalelkar Commission Report was a house divider. The division rested on the question whether the Constitution permitted organization of state policy on the basis of caste rather than class as a criterion of backwardness. No action on the Kalelkar Report resulted during the Nehru era and it was only after 30 years of independence that the Mandal Commission was constituted. In the meantime, a large number of States proceeded to have their own Backward Classes Commissions and arrived at different formulas of reservation in education and employment for the backward classes.²⁰

Though free India's secular and republican Constitution provides for equality of opportunity to all its citizens, irrespective of caste, creed or gender, and for redress of the inherited or imposed disadvantages suffered by the sections of the people, the traditional hold of the upper castes over positions of power and privileges rendered both "equal opportunity" and "redress" less effective instruments for positive changes. Operation of the Constitution, circumscribed by the superior social and political influence of the privileged castes or classes, has thus been able to bring about only some shifts in emphasis than any material alteration in the basic social structure. The erosion of Congress as a credible instrument of social, economic, and political change and redress, the emergence of caste and community based pressure groups that are coalescing into alternative platforms of change that encompass all sections of the people, and the loosening of the Brahmin-centred Hindu hierarchy has seemed to provide fresh scope for disadvantaged classes—increasingly identified as castes in the political electoral context—to seek their place in the sun.

As these disadvantaged groups saw it, the first break in their favour came in 1977 when the Congress lost power at the Centre for the first time in free India. A splinter Congress group in power for a brief two years with the support of caste and community based groups set up the country's second Backward Classes Commission to report on steps to fully enfranchise the "socially and educationally backward classes". The first such Commission (headed by Kaka Kalelkar) failed to present a unanimous report favoring the use of caste as criterion to assess backwardness and thus it was put aside by the Jawaharlal Nehru Government.²¹

The Memorandum of Action (taken by the government on Kalelkar Report) pointed out that "if the entire community, barring a few exceptions, has thus to be regarded as backward, the really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance, nor would such dispensation fulfill the condition laid down in Article 340". In view of the above, the Government considered it necessary that "some positive and workable criteria should be devised for the specification of the socially and educationally backward classes... so that deficiencies that have been noticed in the findings of the Commission are made good".

In pursuance of this Memorandum, a conference of the representatives of the State governments took place in 1959. Representatives from West Bengal suggested that occupations, the dependents on which had less than 50% average literacy of the State and also with which substantial numbers of the Scheduled Castes and Scheduled Tribes were associated, could be categorized as educationally and socially backward. With this approach, the 1951 Census data were retabulated on area sample basis in West Bengal, the then Bombay, and Madras. They identified about hundred occupations like rickshaw pullers, construction workers as OBC. But this approach could not make much headway as it appeared that the other States were not much enthusiastic about it. Hence, on an all-India basis, no list of OBCs or the approach to them could be determined. In the meantime, rapid changes were taking place in the politico-social scenario in India. Through land reforms, the intermediary rights between the State and the cultivators were by and large abolished but equitable distribution of surplus land did not take place in any significant measure.

At the same time, technological developments in the agricultural sector were taking place in various forms in different parts of the country. A class of rich peasants, who mainly belonged to the intermediate level of castes in the traditional social structure, emerged and deeply entrenched itself in the rural power structure; it was also making its presence felt in the political process at the regional and national levels. This class was not, however, homogeneous in its composition and different segments of it did not have identical social history. There were continuous shuffling and reshuffling of power equations among the segments. Simultaneously, technological developments were taking place in the non-agricultural sectors, including village industries and various traditional

occupations. This in some cases led to marginalization of the traditional occupations, and induction of others into these fields; in some other cases this triggered social mobility movements. Thus, for instance, an analysis of the 1961 Census data found that hardly 10% of the workers belonging to the traditional leather working castes were in leather work; on the other hand, a good percentage of leather workers belonged to other castes. It was in this context of socio-political churning that the Second Backward Classes Commission was set up.²²

In exercise of the powers conferred by the Article 340 of the Constitution, the President appointed a Backward Classes Commission,²³ popularly known as the Mandal Commission after its chairman, on 1 January, 1979 to investigate the conditions of Socially and Educationally Backward Classes within the territory of India.²⁴

TERMS OF REFERENCE

- i. To determine the criteria for defining the socially and educationally backward classes;
- ii. To recommend steps to be taken for the advancement of the socially and educationally backward classes of citizens so identified;
- iii. To examine the desirability or otherwise of making provision for the reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or any State; and
- iv. Present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

In this connection, the Commission may also examine the recommendations of the Backward Classes Commission appointed earlier and the considerations which stood in the way of the acceptance of its recommendations by Government.

The Commission was required to present their Report to the President not later than the 31 December, 1979.²⁵

METHODOLOGY

The Mandal Commission was highly critical of the methodology employed by the First Backward Classes Commission to identify the SEBCs. The Commission says that one important reason as to why the Central Government could not accept the recommendations of Kaka Kalelkar Commission was that it had not worked out objective tests and criteria for the proper classification of socially and educationally backward classes. In several petitions filed against reservation orders issued by some State Governments, the Supreme Court and various High Courts have also emphasized the imperative need for an empirical approach to the defining of social and educational backwardness and the identification of Other Backward Classes.²⁶

Questionnaires

In April 1979, the Commission issued three questionnaires to all the State Governments, Central Ministries/Departments, and the General Public.

Questionnaire to State Governments requested the States to supply information on: their concept of social and educational backwardness, steps taken for the welfare of OBCs, their representation in Government Services, income levels and social status of manual workers and occupational communities, their educational levels and incidence of drop-outs, etc. Replies were received from all the State Governments and Union Territories.

Questionnaire for Central Ministries/Departments sought the Central Ministries/Departments and the Public Undertakings to supply information regarding the number and percentage of employees of Other Backward Classesⁱ employed in these organizations. A rough and ready criteria of social and educational backwardness was also given in this questionnaire. In all, 30 Ministries and Departments and 31 Attached and Subordinate Offices furnished the desired information.

Questionnaire for the General Public, Voluntary Organizations, etc. was issued to members of general public, social workers, public men, caste associations, voluntary organizations, etc., to elicit their views on the criteria for social and educational backwardness, social mobility since independence, place of caste in the social structure of India, social and civil disabilities suffered by backward classes, etc. In all, 1,872 replies were received by the Commission from all over the country.

Commission's Tours

The Commission undertook extensive tours of the country to get firsthand information from various communities and sections of the public on the problems of social and educational backwardness. It visited 84 District headquarters, 37 villages, attended 171 formal meetings, and received 2638 representations from public men and voluntary organizations. At each State Headquarters, the Commission had useful discussions with Chief Ministers, Members of Parliament, Members of Legislative Assemblies, senior officials, representatives of State and Central Public Undertakings, voluntary social organizations and prominent public men.

North-South Comparison of Backward Classes Welfare

Southern States have a fairly long and peaceful history of giving substantial benefits to Other Backward Classes and these States have done more for their welfare than any region in India. On the other hand, Northern States have been quite slow and hesitant in framing any welfare scheme for the OBCs. In fact very modest reservations made in services and educational institutions in Bihar and Uttar Pradesh in recent years have given rise to widespread protests and agitation. As it appeared necessary to have a clear understanding of local factors, social attitudes, prejudices, etc., for this contrast in responses to the same phenomenon, the Commission engaged Tata Institute of Social Sciences, Bombay, to undertake a case study of four States, i.e., Tamil Nadu, Karnataka, Bihar, and Uttar Pradesh with this end in view.

Census Data

On the basis of 1891 and 1931 Census, data was collected and analyzed with a view to getting a frame for the linkage of traditional occupations by caste. The main objective of this exercise was to get an idea of social mobility amongst various castes during the intervening period of 40 years. Such data was compiled fully for the States of Bihar and Uttar Pradesh and caste index by traditional occupations was prepared for those two States. This study could not be carried beyond 1931, as listing of castes was discontinued in subsequent Census operations.

Village Studies by Anthropological Survey of India

At the Commission's request, the *Anthropological Survey of India*, Calcutta, made available its village studies pertaining to Andhra Pradesh, Bihar, Karnataka, Madhya

Pradesh, Maharashtra, Punjab, Tamil Nadu, Tripura and Uttar Pradesh. From these studies the Commission could cull useful information about the socio-economic conditions of rural population of these States.

Special Reports

A large number of survey reports and monographs prepared by the Indian Council of Social Sciences Research; Labour Bureau (Ministry of Labour); National Labour Institute; Institute of Economic Growth; Centre for the Study of Developing Societies; Indian Social Institute; etc., provided the Commission with a mine of useful information on the conditions and problems of SEBCs.

Legal and Constitutional Issues

During the last 20 years (till 1990), the Supreme Court and various-High Courts had decided a number of cases regarding the reservation policies in favour of the Other Backward Classes adopted by several States. As very important Constitutional and legal issues had been discussed in these judgements, it was necessary for the Commission to take cognizance of these judicial pronouncements in formulating its recommendations for the identification of Backward Classes and suggesting measures for their upliftment. In view of this, the Commission engaged Law Institute of India, New Delhi, to prepare a comprehensive Report on this subject.²⁷

THE DYNAMICS OF CASTE

The Mandal Commission Report strongly contends that there is a close relationship between caste and, educational and economic backwardness. The Report also quotes some important judicial pronouncements on reservation issue to corroborate its views. It devotes four Chapters (IV to VII), in Volume I, to the above analysis, the summary of which is presented below.

Social Backwardness and Caste

Castes are 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 to 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. In view of the permanent stratification of society in hierarchical caste order, members of lower caste have always suffered 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 ever changing social reality. The traditional view of caste system is based more on Hindu *Shastras* than actual state of social reality. Moreover, caste restrictions have loosened considerably as a result of the rule of law introduced by the British, urbanization, industrialization, spread of mass education and, above all, the introduction of adult franchise after Independence. But all the above changes mark only a shift in emphasis and not any material alteration in the basic structure of caste. It is generally argued 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 mobilization 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 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 humanness of 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 social justice. In fact, it is "equality 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 Articles 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 as a violation of their Fundamental Rights 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 come from rural background cannot compete on an equal footing with children from well-to-do homes. In view of this "merit" and "equality" should be viewed in proper perspective and the element of privilege should be duly recognized and discounted for when "unequals" are made to run the same race.

Social Justice, Constitution, and Law: The element of conflict between the Fundamental Rights and the Directive Principles of State Policy had 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 the Other Backward Classes among Hindu Communities. Backwardness must be both social and 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.²⁸

CRITERIA OF BACKWARDNESS

The Commission designed a socio-educational field survey with the help of a Research Planning Team of Sociologists, and a Panel of Experts led by Prof. M.N. Srinivas. With a view to providing continuous guidance at the operational level, a Technical Advisory Committee was set up headed by Dr. K.C. Seal, Director General, Central Statistical Organization.²⁹

Schedules: The Experts' Panel had prepared the following four schedules for the field survey: (a) household schedule (rural); (b) household schedule (urban); (c) village schedule; (d) town schedule. Household schedule was divided into five parts: household particulars, particulars of individual members, particulars of non-students between 5-15 years, and description of assets and indebtedness. Questions under each part were so framed as to get information on such social, educational, and economic particulars of household as characterized the syndrome of social and educational backwardness in the Indian conditions.

Sample Size and Coverage: Experts' panel had recommended 1% purposive sample of villages at the district level that will be able to identify a vast majority of backward classes. At a subsequent meeting of Technical Advisory Committee, it was decided that for our purpose a sample of 1% of the country's population comprising 65 lakh persons may be too large, especially in view of the limited time available to the Commission. Instead, 100% coverage of two villages and one urban block in each district of the country was considered to be quite adequate. In view of the vast experience of Central Statistical and National Sample Survey Organizations in conducting surveys, this recommendation of the Committee was accepted. The selection of villages and urban block was left to the State agencies entrusted with the survey. Survey operations were entrusted to the State Statistical Organizations of the concerned States/Union Territories.³⁰

In this connection, it may be useful to point out that in social sciences no mathematical formulae or precise benchmarks are available for determining various social traits. A survey of the above type has to tread warily on unfamiliar ground and evolve its own norms and benchmarks. And this exercise is full of hidden pitfalls. In view of the above "Indicators for Backwardness" were tested against various cut-off points. For doing so, about a dozen castes well known for their social and educational backwardness were selected from amongst the castes covered by our survey in a particular State. These were treated as "Control", and validation checks were carried out by testing them against "Indicators" at various cut-off points. For instance, one of the Indicators for social backwardness is the rate of student drop-outs in the age group 5-15 years as compared to the State average. As a result of the above tests, it was seen that in educational backwardness, this rate is at least 25% above the State average. Further, it was also noticed that this deviation of 25% from the State average in the case of most of indicators gave satisfactory results. In view of this, wherever an indicator was based on deviation from the State average, it was fixed at 25%, because a deviation of 50% was seen to give wholly unsatisfactory results and, at times, to create anomalous situations.³¹

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 heads: 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 attend 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 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 weightage was given to Indicators in each group. All the social Indicators were given a weightage of 3 points each, Educational Indicators a weightage of 2 points each and Economic Indicators a weightage of one point each. Economic, in addition to Social and Educational Indicators, were considered important as they directly flow from social and educational backwardness. This also helped to highlight the fact that socially and educationally backward classes were economically backward also. It will be seen that from the values given to each Indicator, the total score adds upto 22. All these 11 indicators were applied to all the castes covered by the survey for a particular State. As a result, all castes which had a score of 50% (11 points) or above were listed as socially and educationally backward and the rest were treated as "advanced". Further, in case the number of households covered by the survey for any particular caste were below 20, it was left out of consideration, as the sample was considered too small for any dependable inference.

The above system of listing castes as socially and educationally backward on the basis of their score may appear somewhat arbitrary. On the face of it, this is a tenable viewpoint. On the other hand, the points scored by a particular caste under the above system actually reflects the number of indicators of backwardness which it satisfies. Secondly, this method has the great merit of objectivity, as the point system allows no

subjective assessment. Thirdly, this method was found to be highly dependable in practice. For instance, as a result of its application, most of the well known socially and educationally backward castes were identified as backward.

It may be emphasized here that the Commission adds: "This survey has no pretensions to being a piece of academic research. It has been conducted by the administrative machinery of the Government and used as a rough and ready tool for evolving a set of simple criteria for identifying social and educational backwardness. Throughout this survey, our approach has been conditioned by practical considerations, realities of field conditions, constraints of resources and trained manpower and paucity of time. All these factors obviously militate against the requirements of a technically sophisticated and academically satisfying operation".³²

IDENTIFICATION OF THE OTHER BACKWARD CLASSES

The classes, castes, or communities identified as backward as a result of this survey belong to Hindu religion only. As the unit of identification in the above survey is caste, and caste is a peculiar feature of Hindu society, the results of the survey cannot have much validity for non-Hindu communities. Criteria for their identification have been given separately.

Regarding the State-wise lists of socially and educationally backward classes (contained in Volume VI of the Report), as discussed above, only two villages and one urban block were selected from each district of the country for socio-educational survey. Whereas the size of the sample was large enough to give us reliable data for the formulation and testing of criteria of social-educational backwardness, it was not sufficiently comprehensive to cover each and every caste in the country. But for our purpose it was also necessary to give complete lists of socially and educationally backward castes/classes in each State, as in the absence of properly identified OBCs, the recommendations of the Commission would have been only of academic interest. So the Commission has also applied some other tests like the stigmas of low occupation, criminality, nomadism, beggary and untouchability to identify social backwardness. Inadequate representation in public services was taken as another important test.

Thus, the Commission 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-educational field survey;
- (ii) Census Report of 1961 (particularly for the identification of primitive tribes, hill tribes, forest tribes and indigenous tribes);
- (iii) Personal knowledge gained through extensive touring of the country and receipt of voluminous public evidence as described in chapter X of the Report; and
- (iv) Lists of OBCs notified by various State Governments.³³

OBCs Among Non-Hindu Communities

There is no doubt that social and educational backwardness among non-Hindu communities is more or less of the same order as many Hindu communities. Though caste system is peculiar to Hindu society, in actual practice, it also pervades the non-Hindu communities in varying degrees. There are two main reasons for this phenomenon: first, caste system is a great conditioner of the mind and leaves an indelible mark on a person's social consciousness and cultural mores. Consequently, even after conversion, the ex-Hindus carried with them their deeply ingrained ideas of social hierarchy and stratification. This resulted in the Hindu converts inadvertently acting as Trojan horses of the caste system among highly equalitarian religions such as Islam, Christianity, Sikhism, etc. Secondly, non-Hindu minorities living in predominantly Hindu India could not escape from its dominant social and cultural influences. Thus, both from within and without, caste amongst non-Hindu communities received continuous sustenance and stimulus.³⁴

But despite the prevalence of caste system among non-Hindu communities in varying degrees, the fact of the matter is that all these religions are totally egalitarian in their outlook, they proclaim absolute equality of all their co-religionists and any social differentiation based on caste is anathema to them. In view of this, caste cannot be made the basis for identifying SEBCs among non-Hindu communities. The Commission, therefore, evolved some other "rough and ready criteria" for identifying non-Hindu OBCs. The criterion of poverty appears to be the most plausible, but it is full of pitfalls. For instance, even a highly respected and well educated Sayyad or Syrian Christian may be

poor. Thus he will not satisfy the Constitutional provision of 'social and educational backwardness'. Moreover, verification of economic status is very tricky.

After giving a good deal of thought to the difficulties, the Commission evolved the following criteria for identifying non-Hindu OBCs:

- (i) All untouchables converted to any non-Hindu religion; and
- (ii) Such occupational communities which are known by the name of their traditional hereditary occupations and whose Hindu counterparts included in the list of Hindu OBCs; (examples: Dhobi, Teli, Dheemar, Nai, Gujar, Kumhar, Lohar, Darji, Badhai, etc.).³⁵

Estimated Population of OBCs

Systematic caste-wise enumeration of population was introduced in 1881 and discontinued in 1931. In view of this, figures of caste-wise population beyond 1931 are not available, But assuming that the *inter se* rate of growth of population of various castes, communities and religious groups over the last half a century has remained more or less same, it is possible to work out the percentage that all these groups constitute of the total population of the country. Working on the above basis, the Commission culled out caste/community-wise population figures from the Census records of 1931 and, then grouped them into broad caste clusters and religious groups. These collectivities were aggregated under five major heads: (i) Scheduled Castes and Scheduled Tribes; (ii) Non-Hindu Communities, Religious Groups, etc.; (iii) Forward Hindu Castes and Communities; and (iv) Backward Hindu Castes and Communities; and (v) Backward non-Hindu Communities. Results of this exercise are contained in the following Table: 3, and a look at it will indicate the broad classification adopted by the Commission.

TABLE: 3
Percentage Distribution of Indian Population by Caste and Religious Groups

S.No.	Group Name	% of Total Population	
I. Scheduled Castes and Scheduled Tribes			
A.1	Scheduled Castes	15.05	
A.2	Scheduled Tribes	7.15	
	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 and STs)	1.67	(0.22)*
B.4	Budhists (Other than STs)	0.67	(0.03)*
B.5	Jains	0.47	
	Total of 'B'	16.16	
III. Forward Hindu Castes and Communities			
C.1	Brahmins (incl. Bhumihars)	5.52	
C.2	Rajputs	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, and C	56.30	
IV. Backward Hindu Castes and Communities			
D.	Remaining Hindu Castes/Groups which come in the category of "Other Backward Classes"	43.70@	
V. Backward Non-Hindu Communities			
E.	52% of Religious Groups under Sec. B. may also be treated as OBCs	8.40	
F.	The approximate derived population of other Backward Classes incl.non-HinduCommunities	52%	

- Figures in brackets give the population of SCs and STs among these non-Hindu Communities.

@ This is a derived figure

Source: *Mandal Commission Report*

From the foregoing it will be seen that, excluding Scheduled Castes and Scheduled Tribes, Other Backward Classes constitute nearly 52% of the Indian population.¹⁶

RECOMMENDATIONS

The Mandal Commission observes that the upliftment of the Other Backward Classes is not just part of the larger problem of the removal of poverty. The deprivation of OBCs is a very special case of social and educational backwardness and poverty is a direct consequence of these two crippling caste-based handicaps. As these handicaps are embedded in our social structure, their removal will require far-reaching structural changes. So the Commission offers wideranging and far-reaching solutions to the various problems of OBCs. Following is the synopsis of the essential recommendations of the Commission.³⁷

Reservations: In a democratic set up, every individual and community has a legitimate right and aspiration to participate in ruling this country. Any situation which results in a near denial of this right to nearly 52% of the country's population needs to be urgently rectified. The chief merit of reservations is not that it will introduce egalitarianism among the OBCs when the rest of the Indian society is seized by all sorts of inequalities. But reservation will certainly erode the hold of higher castes on the services and enable OBCs in general to have a sense of participation in running affairs of their country. The population of OBCs (both Hindu and non-Hindu) is around 52% of the total population. But in view of the Supreme Court judgments which hold that the total quantum of reservation under Articles 15(4) and 16(4) should be below 50%, the proposed reservation for OBCs would have to be pegged at a figure which, when added to 22.5% for SCs and STs, remains, below 50%. So the Commission was obliged to recommend a reservation of 27% only, even though their population is almost twice this figure.

States which have already introduced reservation for OBCs exceeding 27% will remain unaffected by this recommendation. In addition, the Commission proposes the "overall scheme of reservation" for OBCs: (a). Candidates recruited on merit basis (i.e., open competition) should not be adjusted against their quota of 27%. (b). The above

reservation should be applied to promotions at all levels, (c). Relaxation of upper age limit for direct recruitment should be extended to the OBCs also. (d). The above scheme of reservation, in toto, should also be applied to all recruitments to: public sector undertakings (both Central and State); nationalized banks; all private undertakings which have received financial assistance from the Government; and all Universities and affiliated colleges.

Educational Concessions: Though our educational system is elitist in character and least suited to the needs of backward classes, they are forced to run the rat-race with others as no options are available to them. "As educational reform was not within the terms of reference of this commission, we are forced to suggest only palliative measures within the existing framework". Various State governments are giving a number of educational concessions to the OBC students—scholarships, exemption of fees, special hostels, etc. They are all right as far as they go but they are not enough, What is required is the framing of integrated schemes for creating the proper environment and incentives for purposeful studies.

Most backward class children are irregular and indifferent students and their drop-out rate is very high. So an intensive and time bound program for adult education should be launched in pockets with high concentration of OBC population; and residential schools should be set up in these areas for the backward class students. As the OBCs cannot afford the high wastage rates of our educational system, their education should be highly biased in favor of vocational training. Even if all the above facilities are given to the OBC students, they will not be able to compete with others. Therefore, 27% of seats in all scientific, technical and professional institutions—run by the Central and State governments—should be reserved for OBC students.

Financial Assistance: Rural artisans following hereditary occupations have suffered heavily as a result of industrialization. So suitable institutional finance, through separate financial institutions, and technical assistance have to be provided to such members of village vocational communities who want to set up small scale industries. Cooperative societies of hereditary occupational groups would help the backward classes a great deal. The share of OBCs in the industrial and business life of the country is negligible. As a pan

of its overall strategy to uplift the backward classes, it is imperative that all State governments are suitably advised and encouraged to create a separate network of financial and technical institutions to foster business and industrial enterprise among OBCs.

Structural Changes: Educational and job reservations, and all possible financial assistance will remain mere palliatives unless the problem of backwardness is tackled at its root. As most of the functionaries of the government are drawn from the "top peasantry", the class and caste linkage between the functionaries and the top peasantry remains firm. This tilts the socio-political balance and helps the top peasantry in maintaining its dominance over others.

Despite constituting nearly three-fourths of the country's population, the SCs, STs and OBCs have been able to acquire a very limited political clout. Through their literal monopoly of means of production, the higher castes are able to manipulate and coerce the backward classes into acting against their own interests. Until the stranglehold of the existing production relations is broken through radical land reforms, the abject dependence of the underprivileged on the dominant higher castes will continue indefinitely. The implementation of various land reform legislations has been halting, half-hearted and superficial. The States like Karnataka, Kerala and West Bengal which have gone about the job more earnestly have not only succeeded in materially helping the backward classes, but also reaped rich political dividends in the bargain.

A radical transformation of the existing production relations is the most important single step that can be taken for the welfare and upliftment of all backward classes. Even if this is not possible in the industrial sector for various reasons, in the agriculture sector a change of this nature is both feasible and overdue.

Miscellaneous: Backward Classes Development Corporations should be set up both at the Central and State levels to implement various developmental schemes for their advancement. A separate Ministry for OBCs at the Center and in the States should be created to safeguard their interests. The Commission strongly recommends that all development programs specially designed for the 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.

Regarding the period of operation of the Commission's recommendations, the entire scheme should be reviewed after twenty years.

The Post-Mandal Interlude

The Mandal Commission had shown none of the hesitations and equivocations of the Kalelkar Commission. Earlier recommendations regarding the OBCs, whether for or against reservations, were frequently criticized for lacking an adequate empirical basis. Mandal Commission had sought to make good this lack by collecting and compiling a large body of data on a variety of topics. It had tried to use these data to forestall all possible objections to the use of caste quotas in education and employment. The Mandal Commission was constituted and was operating in a changed socio-economic and political context. As a result of land reforms, Green Revolution and social mobility movements by some leading backward castes (particularly Yadavas), the upwardly mobile *Shudra* communities made their political presence felt at the national level, particularly in north India. In sharp contrast to this, the Kalelkar Commission had to explain to the general public that the focus of the Commission's enquiry was on the Backward Classes and not on Scheduled Castes and Tribes. This explains the fact that the Backward Classes had not emerged at the national level immediately after the Independence (see *Introduction* for a detailed discussion). Moreover, the Congress-dominated political leadership immediately after the Independence under Nehru's stewardship was too idealistic which espoused the far-fetched Constitutional goal of "classless and casteless" society. The above ideal is also reflected in the Supreme Court's judgment in 1951 (in *State of Madras vs Champakam Dorairajan*) which struck down the Madras government's reservation policy.

The Janata victory in 1977 reflects the emergence of the intermediate castes in north India. And the Backward Classes returned to the national political agenda. Pursuant to its electoral promise, the Janata government appointed the Mandal Commission. And northern State governments under Janata control substantially enlarged the preferences for the OBCs, leading to massive violence in Bihar. In its declining days, the Janata caretaker government (headed by Charan Singh) came close to reserving 25% Central government posts for Backward Classes.³⁹ The Report of Mandal Commission (submitted on 31

December, 1980) was placed before the Parliament in April 1982. The Report was unanimously "endorsed" by the Parliament on 11 August. All political parties in the Parliament acclaimed the spirit of equality embedded in the Commission's Report.⁴⁰

The Report was neither rejected nor categorically accepted by the two successive Congress governments. The Congress government was unwilling to implement the Report as it enjoyed the electoral support of twice-born castes along with the Scheduled Castes and Tribes. It did not have much of support among the Other Backward Classes. Hence it was not under pressure to implement the Report, though there were repeated demands from the OBCs and then- supporters to implement the recommendations. The Congress kept on promising to consider implementation of the Report but had not fulfilled its promise.⁴¹ Resultantly, the Report gathered dust till 1990. So this Chapter completes the introduction to the historic developments that started unfolding in 1990. Accordingly, the following Chapter deals with the outbreak of the unprecedented sequence of events that followed the momentous decision on the Mandal Commission—taken in 1990 in a changed political, economic and social context. And the subsequent Chapters discuss how the other institutions under study got entangled in the institutional conflict over the Mandal Report.

NOTES

¹. *Report of the Backward Classes Commission* (Chairman: Kaka Kalelkar), Vol.1, Govt of India, 1953, p.1. (Hereafter; *Kalelkar Commission Report*)

². Basu, D.D., *Constitutional Law of India*, Prentice Hall of India, Delhi, 1988, p.412.

. The other members of the Commission are: Messrs. N.S. Kajralkar (M.P.); Bheeka . Bhai (M.P.); S.S. Chaurasia; Rajeshwar Patel (M.P.); A. Quiyam Ansari (M.L.A.); T. Mariappa (M.L.A.); L.Jagannadh; A.S.Namdhari (M.P.); N.R.M.Swami (M.P.); and Arunagshu De (member secretary).

⁴. But as the inquiry could start only after the March, 1953, the report could not be completed within the time stipulated. The term of the Commission was, therefore, extended upto 31 March, 1955. *Kalelkar Commission Report*, pp.2-3.

⁵. Ibid. p.8.

⁶. *Report of the Backward Classes Commission* (Chairman: B.P.Mandal), Vol. I (Part I), Govt. of India, 1980, p.1. (Hereafter: *Mandal Commission Report*).
Kalelkar Commission Report, pp.11-144.

- ⁸, *Mandal Commission Report*, p.1.
- ⁹. *Kalelkar Commission Report*, pp. i-xxvii.
- ¹⁰, *Mandal Commission Report*, pp. 1-2.
- ¹¹. Oppositon to the way in which the Commission proceeded might have been anticipated in view of the Government's decision to ignore caste in 1951 Census. Marc Galanter. *Competing Equalities: Law and Backward Classes in India*, OUP, Delhi, 1984, pp.172-73,
- ¹². *Mandal Commission Report*, p.2.
- ¹³. *Ibid*, pp.2-3.
- ¹⁴. *Ibid*.
- ¹⁵. Marc Galanter, op.cit, pp. 174-75.
- ¹⁶. These States and Union Territories mostly relied on the lists of OBCs maintained by them for the grant of post-matric scholarships, etc., under the Education Ministry's scheme formulated in 1944.
- ¹⁷. The salient features of the varying State policies for the OECs are: Caste and communal units remain the predominant "classes" deemed backward. Caste lists range in magnitude from those who include a substantial portion of the State's population to those constituting a narrow stratum just above the untouchables. Income tests are also employed in many cases, sometimes independently and sometimes in conjunction with communal units. The level of benefits ranges from none through scholarships and fee concessions to an array of reservations.
- ¹⁸. Marc Galanter, op.cit, 179-81.
- ¹⁹. Ranjan Prasad Yadav, "Why Mandal Commission", *Third Concept*, August 1990, p.42.
- ²⁰. Upendra Baxi, "Mandal Commission and Operative Policy to End Backwardness". *Mainstream*, September 22,1990,p.5.
- ²¹. Venugopala Rao, M., "Caste War Out in the Open", *Mainstream*, September 29, 1990. pp.3-4.
- ²². Roy Burman, B.K. "Mandal Commission Report and Right to Information". *Mainstream*, September 29, 1990, pp.5-6.
- ²³. This is the Second, and the last so far, Backward Classes Commission appointed by the Central government under the Article 340.
- ²⁴. Notification setting up the Commission was issued on January 1, 1979. But the Commission was formally inaugurated by the then prime minister, Morarji Desai on March 26, 1979 and it became fully operational only in the middle of 1979. The Report was submitted on December 31, 1980. The composition of the Commission was as follows:
- | | |
|---------------------------------------|-----------|
| Mr. Bindeshwari Prasad Mandal (ex-MP) | Chairman |
| Mr. R.R. Bhole (M.P.) | Member |
| Mr. Dewan Mohan Lal | Member |
| Mr. L.R. Naik (ex-MP) | Member |
| Mr. K. Subramanian | Member |
| Mr. S. S. Gill | Secretary |
- . Later extended, in stages, upto December 31, 1980.
- ²⁶. *Mandal Commission Report*, p.12.
- ²⁷ *Ibid*. pp.12-13.
- ²⁸ *Ibid*. pp. 14-30.

²⁹. *Ibid.*, pp. 36-42

³⁰. *Ibid.* pp.50-51.

³¹. *Ibid.*pp.51-52.

³².*Ibid.*, pp.52-53.

³³. *Ibid*, p. 54.

³⁴ *Ibid*, p. 55.

³⁵.*Ibid.*

³⁶.*Ibid.*

³⁷. *Ibid.* (Part I), Vol. I, pp.54-60. See: *Appendix: I* for the recommendations of the Commission in detail.

³⁸. Andre Beteille, "The Gains of Reservation: A Comparative Perspective," *The Times of India*, 6 September, 1984.

³⁹. This proposal was dropped after the President objected that it violated an agreement that the caretaker government would refrain from taking policy decisions which might amount to electoral initiatives. Marc Galanter, *op.cit.*, pp. 185-87.

⁴⁰. Andre Beteille, "The Indian Road to Equality: More Jobs for More Castes," *Times of India*, 28 August, 1982.

⁴¹. Asghar Ali Engineer (Ed) in his "Introduction" to *Mandal Commission Controversy*, Ajanta Pubs., Delhi, 1991, p.IX

CHAPTER IV

Caste Groups and Print Medium: Battle for Status Quo

CASTE GROUPS AND PRINT MEDIUM : BATTLE FOR STATUS QUO

As set forth in the initiatory Chapter, the Central Government's positive discrimination policy, based on the Mandal Commission Report, in favour of the OBCs set off a violent reaction from the civil society which manifested itself in the form of anti-reservation agitation by the upper castes. It is the caste conflict in society that triggered the institutional domino effect and the resultant conflict and "crisis". The early phase of the national turbulence over Mandal Commission was visibly dominated by anti-reservation student movement and the print medium. Accordingly, this Chapter examines the beginning of the institutional conflict in civil society involving the crucial institutions of caste (groups) and the print medium.

Report of the Mandal Commission was submitted to the Government of India in 1980. The Commission was appointed by the Janata government in 1979 and by the time the Report was submitted, the Janata government fell and the Congress party came to power again. Hence the Report was submitted to the Congress government headed by Mrs. Indira Gandhi. Its implementation was kept pending by the Congress (I) governments for nine years, despite the occasional demands from the Other Backward Classes (OBCs) to implement the recommendations of the Commission. So the Mandal Commission's recommendations were gathering dust for a decade. There may have been some stray discussions on it but it hardly received the attention which may be termed as a nation-wide debate over it.¹

Mandal Report has been in the public domain since 1982. But it can hardly be said that it has been properly examined or discussed in either political or governmental circles. Copies of the Report had not been available for sale anywhere with the Government, and thus even persons attempting to enter into a meaningful and studied examination of the recommendations and their implications had been unable to do so.² Mrs. Gandhi (the then prime minister) did not pay any attention to the Mandal Commission's recommendations impregnated with a definite program of poverty alleviation concerning 52% of the underprivileged population of the country.³ Two successive Congress governments⁴ had deferred the implementation of the Report for reasons intricately connected with the

party's electoral base.⁵ The Congress government was unwilling to implement (he Report as it enjoyed electoral support of twice-born castes along with the Scheduled Castes and Scheduled Tribes. It did not have much of support among what is today known as the Other Backward Classes. Hence it was not under pressure to implement the Report.⁶ Moreover, it is argued that Indira Gandhi was unwilling to act on the Report lest she should incur the displeasure of vested interests within her party.⁷ When Rajiv Gandhi became the prime minister, as he admitted it in an interview, he too avoided "having a ball with Mandal", apparently as a stand against casteism and for the far-fetched constitutional perception of "a classless and casteless society".⁸ Resultantly, the Report had remained a dead letter for a decade till 1990 when it was revived, through a momentous decision, by the second non-Congress coalition government at the Center.

Reactivation of Mandal Commission Report

The National Front-led Central government, announced abruptly on 7 August, 1990 its decision to implement the recommendations of the Mandal Commission. Making a *suo moto* statement in the Parliament on that day, the then prime minister, Mr. Vishwanath Pratap Singh said: "I am happy today to announce in this August House a momentous decision of social justice that my Government has taken regarding the Socially and Educationally Backward Classes on the basis of the Mandal Commission Report... The Constitution which we gave to ourselves 40 years ago envisages that socially and educationally backward classes be identified, their difficulties were removed and their conditions improved in terms of Article 340(1) read with Article 15(4) as well as Article 16(4). It is a negation of the basic structure of our Constitution that till now this requirement was not fulfilled... In order to avail ourselves of the benefit of the long experience of a number of States in preparing lists of socially and educationally backward classes and in order to ensure harmonious and quick implementation, we have decided to adopt in the first phase, the castes common to both the Mandal list and the State lists. The percentage of reservation for the Socially and Educationally Backward Classes will be 27%. This reservation will be applicable to services under the Government of India and public undertakings".⁹

In a quick follow-up action, the Union Government issued an Office Memorandum (dated August 13.1990), giving effect to its decision. The Memorandum, *inter alia*, states: "27 percent of the vacancies in civil posts and services under the Government of India shall be reserved for the SEBCs. The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Candidates belonging to SEBCs recruited on the basis of the merit in an open competition shall not be adjusted against the reservation quota of 27%. The aforesaid reservation shall take effect from 07.08.1990".¹⁰ The unexpected policy had set off, in rapid succession, a series of unprecedented developments, the first of which was the nationwide backlash against the new policy of affirmative action.

AGITATIONS AND VIOLENCE OVER OBC RESERVATION

The Governments, both at the Centre and in States, have been implementing various reservational programs for the welfare of the Backward Classes. As far as the preferential treatment for the SCs and the STs is concerned, there seems to be a consensus in its favour. But such policies in favour of the OBCs have always provoked violent backlash from the upper castes. The anti-reservation agitations in Bihar, Gujarat and Andhra Pradesh in 1977, 1981 and 1986 respectively are still fresh in our memory. The Central Government's abrupt decision (taken on August 7, 1990) to reserve 27% civil positions for the OBCs sparked off a violent backlash from the upper castes. The violent anti-reservation agitation, which had erupted in the national capital Delhi, spread steadily to other north Indian- cities and later to south India. But the protests were more widespread and violent in north India.

Earlier, anti-reservation protests were confined to the respective States where the policy was introduced or modified. The agitations assumed all-India proportions only in the wake of the partial implementation of the Mandal Commission Report. The anti-Mandal student movement paralyzed the normal life all over the country, particularly in north India. Initially, the violent protests were characterized by rallies and bandhs held by the anti-reservationists. But later, the supporters of the policy also entered the fray by organizing pro-reservation bandhs and public meetings, provoked and supported, either overtly or covertly, by the constituent parties of the ruling National Front coalition.

VIOLENT ANTI-MANDAL BACKLASH IN NORTH INDIA

Capital **Delhi** was epicenter of the anti-reservation agitation and it remained so till the end of the stir. The backlash from the forward caste students was quick and spontaneous. The anti-reservation agitation in the country had already intensified by August 18(1990) with school children joining it. The movement was gaining momentum with each passing day. Apart from the wholehearted support from the South Campus, Jawaharlal Nehru University (JNU), Indian Institute of Technology, Maulana Azad Medical College, Delhi College of Engineering, the movement was getting the support of several trade unions too. Even the teaching community and the administrative staff of various educational institutions were encouraging the students to continue the struggle till their demand of recession of Mandal Commission implementation was met. In a bid to transform the movement into a nation-wide agitation, efforts were being made to enlist the support of agitators in the other parts of the country. Initially, the movement had, however, remained non-political. Though 10 days had passed, none of the political parties came forward to support the stand taken by the students.¹¹

Concurrently, the then prime minister, Mr. V.P, Singh reiterated his commitment to the policy of 27% job reservation for the OBCs, which, he said, would not be diluted. He also announced, on September 1 that the 27% reservation would not apply to State Government jobs.

A writ petition, challenging the Government's decision to close down educational institutions in Delhi for a month, was also filed in the High Court. A similar petition was filed in the Court earlier urging it to direct the administration to open the schools and colleges closed in the wake of the agitation. The Delhi Transport Corporation estimated that it suffered a loss of about Rs. 60 Lakh during the violence unleashed on its buses by anti-quota protesters.¹² The "Mahabandh" called by the Anti-Mandal Sangharsh Vahini on August 29 evoked a mixed response from the public, trade, business and industry in Delhi, Ghaziabad, Noida, Faridabad and Gurgaon. On August 27, protesters organized successful *bandhs* in Delhi, Rajasthan, Haryana, Punjab and Uttar Pradesh. More than 200 vehicles were damaged and rail and road traffic was disrupted during "Delhi Bandh" called by the Equalny From.¹³

The Anti-Mandal Commission Forum rejected the reported offer of Mr. V.P. Singh for talks. Forum members took part in a protest procession brought out by lawyers at Tis Hazari. The Forum also condemned the repression by the police and stressed that the students had the right to express their grievances. It said that "regulations" of such magnitude as the Mandal Report could not be forced on the country without a national debate and consensus. On August 24 (1990), violence erupted in Delhi when thousands of student protesters were lathicharged and teargassed at four places. Several students (some reports say hundreds) and some policemen were injured when the protesters tried to break security cordon and form a human chain around the Parliament. Earlier, the students were teargassed while attempting to force their way into the Parliament. On September 4 (1990), violence broke out in many north Indian cities in which at least five persons were killed and more than sixty injured. Students of the Indian Institute of Technology (Delhi) began a hunger strike in the campus to protest against the quota system. Apart from Delhi, educational institutions in Rajasthan, Himachal Pradesh and Jammu region were closed because of the anti-quota stir.¹⁴

Prime Minister's Stand: The prime minister Mr. V.P. Singh told a news conference in Madras on September 22 (1990) that his Government would make all efforts to "mollify" the feelings of the students agitating against the Mandal Commission. "If they are apprehensive about it, we will have a dialogue and see what best can be done about it", he said. About the self-immolation attempts in Delhi, Chandigarh and elsewhere, he said. "We are very concerned and visibly hurt. These young boys are ours. We should try to mollify their feelings". The decision on the Mandal Commission, he said, had been taken as part of the social justice and things had been exaggerated.¹⁵ Addressing a public meeting in Madras (on September 16, 1990) the prime minister declared that it was a choice between taking up the struggle to secure social justice and sticking to power, the National Front Government at the Center would opt to serve the have-nots. He reiterated that his government would remain as a rock in the implementation of the Mandal Commission recommendations. He also mentioned that the additional 27% reservation for the OBCs in Central Government jobs would be implemented only in those States where reservations in State government jobs exist. And he clarified that reservations would only for jobs and not for promotions. The States would not be forced to implement the Mandal

Commission Report. A number of States have a long experience in preparing lists of SEBCs, the castes/communities common to both the Mandal Commission list and the States own lists would be adopted in the first phase.¹⁶

Supreme Court's Restraint on Government: The Supreme Court restrained on September 21 (1990) the Central government from extending the scope of Mandal Commission and asked the authorities concerned to handle the anti-reservation stir with "appropriate care". Referring the matter relating to the Government's decision to implement the Report to a Constitutional Bench, the Court declined to interfere with the routine actions of the Government towards executing the decision. The three-member Bench (headed by the then Chief Justice Mr. Rangnath Mishra) warned the Government that it should be conscious that the matter was pending judicial adjudication. The Judges asked the Government to modulate its actions, keeping in view the existing situation.

Though the hearing of the petitions, both challenging the implementation and favouring it, had been fixed for November 6 (1990), the Court decided on September 20 to advance it following the interventions of the Supreme Court Bar Association president Mr. K.K.Venugopal bringing to the Court's notice the ever increasing violence and attempts made by young students to immolate themselves. Mr. Venugopal had also sought stay of the implementation of the Report.

Meanwhile, the frenzy of the anti-quota stir reached its peak in Delhi on September 19 as two Deshbandhu College students made a serious bid to immolate themselves. Incidents of self-immolation were also reported from various State capitals.¹⁷ Amid widespread rumours about his impending resignation,¹⁸ the prime minister issued an appeal to the students once again to enter into a dialogue with the Government. He expressed his "profound anguish" at the self-immolation attempts and said that each such death was a personal blow to him and added, "I have sons not much older than these tragically misguided young people". At the same time, he reiterated that there would be no dilution in the implementation of the Mandal Report. And in the continuing violence in Delhi, five persons lost their lives on September 29 (1990) when the police opened fire on suicide attempts.¹⁹ The escalating violence took a new turn when a police inspector was shot dead in east Delhi. On September 25, two students were killed and ten others injured in pitched battles between the police and riotous mobs indulging in large-scale arson and

violence directed primarily against public property. The violence was sparked off by the death of S.S. Chauhan (a college student) who had set himself on fire the previous day.²⁰

Fifteen lives were lost in northern India even as seven more towns in Punjab and Haryana were put under curfew and the army was called out in two Himachal towns and alerted in Sagar in Madhya Pradesh. Reports of suicides, killings and violence had been pouring in from town in Bihar, Uttar Pradesh, Madhya Pradesh and Gujarat. The unabated violence in northern States had not seriously blocked rail and road traffic, but the damage to public property had run into crores. The agitation took a sizable toll of life, mostly of young boys and girls, with no signs of abatement even after six weeks as on September 30, 1990. It is difficult to estimate category-wise deaths due to police firing, suicides, immolations and agitation. In a single day, 10 more lives were lost forcing the authorities to place six more towns under curfew. Most of the trains passing through Haryana and Uttar Pradesh had been cancelled.²¹ Meanwhile, the prime minister Mr. V.P. Singh appealed, on TV (*Doordarshani*), to the students to give up the agitation. He said that there would be no need for reservations if everyone is able to satisfy his basic needs. He strongly defended his Government's quota policy and said that he had been very clear about the social issues involved.

The Anti-Mandal Commission Forum, spearheading the anti-reservation agitation, alleged that the Government was trying to sabotage the movement by planting anti-social elements. The Forum took "strong exception" to the appeal made to anti-reservationists by the prime minister over *Doordarshan* in which he described the agitating youth as "tragically misguided". "We turned down his offer for talks with the Center because this was in fact no offer as he says there can be no going back on the issue of the implementation of Mandal Commission", the Forum felt. A day earlier too, the Forum had said it would not respond to the prime minister's invitation for talks with the Janata Dal President, "we will talk to the Government, not with the party President, and that too only after the Mandal report is withdrawn".²²

Talks with Students Fail: The Government-student dialogue on the Mandal Commission controversy failed to take off with both sides taking uncompromising positions. The Minister (for Communications, Mr. Janeshwar Mishra), who had been directed by the prime minister to start negotiations with the students, told a press conference that though

the talks were deadlocked, the government would soon make a fresh bid to bring down the students. The Minister had four rounds of talks with 50-odd student "ring leaders". According to the Minister, there were no student leaders who could communicate with the Government. However, the majority of the students stated that meaningful discussions could start only after the Government agreed to withdraw its decision to implement the Mandal Commission's recommendations.²³

Mandela's Remarks on Mandal Report Assailed: The Anti-Mandal Commission Front took strong exception to the Government of India spokesman's assertion that Dr. Nelson Mandela, during his talks with the prime minister, had hailed the implementation of the Mandal Report as a courageous step on the part of the National Front Government.²⁴ Mr. R.S. Randhava, the president and Dr. Jarnail Singh, a spokesman-of the Front, in a press release, said that to counter the prime minister, Mr. V.P. Singh's "misleading" talks with Dr. Mandela, a delegation, led by Dr. Jarnail Singh, along with other Delhi leaders of the Front, was sent to present Dr. Mandela "gifts" from the students which included books and articles on the Mandal Commission Report, on the Indian social structure and on the Sikh religion and its history, According to Mr. Randhava, the delegation met Dr. Mandela's representative and appraised him of the Indian situation and the facts of the anti-Mandal agitation.

Several other organizations and individuals also deplored the reported statement by the South African leader. Those who criticized the attempt of the National Front Government to involve Dr. Mandela in the controversy included the People's Union for Civil Liberties (PUCL), the Rashtriya Mukthi Morcha and Dr. Karan Singh (former Indian ambassador to US). The PUCL President, Justice Rajinder Sachar said, "the clumsy and unpardonable attempts of the Government spokesman to involve Dr. Mandela in the Mandal Commission controversy is most deplorable and is against all canons of diplomacy". Dr. Karan Singh said, "had Dr. Mandela been aware of the full facts, I am sure, with his wisdom and maturity, he would not have wished to lend prestige of his name to one side in this divisive and explosive controversy".²⁵

With Delhi's normally placid student community taking to the streets, post-Mandal capital had been transformed into a city of *bandhs* and rallies. Though the coordination between the various student groups spearheading the stir made some of the *bandhs*

somewhat farcical, the agitation clearly had the government worried. As a precautionary measure, the administration closed all schools and colleges for a month while fearing further vandalism, the Delhi Transport Corporation ordered the removal of glasspanes from all its buses. Meanwhile, Mr. Sharad Yadav (a minister in the Central Cabinet) continued exhorting the backwards to come out into the streets for a numerical showdown with the anti-reservationists. And an anti-Mandal rally held in the capital was attended by over 50,000 while a pro-Mandal rally held the next day could draw only a few thousands.²⁶

The Bihar Government brought on August 9 (1990) vital installations in the State under tight security cover and alerted the district administration as sporadic violence marked the 48-hour anti-reservation agitation. Capital Patna remained virtually paralyzed. Police used force to disperse unruly mobs as they burnt vehicles and forced the closure of shops and markets. Almost all examinations in Patna University were boycotted by the upper caste students.²⁷ A member of Parliament from Janata Dal, Mr. S.D. Singh was held hostage at his residence in Patna by anti-reservation agitators. Meanwhile, the Jarkhand Coordination Committee had deferred its rally scheduled for August 18 following the anti and pro-reservation stir in the region. The JCC supported the Center's reservation policy for the OBCs. At least 500 people had been arrested in the region. The police also sounded a fresh security alert in tribal Bihar following the Jarkhandi counter-offensive and deployed paramilitary forces in the region on a large scale.²⁸ At least four persons were killed and more than 50 injured in the anti-reservationist stir in Patna, where more than a thousand people were arrested by September 4.²⁹

Bihar, where backward classes are more organized, had witnessed some of the bloodiest anti-Mandal protests which claimed seven lives. Because the "dominant" backward castes—like Yadavs, Kurmis and Koeris—who have gained both economic and political power over the years and posed a major threat to the forward castes like Bhumihars, Brahmins and Rajputs. And in a State which has still not been able to shake off the vestiges of feudalism, it is only to be expected that all these powerful groups should be openly commandeering their armies of followers to gear up for the possible caste war. And in the already vitiated atmosphere in the State, the chief minister (L.P. Yadav) had issued statements like, "this government is not going to reverse its decision even if people

opposed to it break their heads". The issue had also split political parties along caste lines. Though the Congress (I) continued to pay Up service to the Report, former chief minister Jagannath Mishra had taken a firm anti-Mandal posture. But the Congress (I) deputy leader in the Assembly, Ramlakhan Singh Yadav, described Mr. V.P. Singh as the "messiah of the backwards" at a pro-reservation rally.

So angry were Bihar's upper castes that an organization called the *Rashtriya Swarna Mukti Morcha* (National Upper Caste Liberation Front) was set up in Bhumihar dominated Muzaffarpur District to demand a separate "*Swarna Rajya*" (upper caste state) comprising areas in Bihar, Uttar Pradesh, Madhya Pradesh, West Bengal and Haryana.³⁰

A complete "bandh" was observed in Ghaziapur area of eastern Uttar Pradesh in protest against the new reservation policy. Students boycotted classes and took out processions."³¹The Uttar Pradesh chief minister, Mr. Mulayam Singh Yadav stated (on 2 September, 1990) that the Mandal Commission recommendations should be implemented in toto. And the Bharatiya Kisan Union (BKU) had extended its support to the movement by the students against the Mandal Commission. The BKU president, Mr. Mahindra Singh Tikait called upon the farmers for a social boycott of all the legislators and parliamentarians elected from the western U.P. Though the anti-Mandal agitation had claimed three lives, it had less potential for an all out caste war. Still normal life had been disrupted in most of the districts. Almost all the State Universities and 350-odd degree colleges had been closed and disruption of rail and road traffic, besides attacks on government property, had become routine. More than 3,500 student protestors had been rounded up. In Lucknow, medical and other students polished shoes, cleaned cars and plied cycle rickshaws—to make the point that this was what they were likely to end up doing if the Government reserved more jobs. But, even in that explosive situation, the chief minister said: "There should be more reservation than what is suggested in the Report. Only a handful of people are feeling bad and our government is not bothered about them". He also exhorted the backwards to "come out and fight these anti-reservationists on the streets".³²

Five persons were killed and three injured on September 1 (1990) when the police opened fire at Nirakarspur and Balugoan in Puri district as the anti-reservation agitation in Janata Dai-ruled Orissa took a violent turn. A student who was injured in the police firing

at Salipur also died. With this the death toll in the five-day-long anti-quota stir had risen to seven. Prohibitory orders were promulgated in Sambalpur city following incidents of violence.³³ Earlier, on August 29, the Orissa chief minister, Mr. Biju Patnaik said that the Center's decision would not be made applicable for State services and the State government would consider the Report and take its own decision making economic criteria as one of the main considerations for reservations. He suggested certain modifications to the Center's decision to help defuse the disturbances all over the country. Stating that the Center's acceptance of the Report had created "considerable controversy" in Orissa, he pointed out that the State had no list of Backward Classes entitled for reservation in services.³⁴

Top Congress leaders in Orissa (Mr. J.P. Patnaik, Ms. Nandini Satpalhy, Mr. Hemananda Biswal *et al*) were arrested for defying prohibitory orders at Bhubaneswar. even as the president of the party State unit Mr. Giridhar Gomongo demanded the imposition of President's rule in the violence-ravaged State.³⁵ The chief minister, Biju Patnaik reiterated that the "rectified" Mandal Report might be accepted by the State government. Mr. Patnaik turned out to be the first rebel Janata Dal chief minister who had openly rejected his party's policy and come out publicly against caste-based reservations. In a letter to the prime minister, he wrote: "If the lot of the Backward Classes has not improved despite reservations in the past so many years, they would be no better in next generations too".

The fact that violence continued even after the chief minister's announcement indicated that the Congress (I) was fomenting the trouble. And there was enough proof that students had been replaced by gangs of youth paid to indulge in rioting and arson: of the 40-odd youths treated at a Bhubaneswar hospital for injuries, no less than 24 belonged to 10 castes which actually stood to benefit from the Mandal Report; four of the six killed in police firing also belonged to Backward Classes; and the State NSUI (student wing of Congress I) President, Laltendu Mahapatra was arrested as the prime motivator behind the burning of a bus driver at Utkal University. The Congress (I) had found the perfect excuse to try and destabilize the government and avenge its humiliating defeat at the hustings.³⁶

In Himachal Pradesh, army was alerted after the pro and anti-reservationists threatened to clash in Shimla. Army was called out in Mandi and Bilaspur. The

opposition-ruled (BJP) State government, in a swift move, had decided to challenge the caste-based reservations in the Supreme Court reassuring the anti-reservationists of its support to their cause. The State government strongly asserted that reservation for Backward Classes, notified irrationally and arbitrarily on the basis of the Mandal Commission's recommendations, was not only against the basic spirit of the Constitution but was bound to destroy the secular fabric of the country. The State's BJP government, which had already rejected the recommendations following State-wide agitation by employees and students, filed its affidavit in the Supreme Court, opposing the Mandal Commission recommendations. The affidavit said that the implementation of the Report was unconstitutional, illegal and anti-national and should, therefore, be set aside. It wondered why the economic criteria had been completely ignored if the Center really wanted to uplift the weaker sections.³⁷

The army had to be called out in half a dozen towns of this tiny hill State as clashes between pro and anti-reservationists got out of hands; government buildings were burnt down; educational institutions remained closed and functioning of banks and postal services was disrupted. At this point, the chief minister Shanta Kumar announced that the government proposed to implement the "antyodaya scheme", by which one lakh poor families would be chosen for benefits. But the anti-reservationists were not satisfied and the stir in Himachal took on a significant dimension when they demanded the scrapping of even the existing 22.5% reservation given to Scheduled Castes and Tribes. And in Nahan township, there were ominous portents as shopkeepers decided to socially boycott *Harijans* (SCs) and the *Harijans* in turn remained stay put in their *bastis* (localities).³⁸

One police constable was killed and around 12 students injured as anti-reservation agitation intensified on 30 August, 1990; protesters organized successful *bandhs* in **Punjab** and **Haryana** on August 27. Army was alerted in Kurukshetra (Haryana) as rampaging mobs destroyed government property, including the Deputy Commissioner's office, after a high school student committed suicide in protest against the Mandal Report. The army was also asked to stand by in Rothak after pro and anti-reservationists clashed. Police laid charge against agitating youths in Patiala (Punjab), while large scale demonstrations against Mandal Commission were staged in Jalandhar and Bhatinda. The situation in Chandigarh, the scene of large scale violence and arson on September 21, remained tense

with curfew in force and troops patrolling in strength.³⁹ One person was killed in violence in Hissar (Haryana), another succumbed to bullet wounds in Modinagar; two boys committed suicide in Hapur and Sisra, while a school girl and a college student immolated themselves in Chandigarh and Muzaffarnagar, respectively. Curfew was imposed in Khanna, Phagwara and Nangal (Punjab) and Ballabgarh, Faridabad, Palwal and Fatahabad in Haryana. As many as nine towns in Punjab and eleven in Haryana had been placed under curfew.⁴⁰

On October 12, police opened fire on the clashing pro and anti-quota agitators in Haryana. A 17-year-old student (Neelam Rani) attempted suicide at Bhiwani (Haryana). Two more youths committed suicide at Patiala and Phagwara respectively. A.B.A. Student was hospitalized after she had attempted to end her life at Patiala.⁴¹

Students managed to paralyze normal life in Chandigarh, the capital shared by the two States. Except for sporadic incidents, the agitation did not take a violent turn. In Punjab, the protest was even more muted as the government announced that it would leave it to a popular government to decide on implementing the Report and as various Akali and militant groups seemed unable to take a stand on the issue. Haryana witnessed far more trouble (like road and rail blockades, violent clashes) possibly because the State government was not exactly averse to fomenting it. The chief minister Hukam Singh welcomed the implementation of the Mandal Commission Report but, in an obvious attempt to embarrass the Union Government, appointed a Backward Classes Commission. He claimed to have done so because deputations of many communities, including Jats, Jat-Sikhs, Ahirs, Gujjars, Sainis, Rodes and Moos, had complained that despite being socially and economically backward, they had not been included in the list of backward classes. The move—undoubtedly masterminded by Messrs. Devi Lal and Chautala—was a blatant attempt to declare the entire agricultural community in Haryana as backward.⁴²

Ahmedabad and other towns of Gujarat had been in the thick of the movement against the reservation policy. The then chief minister Mr. Chimanbhai Patel had hinted that his government would not implement the recommendations of Mandal Commission.

If the State with one of the bloodiest records of anti-reservation riots remained relatively peaceful this time round, it was largely due to the shrewd handling of the situation by the chief minister. Just as the agitation seemed to be taking off, he announced

that the State would not implement the Commission's recommendations as it had not been able to fill even the existing 31% quota, of which 10% is for OBCs. Even those sections which would have liked to agitate were left without a cause.⁴³

SUBDUED RESISTANCE IN SOUTH INDIA

In south India, unlike the north, the opposition to job quotas for the SEBCs had been relatively muted and largely non-violent. The anti-reservation protests were particularly visible in the States of Andhra Pradesh and Karnataka. While the rest of the South remained largely peaceful, Congress (I)-ruled Andhra Pradesh had its share of rail and *rasta rokos*, protest rallies and *bandhs*. Stray incidents of arson were reported, though mercifully no lives were lost. If the agitation did not take an ugly turn it was possibly because it was a spontaneous student movement and not one engineered by political parties,⁴⁴ At Vijayawada, K. Srinivasa (26), a local college student, consumed an overdose of sleeping pills and his condition was stated to be "critical".⁴⁵

About 200 students formed a human chain at Rajaji Nagar entrance in protest against the implementation of the Mandal Report,⁴⁶ Karnataka chief minister, Mr. Veerendra Patil said in Bangalore on September 17 (1990) that he would not blindly accept the Mandal Commission Report.⁴⁷ A few days later, the chief minister ruled out the implementation of the Mandal Commission's recommendations in Karnataka in view of the pending decision of the State Government on the Justice Chinnappa Reddy Commission. Unless a common list of the backward classes in both the reports was approved, the state could not enforce the Mandal Report.⁴⁸

The resistance in the south had largely confined to the capital cities. The protests in south India were marred by two incidents of self-immolations by the agitating students in Andhra Pradesh; one of which (occurred in the capital Hyderabad) resulted in the death. The extreme step was reportedly resorted to by the student to disprove the general impression that the agitation had not spread to south India.

Supreme Court's Stay on OBC Reservation: The Supreme Court stayed on 2 October, 1990—amid self-immolations and suicide attempts by some students during the peak of

the anti-reservation movement—the August 13 (1990) Official Memorandum of the Central Government implementing the Mandal Commission's recommendations but permitted the Government to continue with the process of identifying the backward castes to be benefited by the notification. Advancing the hearing of the writ petitions to 25 October, 1990 from November 16, the Five Judge Constitution Bench, headed by the then Chief Justice Ranganath Mishra, ordered that no further steps should be taken to implement the order.

The Bench, in its four-page order, said that they expected that the law and order situation would immediately improve and that "both the parties would take our appeal seriously and restore peace so that the hearing of the matter can be taken up by this Court in an appropriate atmosphere on October 25". Quoting the Attorney General that identification of castes would take about two to three months, the Court said it was not in dispute that until such identification was made no further steps for conferring the benefits contained in the Government's Order of August 13 could at all be worked out. "Till the end of November, there would be no occasion for proceeding with the implementation of the Government's order," the Court said. During the arguments, Mr. Venugopal (advocate) referred to the sudden intensification of the anti-reservation agitation and claimed that so far 56 people had been killed including 36 in police firing and 20 in self-immolations. And hundreds of people had been injured during the agitation, he added.

Mixed Reaction: The then Attorney General, Mr. Soli Sorabji had urged the Court to reaffirm its Order of September 21 not to stay the implementation of the August 13 notification. Grant of stay because of the agitations would set a wrong precedent, he argued. "If the Court grants a stay on the grounds of self-immolations and suicides, it would be a self-immolation of this institution", he contended. Mr. Sorabji was replying to the argument of Mr. K.K. Venugopal who had moved the petition for stay of the Government's orders on behalf of the Supreme Court Bar Association in order to prevent further bloodshed and loss of life.

The Politburo of the CPI(M) called on the V.P. Singh government to use the interim period made available by the Supreme Court's stay order for the widest possible consultation on the reservation policy. The Supreme Court's virtual stay of the implementation of the Mandal Commission recommendations provided an opportunity to

the government to "rectify" the tragic fallout of its "hasty" decision on it which was "motivated by internal politics of the Janata Dal", a Congress spokesman said. All India Students' Federation (AISF) expressed fears that the Supreme Court's order and the "pressure mounted by the entrenched upper classes" against the Report could "force the government to put Mandal Commission recommendations into cold storage". The Panthers Party chief and Supreme Court advocate, Mr. Bhim Singh described the Bench order as a "historic landmark". The Tamil Nadu chief minister, Mr. M. Karunanidhi threatened that the DMK would spearhead an agitation if the Supreme Court rejected the 27% reservations for the OBCs based on the Mandal Commission Report.⁴⁹

THE PHENOMENA OF SELF-IMMOLATIONS AND SUICIDES

The nation-wide violent resistance to Mandal Commission was marked by the unprecedented wave of "self-immolations" and suicides, mostly by students in their teens. While the majority set themselves on fire after pouring kerosene or petrol on themselves, some hanged themselves or consumed poison. "The Mandal Report seems to have touched a peculiar chord among the youth, one that brooks no easy explanation. More than 159 people have attempted suicide; 63 have died. Not that this has shaken the Government, Smug in its electoral arithmetic, it has refused to concede an inch. The student agitation on its part lacks both organization and base. It is a spontaneous, chaotic affair that draws sustenance from tragic acts of suicide".⁵⁰ According to another estimate, the number of these suicide attempts exceeded 150 by October (1990), and an alarming large proportion led to death. In a very large measure, the spread and fury of the agitation was due to the anger caused by the self-immolations and the Government's refusal to budge from its decision in spite of these deaths.⁵¹

The agitation got a fresh impetus by the first self-immolation attempt on 19 September, 1990. On that day, 20-year-old Rajeev Goswami of Delhi University (Deshbandhu College) set himself ablaze, to protest against the Mandal Commission Report, sustaining 50% burns. The next morning, the picture of the youth attempting immolation was on the front page of all newspapers. Two days later, the crossing outside the Safdarganj Hospital—where he struggled for life—was renamed *Qurbani Chowk*

(Sacrifice Square) and the road signs repainted "Rajeev Goswami Marg". The anti-Mandal Commission student movement in the capital had finally found a rallying point. If the agitation was looking for a novel form of protest, Goswami provided it. In quick succession, youths in a series of cities—Delhi, Hissar, Sirsa, Ambala, Lucknow, Gwalior, Kota, Ghaziabad—set themselves on fire. Enraged by the reports of self-immolation attempts and police offensive, the anti-Mandal agitation flared up again, spreading to more cities, intensifying the violence.

The anti-Mandal protest took a violent turn following the suicide by an evening student of Deshbandhu College, Surinder Singh Chauhan (22). He had little reason to end his life: he had a job, as a clerk in the Defence Ministry, Money was not a problem at home. His neighbors said he was a cheerful person but after Rajeev Goswami's self-immolation attempt, he grew serious and began spending time with student protesters. On September 24, he torched himself in full view of the bystanders, sustaining 98% burns. His suicide note read: "The responsibility for my death lies with those people who consider reservation a votebank, people like V.P., Paswan, Yadav and so on". Monica Chada (19), Class XII student of Delhi was clearly media-conscious and charged by the growing protests- She had been affected by the self-immolation attempt of a Hoshiyarpur girl. In fact, an hour before setting herself on fire she had spoken of her wish to do so. And her mother had said, "Go to V.P. Singh's house and tell him what you feel. Death is not the answer". Battling for life with 90% burns, she still exhorted her aunt: "*Aap bhi bolo na, V.P. hai, hai*". Another notable protest suicide was that of Sharma Gupta (16) of Chandigarh who burnt herself to death soon after hearing the news of another girl's suicide on television. For some days, she had been keenly listening to reports about students who, because of reservation, failed to get jobs despite good marks. She wrote in her suicide note: "V.P. Singh, you can see it is not just the boys but the girls are also making sacrifices". And her family was proud of her "sacrifice".⁵²

Probably the only incident of self-immolation in south India took place in Andhra Pradesh. When the *Deccan Chronicle* (a local daily) carried an anonymous letter from a student threatening to set himself ablaze at Abids, the city shopping center in Hyderabad, the report was dismissed as a joke. But the writer, S.Vamsee Mohan (20) was serious. He did a computer course after finishing school. He burnt himself to death, apparently 10

dispel the prime minister's notion that the agitation had not spread to the south. His suicide note says: "There is no other reason but the Mandal Commission Report which made me take such a step".⁵³ At Vijayawada (Andhra Pradesh), K. Sreenivasa (26), a local college student, consumed an overdose of sleeping pills and his condition was stated to be "critical".⁵⁴ Madhya Pradesh witnessed the maximum number, i.e., 30, of self-immolation attempts in different parts of the State within a span of five days; of which seven attempts were "serious".

THE MOTIVES

The resistance to Mandal Commission took more violent turn as the protest suicides supplied the emotive force to the agitation. The extreme form of protest is unparalleled in the country. But why did they—the callow youngsters, most barely out of their teens and sometimes floundering in them—protest in so incendiary a fashion? Psychoanalysts and social scientists put forward various explanations. The Department of Psychiatry in Chandigarh's PGI had studied 20 suicide cases to go into the psychological profiles of the suicide victims and the reactions of their parents. Interestingly, the preliminary survey suggested that more than 50% of the parents seemed to be glorifying the incendiary acts of their children. What was also obvious was that dying in flames was probably the most dramatic way to make a point: jettison the Mandal Commission Report and let the country go ahead as it was before the pyres lit. "One thing that is special here is adolescence", said Kiran Bhatia, a Delhi-based counselor for emotional problems. She added, "At this age the youth are volatile and react much more sharply, and Mandal simply sparked off already pent-up feelings. In addition to the intense frustration and adolescent energy that are let loose came the blow that opportunities for the future were on the verge of disappearing". So compelling was the need to make the Government realize its "folly" that even 13-year-old Chetan Gautam, who had many years to go before the effects of the Mandal Commission would have hit him, set himself on fire. Was he mature enough to understand the implications of the government's "mulishness". Or was he acting out of frustration that might have had its seeds in his relationship at home and at school? Or was everything simply the result of the addled hormones typical of the pubertal?⁵⁶

The media, particularly the newspapers, also played a contributory role. Along with the concept of personal sacrifice the one important catalyst that probably spurs on the young is the overwhelming media publicity that comes in the wake of every immolation attempt. Dr. Mohan, Head of Psychology in the All India Institute of Medical Sciences, observed: "The otherwise lost souls started finding mention in newspapers. In an epidemic, the degree of exposure you get overtakes pain, the thought of death or even rational thinking". He was not exaggerating. The first question that Monica Chada (19) asked her mother a day after her suicide attempt was: "Has my photograph appeared in the newspapers?" This clarity of desire even with 90% burns speaks volumes for her motives; (see the following section on the print medium).

The immolation epidemic broke out in northern India because more and more people identified with what they believed was a cause. Peer group pressure was strong and most of those who attempted suicide found a cause in what was otherwise a "normless and rootless environment". Of the six people in Chandigarh that *India Today* spoke to, four had attempted suicide only after having heard on television about another person having taken recourse to it. For instance, Saroj Saini (15) attempted suicide after hearing on TV that Rajeev Goswami had burnt himself. "I wanted to be the first girl to do it", she told her relatives. These deaths were little more than attempts at joining the list of martyrs and of earning accolades from peers and parents. And parental approval of anti-Mandal protests had been evident in the fact that parents had joined the rallies, sloganeered and brickbatted. For example, S.S. Chauhan's father touched the feet of his son, saying somberly: "He has sacrificed his life for the sake of the country". Such an attitude probably prompted a number of suicide attempts. Those who immolated themselves came from ordinary backgrounds and were in no way leaders or performers or achievers. Psychiatrist J.W. Sabhaney held: "The attempt to burn oneself in full public view is actually an attempt to seek attention which has been denied in other spheres of life—school, college or society at large". Such people are potential suicide risks and the agitation had provided the final spark.⁵⁷

But there are psychologists who feel just the opposite, that it is usually the brighter, more intelligent youth who are more frustrated and liable to resort to terminal forms of protest. Explains Dr. Mohan of AIIMS: "Aspirations lead to greater frustration. This in

turn spurs you to action". Kiran Bhatia qualifies this : "More so, when you feel that value of knowledge which takes you nowhere. The pressure of being brilliant and not making it leads to intense psychic turmoil". Those attempting immolation were also spurred on by the availability of a clear focus for their anger and frustrations; Chetan Goutam and Anil Kumar did not scream with pain but instead shouted, "V.P.Singh *Murdabad*" and "V.P.Singh *Gaddi Chodo*". A number of victims stated, in their suicide notes, that V.P. Singh was responsible for their deaths.⁵⁸ There was a widespread feeling, particularly among the forward castes, that it was Mr. V.P. Singh's "stubbornness" and the reiterations of his commitment to the implementation of the Mandal Commission that further fanned the flames and led to more attempts. Kakar says the children were reacting against Mr. V.P. Singh; who as prime minister, the head of the country, symbolized fatherhood. And like children rebel if they see their brothers or sisters being favored, they saw Mr. Singh as being unjust and his reservation policy as being an act favoring some children, thus making them unequal. The fallout of deaths gave a fillip to the movement which may have otherwise died out for want of finances and organized political support. And since individual acts of defiance do not need props, the movement all over the north smacked of the kind of riotous anarchy that can unhinge any government.⁵⁹

PRO-MANDAL COMMISSION PROTESTS

While the agitation by the upper castes against the Mandal Commission continued unabated, in fact it took a more violent turn due to the suicides by some students, the supporters or the potential beneficiaries of the policy did not launch a counter-agitation. But there had been some public protests and rallies by the pro-reservationists which were largely non-violent.

The first official reaction against the anti-reservation agitation came as a "warning" from the Union Textile Minister, Mr. Sharad Yadav who appealed to the anti-reservationists to stop involving in destructive activities and issued a warning: "We will show them within 10 days how many people are behind us if they do not come back to [their senses]". He also observed that the main reason for the anti-reservation stir was the shrinking employment opportunities. The first pro-reservation rally was held at the Boat

Club (Delhi) in the first week of September. Thousands of people from neighboring States gathered there to participate in a day-long *dharna* and organized a mass rally the next day in support of the new reservation policy.⁶⁰ The Supreme Court's stay order, issued on October 2, on the implementation of the Mandal Commission recommendations, spurred some groups and political parties to enter the fray to defend the policy. The Tamil Nadu chief minister, Mr. M. Karunanidhi, had threatened that the DMK would spearhead an agitation if the Supreme Court rejected the 27% reservations for the backward castes. He stated that an agitation similar to that in 1953, when reservations in the erstwhile Madras State were struck down by the Madras High Court, would be launched by the DMK now. He wondered how the Supreme Court could strike down the Central Government's recent order when such reservation had been in force in many state government services for a long time.

Police had to open fire on the clashing pro and anti-quota agitators in Haryana. Perhaps the only south Indian State where pro-Mandal rallies were in evidence was Tamil Nadu where lawyers took out a procession in Tiruchirapalli. The students of E.V.R. Periyar College in Tiruchirapalli boycotted classes protesting against the Supreme Court stay order.⁶¹ And a pro-Mandal bandh in Tamil Nadu on October 16 was marked by sporadic violence. The pro-Mandal Commission Forum of students went on an offensive against the anti-reservationists in Delhi on October 19 by starting a week-long mobilization campaign, scheduled to come to an end on October 25, when petitions challenging the decision on the issue come up for hearing before the Supreme Court.⁶²

The largest Government-sponsored rally was organized on October 8 (1990) in Patna, the capital of caste-conscious Bihar State with a sizable and dominant OBC population. The rally—named as *Sadbhavana* (harmony) meeting and attended by over 2 lakh people—was addressed by the prime minister and his staunch pro-Mandal cabinet colleagues. The speeches were marked by a verbal offensive against the anti-reservationists. The cutting edge of Mr. V.P. Singh's presentation was its populist challenge: "Instead of running after MAs and BAs it is better for the youth to study the pain and suffering of the poor. 40% of *Lok Sabha* and *Rajya Sabha* seats should be reserved for the poor. Gas and fertilizer agencies should be distributed among the poor". He further intoned: "I can be removed as prime minister. My government can be removed

They can remove me from Delhi but they cannot remove me from the doorsteps of the poor". This was clearly a reference to his shaky position in the Janata Dal and the battering the party had taken in the aftermath of the Mandal Report.⁶³

It was a no-holds-barred mobilization of backwards who poured into the State capital shouting: *Brahmin saala desh chodo* (Brahmins, leave the country) and "*Ranganath hoshiyar. Naganath hoshiyar*" (Ranganath beware, the cobra king is ready).⁶⁴ The slogans summed up the mood of the hundreds of thousands of backwards who converged despite the call for a "Janata curfew", blockade of roads and rails and a transport strike by anti-Mandal forces. Part of the reason for the rally's success was the unprecedented mobilization of the entire state machinery, In its aftermath, Bihar was seeing the beginning of a caste war. Backward castes had already begun attacking and smashing buses belonging to "forwards" and ordering them off the roads. The battle lines were clearly being drawn between the Yadavs on the one side and the Bhumihar-Rajput combine on the other. An independent MLA, a Yadav leader, and his supporters opened fire at seven places on anti-reservationists killing a constable and a Bhumihar youth.⁶⁵

OPPOSITION TO POSITIVE DISCRIMINATION: NORTH-SOUTH DIFFERENCES

As discussed in the previous section, the resistance to reservations for the Other Backward Classes (based on the Mandal Commission Report) was more widespread in north India than in south India. The anti-Mandal agitation in south India had been less intense and largely non-violent. Then, why the introduction of reservation for the OBCs in the south is generally accepted by the adversely affected population and why similar measures in the north provoke violent backlash? Even the Mandal Commission (which submitted Report in 1980) had also studied this problem in a systematic manner. The Commission had a comparative study—of the north-south differences in their reactions to reservations—done by Tata Institute of Social Sciences, Bombay.⁶⁶ The study makes a comparative study of two north Indian States, i.e., Bihar and Uttar Pradesh and two south Indian states, i.e., Tamil Nadu and Karnataka. "The Commission had anticipated this reaction in 1980 itself. We had sought the opinion of the Tata Institute on the possible

reaction to our recommendations and were told that the Hindi belt would react adversely".⁶⁷

The study observes that this pattern of caste conflict (over preferential treatment) is only a part of the general canvas of the caste conflicts which are being increasingly waged in the country. Conflicts among the various castes and caste groups on the single issue of reservation of seats and jobs are only a particular kind of manifestation of the general struggle and competition for ascendancy in the socio-political and economic realms. These struggles and competitions are the pervasive features of the Indian politics, although there exist considerable regional variations. The study (on reactions to OBC quotas) explains why the Uttar Pradesh and Bihar government orders of 1977 and 1978 providing for job reservations to the OBCs provoked a violent and virulent protest and backlash, and why similar measures in Tamil Nadu and Karnataka were generally accepted by the forward castes. More specifically, the Report examines why the forward castes in Bihar and Uttar Pradesh had not only the willingness and anger to strike back, but also the capability to do so, and why their counterparts in Karnataka and Tamil Nadu, did not have the willingness to resort to violent protests, and even if they had, lacked the capability for violent protest. Various political, sociological and political economy factors were examined—mainly in terms of the evolution of the balance of power among the caste groups—by the study. The following conclusions emerged from it accounting for much stronger reaction in the north than in the south to preferential treatment for SEBCs:

1. In Tamil Nadu and Karnataka, the reservation schemes have had a long history. In the beginning only the Brahmins were kept out. They were too weak to protest and slowly learnt to live with reservations. They sought and obtained alternative avenues of employment. In 1950, substantial sections of Vellalas, Naidus, Modaliars, Gounders, Chettiars were kept out. But by then they had established their political ascendancy. They had sufficiently infiltrated into the power structure to do without the protection of reservations. Moreover, only a few of the really backward offered them any serious competition.

In Uttar Pradesh and Bihar, the job and seat reservation schemes came as a blow from the blue for the forward castes. Had they been covered by the reservation schemes

earlier and slowly shunted off to the open competition pool, it would have been a different matter. The historical circumstances did not necessitate this.

2. In Tamil Nadu and Karnataka, the forward communities have been divided either by the classification schemes or politically, or both. In Tamil Nadu, the Vellalas, Chettiars, Naidus have all been divided into forward sub-castes and backward sub-castes. They cannot make a common cause of the reservation issue. The possibility of any alliance among them has been pre-empted or prevented. Similarly, in Karnataka, 70% of the Lingayat castes find themselves forward and the rest backward. The 15% reservation for the special groups irrespective of castes has also divided the Lingayat community. The forward Lingayats are the only group highly agitated over the issue. But, they cannot convert their disaffection into political clout. Also, the Karnataka G.O. has put all the Vokkaligas, another landed gentry caste, into the backward list. Just until ten years ago, both the castes had formed a duopoly and ruled the State, Now, no alliance can take place between them. All the political parties there have to reckon with this changed situation.

In Bihar and Uttar Pradesh, the G.O.s have not divided the forward castes. In Bihar, despite the long history of feuds between Bhumihars and Rajputs, these castes find themselves united on the issue of reservation. In UP., where caste feuds were muted, the Yadav G.O. has united 20% of the articulate, organized and powerful section of the population. The Rajputs are particularly upset. Only recently they had begun to make their entry into echelons of power and were suddenly thwarted.

The reservation of 3% for the economically weaker section is just a drop in the ocean for the Bihar forward castes. Had this share been larger, probably, the forward castes would have found themselves divided and too weak to resort to backlash.

3. Both Karnataka and Tamil Nadu have witnessed cases of Harijan baiting and atrocities on them at the hands of the middle order castes. But such instances are few. In Tamil Nadu, the DK movement welded the non-Brahmin upper castes and the *Harijans* into one camp. In this non-Sanskritic area, the ritual and cultural distances between these two groups was less than that between the Brahmins and the non-Brahmins. In Karnataka, Harijans and OBCs find themselves in one camp due to their resentment of the Brahmins in the beginning, and Lingayats later on.

In U.P. and Bihar, the Harijans and the landed castes on the one hand, and the landed backward castes on the other, have never had mutuality of economic, social and political interests. If the forward castes fear rank disequilibrium at the hands of the upper peasant castes in the OBC category, the latter also feel threatened by the rising political consciousness on the part of the *Harijans*. The latter are driven hard by their Kurmi, Koeri and Yadav employers; atrocities on *Harijans* have been committed by the members belonging to these peasant castes. *Harijans* have generally gone with Brahmins in voting for the Congress. This fundamental cleavage between the upper peasant castes and the *Harijans* has rendered the backward class movement weak and hence facilitated the forward caste backlash. As long as the OBCs are in the grip of Sanskritisation, they cannot lead the *Harijans*.

4. In Tamil Nadu and Karnataka, the non-Brahmins made a solid, united and well organized entry into politics and the higher echelons of the Congress party. Their politicization began a long time ago. This has imparted considerable strength to the backward classes movement. In Karnataka particularly. Devraj Urs went on encouraging the holding of the conferences of the minor, weaker non-dominant castes, between 1972 and 1978. He had inducted their leaders into the corridors of power. After preparing the political ground and organizing the weaker OBCs, he got his famous G.O. issued in 1978. The organization and mobilization were sufficient to deter any potential backlash.

In U.P. and Bihar, the ground had not been adequately prepared. In a sense, the Yadav and Thakur G.O.s, were planted from the above. In Bihar, the backward classes entered politics (and the Congress) divided. Their entry depended on the mercy of the forward caste leaders. They have not been held together as an autonomous and coherent political force. In U.P, also, the rise of the backward classes was belated. As observed earlier, both Thakur and Yadav attempted to telescope the backward caste mobilization into a decade. Even today, the backward castes are politically divided. The weakness of the backward castes is evident from the fact that their share of cabinet posts and the Assembly seats has been waxing and waning- The elections of 1967 and 1977 did not signify a permanent and abiding resurgence on the part of the backward castes on the

political scene of U.P. and Bihar. Karpuri Thakur and Ram Naresh Yadav definitely erred in thinking that they did.

5. There is no doubt that in Tamil Nadu, the youth belonging to the non-Brahmin forward castes must be experiencing the crunch of the reservation scheme. But quite a few of them can take advantage of the vagueness and fluidity of the classification based on sub-castes. The seriousness of this rampant misuse has been statistically proved by the Tamil Nadu Backward Classes Commission Report. As long as such misuse is possible, the propensity for frustration and aggression is relatively reduced. In Karnataka too, this is happening, but not to the same extent. In this State, misuse of the provision for the special groups on the income basis has been reported.

The Bihar and U.P. classifications do not permit any falsification of castes, as the classification is based on the broad caste lines, and not on sub-caste lines. A Rajput cannot pass off as a Kurmi or Koeri and remain undetected for a long time.

6. A second stage of the resurgence of the weaker among the backward castes has been delayed in Tamil Nadu. The non-Brahmin forward castes dominate the services and professions, because of the earlier head start. Nine castes in the list of the OBCs have gained a lot from the operation of the reservation scheme. The situation, theoretically, is ideal for a second stage of the movement. If this develops, and if these OBCs, which have gained disproportionately are excluded from the list, we may expect a backlash. But the weaker backward castes have not even protested against the inclusion of the Sozhia Vellalal gounders, etc., in the list in 1973. This absence of resentment and protest is in a large measure due to the Tamil revivalism and sub-nationalism.

In Karnataka, there has been no such revivalist movement to delay the upsurge of the weaker among the backward castes.

7. Owing to the classification in Tamil Nadu along the sub-caste lines, it is difficult to fix the percentage of the population which is classified as forward. In Karnataka, it is really the forward Lingayats, constituting about 10 to 12 percent of the population who are really adversely affected and feel threatened. In the State, the Christians, Vaishyas and Brahmins have written off the government service.

In Uttar Pradesh, the population classified as forward is considerable, i.e., around 20% In Bihar, the numerically small strength of the forwards, i.e., around 13% is more than

made up by its control over the countryside. The legacy of semi-feudalism in these two States has enabled the forward castes to fight bitterly against the reservation policy.

8. The economies of Tamil Nadu and Karnataka have been expanding relatively faster. The private tertiary sector appears to be growing. It can shelter many forward caste youths. Also, they are prepared to migrate outside the State.

The private tertiary sectors in Bihar and U.P. are stagnant. The forward caste youths in these two States have to depend heavily on government jobs. Driven to desperation, they have reacted violently.⁶⁸

The above analysis, to a considerable extent, holds good for the nationwide anti-Mandal agitation of 1990 as well. But the job reservation policy for the OBCs, based on the Mandal Commission recommendations, was initiated by the Union Government and it applies to jobs in the Central Government sector. Consequently, the agitations were directed against the Center. However, the state governments, which had considerable room for maneuver, also played their part, in different ways, in the anti or pro Mandal protests. More importantly, the circumstances under which the national reservation policy was introduced, were different from those prevailing in the late 1970s.

Extensive caste quotas in favour of the Other Backward Classes have been in force in the south for a long time, and have gained wide acceptance there. Whereas the prospect of their introduction has aroused unprecedented resentment and hostility in the north. Here one can indicate a few lines of enquiry that may lead to an answer to this important dimension of the policy. How well a given arrangement works, or whether it works at all, depends not only on its intrinsic merit but also on the circumstances and the manner of its institution. The circumstances under which caste quotas were imposed in south India in the high noon of colonial rule were totally different from the ones under which they are being sought to be instituted today after more than forty years of national independence. It will be a serious mistake to assume that nothing has changed in the outlook and orientation of people in the last seventy years. There have been changes not only in their attitudes to caste, but, what may be more important, also in their orientation to government and politics.⁶⁹

Caste quotas and communal electorates were parts of the same package of measures devised by the British for the governance of India.⁷⁰ At least in the political arena, in north India, the division between Hindus and Muslims overshadowed to a large extent the ones between castes among the Hindus, whereas this did not happen in the south. Caste quotas in public life were instituted in south India in the wake of the Montague-Chelmsford Report of 1918, and became established as permanent features of government and politics in the succeeding decades. They were no doubt welcomed by some, but it is not true that they were welcomed by all. They were welcomed by the rising middle class among the non-Brahmins, supported overtly and covertly by British commercial and administrative interests. The opponents of caste quotas, representing the views of Gandhi, Rajaji, Satyamurthy and others were characteristically dubbed by the former as an upper caste oligarchy. Under colonial rule, positions of authority did not become available to Indians all at once, or under terms and conditions chosen by them. The terms were generally set by the colonial government. It is true that the Congress party tried to bargain for better terms, but its bargaining power was not unlimited, and there were other parties only too eager to set further limits to it: the Justice Party in the south and the Muslim League in the north. The homology between the Justice Party and the Muslim League comes out both in their opposition to the Congress and in their support of the Communal Award.

There was an additional reason why the opposition to reservations did not take the form of a mass movement when they were instituted in south India in the 1920s. Being a part of the non-Brahmin movement, they were designed primarily to restrict the predominance of the Brahmins in public life. The Brahmins occupied a unique position in south Indian, particularly Tamil society. Their intellectual and cultural pre-eminence became even more pronounced as the British rule became established. Yet, they were a very small section of society, less than 4% of the population in Madras Presidency. When the backlash came, they were neither equipped nor prepared to put up any effective resistance to it.⁷²

When Independence came, the Constituent Assembly sought to establish a new consensus in which the individual and the nation would prevail over caste and community. Its deliberations were held under the shadow of the partition of India, and enlightened opinion in most parts of India set itself resolutely against Communal Awards and

Communal G.O.s. This spirit lingered for some time. It was this spirit which was expressed in the letter with which Kaka Kalelkar forwarded the Report of the first Backward Classes Commission to the President.⁷³ In the south, which did not experience the trauma of partition in the same way as the north, the practices established by the Communal Awards and Communal G.O.s continued, despite the changes introduced by the Constitution, and later due to the intervention of the Supreme Court, most notably through *Champakam Dorairajan* and *Balaji*. The caste quotas that were introduced by the British in the teeth of nationalist opposition have now become a way of life in south India.

The social and political climate in north India, and indeed in the whole of India in 1990 is very different from what it was in Madras Presidency in 1920. Opposition to any move, good or bad, by the Government can now be organized much more swiftly and extensively than was conceivable seventy years ago. More importantly, what has struck many observers about the movement against the Mandal Commission Report is the absence of political organization in it and the indifference of all political parties to it. What has sustained the movement and given it its peculiar intensity is not any kind of political organization, but a certain sense of moral outrage.⁷⁴

South India has, for decades, had a very different attitude from the north to reservations for the OBCs. The movements of the backward castes in the south for reservations started as long ago as 1919. But during and just after the British Raj, there was no backward classes movement in north India comparable to that in the south. One reason was that in the north the modern sector (government service, higher education and professions) was not the monopoly of a tiny hereditary elite of Brahmins but shared by diverse groups such as Kayasthas, Bania and some elite sections of Muslims. Further, the educated Bengali was a conspicuous element in the bureaucracies and learned professions in north India. He drew a lot of flak as an "outsider".

The Hindu-Muslim divide was also sharper in the north, inhibiting the rise of a backward class movement. At first, the only reservation was the mandatory one for the SCs and STs. Even today (in 1990) Orissa and West Bengal do not seem to have any reservation for the OBCs. In 1977-78, Karpoori Thakur, then the chief minister of Bihar, tried to introduce 30% reservation for the OBCs. This provoked a violent outburst in which 116 people were reported to have died. In 1985, Madhya Pradesh raised reservations from

28% to 62%, causing violent riots and arson, forcing the government to withdraw the order. The government of Madhavsingh Solanki in Gujarat fell similarly in 1981 following the introduction of reservation in promotions to posts in medical colleges. In other words, north India has not had a consensus favouring reservations for the OBCs, a consensus evident in the south. This explains why the reaction to Mandal has been far more violent in the north.⁷⁵

THE PRINT MEDIUM

The print medium, the most effective of the mass media, too played an active part during the national controversy over the acceptance of the recommendations of the Mandal Commission. The nation-wide debate over the job reservation policy for the Socially and Educationally Backward Classes (SEBCs) provided a rare opportunity to study and gauge the nature, role and import of one of the most important institutions of the Indian society—the press. Because the publicity in the press, particularly through daily newspapers, is the most effective and popular mode of projection compared to publicity through any other media. Newspapers occupy a commanding position as a medium of mass communication. This is so despite widespread illiteracy and limited circulation of newspapers in India. The reasons are both physical and psychological. A newspaper can be read at the reader's own convenience. It can also be referred to as and when required. Newspaper reading is more or less a habit with most of the educated. It is also generally presumed that newspapers provide relatively impartial coverage of happenings compared to other media like television and radio (which were state-controlled at that time in India). Newspapers, therefore, make a greater impact on the public mind, particularly in urban and semi-urban areas.

The Press In Democracy: The press in any democratic country plays a vital role in creating, molding and reflecting the public opinion. It is a fundamental institution of our society. It is generally assumed that the press should be the watch-dog and act as a catalytic agent to hasten the process of social and economic change, and thus secure people's participation and involvement in the country's development. It contributes a great deal in shaping political, social and economic development in the country. The press is also intimately concerned with the functioning of the state and the policy it follows. It touches almost every aspect of our public life. The press in India functioned as a crusading

agent for the freedom movement of the country prior to Independence. The Indian Constitution guarantees freedom of the press under the Article 19 (1) (a) which deals with one of the Fundamental Rights.⁷⁶

It is true that only a small percentage of people in our country come under the reach of the press because of widespread illiteracy and limited circulation of newspapers. The percentage, however, is extremely important as it constitutes the intelligentsia, the vocal sections of the country which not only creates and builds public opinion, but also provides leadership to the society.

PRINT MEDIUM AND MANDAL COMMISSION CONTROVERSY

The act of informing is a value-laden process. The emphasis given to specific developments, the tone and content of the coverage of an event (or a sequence of events) by the press reflect a certain implicit ordering of social priorities. A certain kind of coverage of events may reflect no more than a set of assumptions by media professionals about the range of interests of their readership. These could be purely incidental and need not reflect any widely shared social traits.

However, media analysis could still provide a useful and relevant map to the wider domain of social attitudes. In the case of well-established newspapers with a stable clientele, the assumptions of media professionals about the interests of their readers are likely to have a strong force of custom and tradition backing them up. As a business venture, a newspaper embodies the ethic of information as a commodity, to be sold in the market. The context, and the particular slant of the information it purveys, would therefore reflect its understanding of marketability. Further, there are instances when the coverage of certain developments displays characteristics so persistent and so strong, that they cannot be taken to be merely idiosyncratic or incidental. Such, for instance, has been the case with the coverage of "Mandal" and "Mandir". The scale of values of the national English language press, as reflected in its allocation of print and visual space, and the tone and content of its coverage, amply shows that it has derived inspiration from the ideological fount of undifferentiated Hinduism. In its coverage of the anti-reservation

agitation, the press chose to cast a destructive rampage in the role of a crusade of nothing less than the principles on which Indian nationhood is founded,⁷⁷

Cast in the role of idealistic revolutionaries by the press, the anti-reservation agitators gained propaganda mileage by parading their contempt for the unorganized sector in a variety of ways. But when not pictured self-consciously washing clothes at the *dhobi ghat*, or shining shoes at the busy street intersection—the flush of cynosure full upon their well-groomed faces—they were systematically exercising their destructive zeal upon public amenities. Their destructive rampage was, fortunately for them, not frozen into photographic images for posterity, as their supposedly idealistic forms of protests were. In this respect, they enjoyed the benefits of tacit support from the national press. It is possible to quantify the extent of media attention that the agitators received. Between the middle of August, when the agitation was beginning to move into high gear, and the end of September, *The Indian Express* (Delhi) devoted 1,915 column-centimeters (col-cm) of front page space to news reports on the disturbances. Within the same interval of time, 3,311 col-cm off the front page were used exclusively for the projection of the agitation. *The Times of India* (Delhi) was only marginally behind devoting 1,554 col-cm on front page and 3,229 col-cm off it, to the student rampage. Only *The Hindu* (Delhi), with its reputation for sobriety and moderation, and with the relative unconcern of a newspaper headquartered in the south, chose to devote to the agitation less than half the space that the other two major national dailies in the English language did individually (see Table: 4)

Both the *IE* and *TOI* were lavish in their visual coverage of the agitation too—in both cases, the total space allotted came very close to the print coverage. However, in *The Hindu's* scale of priorities, the movement merited no more than a quarter of the visual space that the other two dailies devoted to it. In terms of the editorial space, however, all three dailies were roughly comparable.

TABLE:4
Coverage of Anti-Reservation Agitation by Three Major National Dailies,
August 15 to September 30,1990
(Column-Centimeters)

	Paper	News Reports		Visual		Edit-
		Front Page	Off Front Page	Front Page	Off Front Page	
1.	<i>The Indian Express</i> (New Delhi)	1,915	3,311	1,461	4,050	168
2.	<i>The Times of India</i> (New Delhi)	1,554	3,229	1,158	2,681	171
3.	<i>The Hindu</i> (New Delhi)	848	1,412	166	666	151

Note: The methodology used measures space devoted exclusive of headlines. The figures above pertain only to print and visual coverage of the agitation. They do not take into account signed commentaries, such as Arun Shourie's inflammatory diatribes; inclusion of these would perhaps double the reckoning of space in the *Indian Express*. Nor do the above figures include the coverage of the "high politics" of the reservation issue, such as the statements issued by various political parties, professional organizations, parliamentary debates, and the waffling non-committal statements of politicians. They do, however, include calls for *bandhs*, reports on *bandhs*, reports on curfew impositions and lifting, and similar such reports.

Source: Sukumar Muralidharan, "Mandal, Mandir our Masjid: Hindu Communalism and the Crisis of the State", *Social Scientist*, October 1990.

The tone and content of editorial comment tended, in addition, to be extremely inflammatory. The *IE* for instance (August 9, 1990), commented editorially. that the National Front government's decision to implement the Mandal Commission recommendations would be "ruinous" for the country, and that "further deterioration of the state apparatus and heightened social tensions are going to be the first consequence of this crassly opportunistic decision". The *TOI* mourned that the decision threatened to undo "at one stroke" all that had been achieved over four decades of independence, in building "a modern, egalitarian order". Reservations, the *TOI* continued, would "enshrine casteism, undermine meritocracy and excellence, and work against the creation of the pan-Indian identity". Those reasonably familiar with the content and direction of the Indian

development experience would feel a sense of bewilderment at the Panglossian pronouncement that all was going well until the state gave in to an opportunistic whim. But no matter, the *TOI* was willing to concede that the backward classes could be helped to improve their "competitiveness" through the provision of "abundant educational, health, nutritional and other social welfare benefits". (*TOI* editorial, 9 August, 1990).

When the agitation began to spread, the *IE* pronounced that it was "clearly in defense of the national interest". In a shocking breach of editorial responsibility, if not a clear incitement to riot, it further urged the students fomenting the disturbances to fulfill their "responsibility to spread and intensify" them (*IE* editorial, August 25, 1990). It took care to add that the protests need necessarily to take a non-violent Gandhian character. But the pronouncedly un-Gandhian character of the agitation was very" apparent by then. The *TOI* was editorially more circumspect, deprecating the violent turn, and calling for a firm hand in controlling it (editorial, August 18, 1990). But it still inclined strongly towards seeing justice on the side of the agitationists. Thus, the high potential rhetoric grew insistently more inflammatory, with neither *TOI* nor the *IE* seeing any difficulty in arrogating to itself, and the agitating students, the right to speak on behalf of the entire nation. It was no surprise that when stalemate began to threaten the student agitators by the middle of September, they chose to raise the stakes by inaugurating a series of barbaric human sacrifices. They were virtually impelled to this course of action by the grandiose posture that they had chosen to cut, with the encouragement of the media and a section of public opinion. And in its coverage of the wave of suicides (and murders) that swept the northern region from the third week of August, the print media proved totally irresponsible.

In the aftermath of the third suicide attempt in the capital, that of S.S. Chauhan, a senior and responsible police officer asserted that constables on duty at the site made an effort to reach him, but were stopped by the cordon of students that had formed around him. *The Hindu* thought that the official version deserved prominent mention, but both the *TOI* and the *IE* chose to ignore it in their reports of the incident (September 25, 1990). And neither, if the papers had reason to disbelieve the official, were these mentioned.⁷⁸

Even in the declining phase of the anti-Mandal protests too, the coverage of the agitation by the leading national English dailies remained loud and lurid. Only *The Hindu* seemed to see some virtue in moderation. The following Table gives the details.

TABLE: 5
**Coverage of Anti-Reservation Agitation by Three Major National Dailies,
October 1 to 5,1990
(Column-Centimeters)**

	Paper	News Reports		Visual		Edit.
		Front Page	Off Front Page	Front Page	Off Front page	
1.	<i>The Indian Express</i> (New Delhi)	152	349	52	166	17.5
2.	<i>The Times of India</i> (New Delhi)	111	192	0	52	0
3.	<i>The Hindu</i> (New Delhi)	70	110	0	18	

Note: Since the time-span studied is rather short, the occurrence of some out-of-the ordinary events could considerably distort the picture. Hence, the coverage of the riotous rally organized on October 2 at the Delhi Boat Club has been omitted. This event, organized under the joint auspices of the Anti-Mandal Commission Forum and the Bharatiya Kisan Union, merited extensive coverage in all the Delhi papers of October 3. Inclusion of this coverage would perhaps double the above reckoning of space, but it would bias the comparison rather severely.

Source; Sukumar Muralidharan, "Mandal, Mandir aur Masjid: Hindu Communalism and the Crisis of the State", *Social Scientist*, October, 1990.

During the national controversy over the Mandal Commission, almost the entire print medium had supported the anti-Mandal movement. It was repeatedly alleged in the press that the Mandal Commission Report was casteist in character and that the Central government was fomenting casteism by accepting the same. An appeal by two central ministers to the backward communities to launch a counter protest in support of the Report was condemned by the press as a dangerous move to divide the country. The national press had issued strident warnings that acceptance of the Mandal Commission recommendations will shatter the spirit of national cohesion, divide the society on sectarian lines, promote caste conflicts and unleash civil war. The initial turmoil in Delhi and other

north Indian cities was cited as only a prelude to the impending apocalypse.⁸⁰ It was not accidental, probably, that just as there was a concerted and at times hysterical outcry in the English language press over caste reservations, focusing on the charge that the economically advanced "dominant castes" would gain from the Mandal program, so there was an equally concerted ideological charge against the kulak lobby from very similar sources. It was not also accidental that the same elite (and the English language press) was divided over the new industrial policy which for the most part looked like a quarrel between its private capital and bureaucratic capital factions.⁸¹ The media (particularly the English language press) had played an unprecedentedly provocative role during the anti-Mandal riots. The *Indian Express* was quick to get into the act. Arun Shourie carried four front page reports on 22, 23, 24 and 25 August (1990) under his own name. They made no attempt to be objective and contained direct incitement to violence.

One of the writings of Shourie says: "But even the fact that the movement must contend with the entire political establishment, that it must seek to arouse the people in the face of indifference, where it is not the active hostility of the establishment, is not all. This time the movement must contend with the entire communities which have been given the opportunity to grab the government and all they can wrest by grabbing it. Among these communities, the backward classes..." And Shourie referred to the backward classes as "lethally aggressive communities".⁸²

PRESS AND SUICIDE ATTEMPTS

As the wave of student suicides continued unabated in north India, in the thick of the anti-Mandal protests, questions were beginning to be raised about the role played by the national press in fomenting the mass hysteria. S.S. Chauhan (22) was the first student to commit suicide in protest against the Mandal Commission.⁸³ He torched himself to death publicly on September 24, 1990. Chauhan's death throes were recorded on a film by a mysterious photographer. This photograph was prominently displayed by most national newspapers, in violation of the well accepted media convention, that photographs of the act of suicide are not to be published. This is a self-imposed convention that is grounded in

two fairly sound rationalizations: a. sensational portrayal of a suicide could spark off imitative attempts by impressionable newspapers readers, especially in an environment of surcharged emotion; and a person who records an act of suicide on film, is open to suspicion of foreknowledge. And in the case of a suicide, foreknowledge is legally as damaging as complicity. Both the *TOI* and the *IE* made use of the photograph of S.S. Chauhan's suicide—crudely and insensitively projecting it on their front pages. The *IE* credited the photograph, in very small print, jointly to itself and one L .S. Tomar. But the *TOI*, very mysteriously, chose to attribute it to an "unidentified student".

Who was this mysterious student, who happened to be present at the site of Chauhan's suicide, fully equipped with camera? The answer is not far to seek. On September 19, 1990, two students of Deshbandhu College had attempted suicide by fire. The identity of Rajeev Goswami, the student who suffered the most serious injuries in that attempt, is fairly well known. Who was the other student? The *IE* of September 20 identified him as Lakshman Singh Tomar; the *TOI* reported that one of the students involved in the self-immolation bid of September 19, "Lakshman Singh Tanwar". was "busy taking photographs of the second self-immolator, Surinder Chauhan, while he was aflame at the chowk".⁸⁴ Most newspapers made use of Tomar's photograph, but chose not to publicize its source. This was not for lack of knowledge, The *IE* was fully informed about the source of the photograph and even if the *TOI* did not know then, it had definitely come to know at a later stage. But these papers' investigative zeal seemingly failed when it began to emerge that there might have been an element of orchestration behind the human sacrifice in Delhi.

In retrospect, it is clear that Chauhan's suicide was the turning point. It sparked off a number of emulative bids in an environment of growing hysteria that the press did little to dispel. But in cynically using the photograph of Chauhan's suicide, while being aware that it may have been taken by an accomplice to the act, the press departed grievously from the accepted norms of responsible reporting.⁸⁵ It also came to light from reports put out by news agencies and various responsible newspapers, that the supposed self-immolation bid in Jaipur on September 24, was actually a case of attempted murder. This pointed conclusively to the intrusion of an element of criminality into the agitation, a matter of obvious concern to the public. *The Hindu* chose to project the news very prominently on

its front page (September 26, 1990). The *IE* thought the story deserved no more than about 6 col-cm in an obscure corner of its edition that day. And to compound the criminality of the deed, the *TOI* chose to block it out entirely.⁸⁶

The national media's editorial excesses—the "editorial frenzy" as an observer put it—in support of the anti-reservationist agitation in north India is now well known. Questions were being raised as to the real motivations behind the numerous cases of self-immolations in the month of September, 1990. Since September 1990, when a Delhi student, Rajeev Goswami set fire to himself, more than 150 similar suicide bids have been reported from different parts of north India - all supposedly in protest against the implementation of the Mandal Report. A few enterprising reporters who interviewed the parents of some of the victims discovered that the unfortunate students suffered from a variety of psychological disorders ranging from alienation from their parents to acute depression and a sense of insecurity caused by social and economic environs. Some of the immolation victims are as young as 12 years; an age at which it is highly unlikely that a student would understand the complex provisions of the Mandal Commission Report.

That it was not the Report itself, but a general sense of fear manipulated among impressionable minds by extraneous forces which could have led to the suicide bids is also a possibility worth considering. Ever since the Government's announcement of its decision to implement the Report, the entire national press had been raising the specter of widespread unemployment among the upper caste "meritocracy" and of the swamping of government jobs by "inefficient" backward caste people. One can easily imagine the impact of the evocation of such bogeys on a generation of young people already under stress of stiff competition in examinations and jobs.

A fresh light on the abominable role of the national press has been shed by a Delhi-based social service organization SSMH (Sanjivini Society for Mental Health). After examining the psychology of the students who attempted self-immolation, it has concluded that in all these cases youngsters appear to have been inspired by newspaper reports of similar acts. The Organization has advised the press to refrain from glorifying such acts. It has also asked parents and teachers (some among whom had egged on the students to

join the agitation, and even approved of their self-immolations as acts of sacrifice for a cause) to prevent the students from resorting to such desperate acts.⁸⁷ Another study of self-immolations against the Mandal Commission also highlighted, among other factors, the role played by the media. Along with a concept of personal sacrifice the one important catalyst that probably spurs on the young is the overwhelming media publicity that comes in the wake of every immolation attempt. Says Dr. Mohan, Head of Psychology Department in the All India Institute of Medical Sciences (Delhi): "The otherwise lost souls started finding mention in newspapers. In an epidemic, the degree of exposure you get overtakes pain, the thought of death of even rational thinking".⁸⁸

The general refrain of the writings in the press had been the linking of efficiency and merit to upper castes and its reinforcement. This kind of propaganda in the media obviously inflamed the tinder in the minds of the youth. Apprehending their own defeat in the battle of numbers that democracy is, those who have enjoyed upper caste plutocracy were urging the youth to commit *jauhar* (sacrifice) for a cause that was thinly disguised as being noble: the protection of merit.⁸⁹

Castes, Print Medium and Affirmative Action:

Elite Resistance To Redistribution

The unexpected adoption of job reservation policy in favour of the SEBCs had propelled the most controversial policy to the centerstage of Indian society and polity. It was the violent anti-Mandal agitation—which erupted in the capital Delhi—that set off the ripple effect, drawing other vital institutions into the vortex. Anti-reservation riots in urban areas first took place in various parts of India in the late 1970s. In Bihar, disturbances broke out in March 1978 when the State Government decided to increase the quota for OBCs from 24 to 26 percent. In the rioting that followed, scores of people were injured. Eighty Janata Party legislators even threatened to resign if the government persisted with its policy. The worst such agitation in the early years of the anti-reservation movement broke out in Ahmedabad. Beginning on 31 December, 1980, violence continued sporadically for 104 days. It would appear that the initial moves to give OBCs adequate representation in employment and educational institutions were not solely motivated by electoral

considerations or by competition for influence between political parties. The 1980 Ahmedabad riots against reservation was the first of its kind. Members of the liberal and learned professions (lawyers, teachers and business people) came out on to the streets.⁹⁰ However, in 1985, the reservation policy in Gujarat under Congress (I) government and in 1990 at the Center under the National Front government carried unmistakable hints of electoral manipulation.⁹¹

The violent anti-Mandal backlash by the upper castes, which had broken out in Delhi, rapidly engulfed the north India and spread gradually to the south India as well. Rallies, demonstrations, destruction of public property and loss of life marked the violent movement. Normal life had been disrupted across the urban India. The agitation spanned almost two months—from the second week of August (1990) to October 2, the day on which the Apex Court stayed the implementation of the newly-adopted job reservations for the OBCs. But it was the dramatic and unprecedented phenomena of self-immolations, resorted to some agitating students, that had unleashed the institutional domino effect turning the agitation more violent. The furious resistance to reservations polarized the nation into pro and anti-reservation camps and generated a national debate over positive discrimination.

Any policy of compensatory discrimination designed to restructure the social relations is bound to be controversial and gives rise to resentment and conflict between the groups favoured and those adversely affected by such a policy. Affirmative action in the U.S. has also been subjected to a great deal of criticism, In India, reservation policy encounters opposition and resistance mainly from upper caste sections who feel threatened by the loss of opportunities and the erosion of their traditional position of dominance. The magnitude of resentment of non-preferred groups and the intensity of backlash against preferential policies is highest in India compared to that in any other country in the world. The scale of the violent protests against the V.P.Singh government's decision to institute job quotas for OBCs is unprecedented in many ways. Moreover, the critics of the policy advance standard arguments.⁹² In India, aggressive opposition to reservations comes mainly from the educated poor and middle class persons in the upper castes. Unlike the well-to-do among the upper castes, they have no family advantages or resources to fall back upon. They seek "decent" employment in order to live at the expected levels.

Hostile attitude towards reservations invariably grows when the non-beneficiaries think of the threat of the preferential treatment or are actually denied a seat or job due to the policy. They think that they are deprived of their opportunities because of reservations even though they are more meritorious or intelligent than the "reserved candidates". This is essentially so among the urban youth who are generally brought up in a relatively secular atmosphere. They are not witness or direct parties to high levels of caste discrimination and oppression rampant in rural India.⁹³ Moreover, upper castes and educational institutions are largely concentrated in urban areas; particularly the educated or qualified youth who feel that they are affected directly by the reservations. And it is much easier to organize protests in urban areas because of the better transport and communications network. Therefore, the anti-reservation agitations (including the anti-Mandal movement) are predominantly urban phenomena.

Like the meritocratic arguments are racist in America, the arguments in favour of entitlements based on merit in the Indian context are essentially caste-centric and they tend to reinforce the status quo of the traditional social order.⁹⁴ The anti-Mandal agitation reflects the resistance by the dominant upper castes to the claims of the ascendant OBCs on the state resources, i.e., jobs in this context. Inadequate mobilization of the SEBCs;⁹⁵ equally inadequate education (and preparedness) of the upper castes about social justice through affirmative action; and the growing competition for the dwindling public sector jobs made the anti-OBC agitation violent and one-sided. The violent anti-quota stir also symbolizes the extra-institutional struggle of the dominant castes in defence of the status quo and hence against reform and redistribution—with support, overt or covert, from political panics, the print medium and the like-minded intellectuals.

The nation witnessed, in the aftermath of the acceptance of Mandal Commission recommendations, a "class" conflict which was a manifestation of the aggregation of castes. Contrary to the belief that democratic politics and adult franchise were providing a new lease of life to caste, what was in fact happening was a transformation in the nature of caste under the impact of democratic and competitive politics. Political and developmental institutions do not anywhere function in a vacuum. They tend, of necessity, to find bases in society either through existing organizational forms or by invoking new structures that cut across these forms. Those who complain of "casteism in politics" are actually looking for a

sort of politics which has no basis in society, *Casteism in politics is no more and no less than politicization of caste*. The key process is politicisation.⁹⁶

The institution of caste takes on an openly secular form for new organizational purposes. It is an indigenous institution that is playing a modern democratic role, The castes in the form of endogamous *jatis* are too small and numerous—and subject to polarization within each under opposite party pulls—to be of much avail themselves; there was a clear necessity to aggregate into larger collectivities. In the old days, these were caste associations and caste federations each of which entered into negotiations with political parties at the local and regional levels. In the new setting, these are class-like formations: the Dalits, the "Kshatriyas", the Backward Classes or the "Other" Backward Classes.

In a predominantly rural and socially diverse society, class finds its basis in the transformation of caste, the basic social unit of India. It is by waging conflict with the exploiting castes and getting organized around larger secular identities like Dalits and the *janjatis* that class formations have taken place. On the contrary, exogenous efforts to impose universalist ideologies have been defeated by the pluralist framework of a caste society. Two such efforts have been modernization through economic development and modern education modeled on Western urbanized societies; and *Hindutwa* through imposing a Semitised framework encompassing the whole country. The phenomenon of (Other) Backward Classes can be understood only in the framework of class as found in India's indigenous context rather than that of "casteism" as was being alleged by the academia and the rampaging students. What we have under way then is a class conflict born out of a distinctive cultural context of neither "India" nor "Bharat" but something far more composite than both.

The emergence of class configuration out of dispersed and fragmented caste identities has taken a large diversity of forms due to a highly plural and regionally federal structure of social reality. Thus in Tamil Nadu, building upon the early efflorescence of the anti-Brahmin movement in which values of truth, science and secularism were put to use, there took place a wide spectrum of lower caste assertions, getting consolidated in Dravida and Tamil identities. A significant part of these assertions took the form of reservations.

In Andhra Pradesh and Karnataka, the political ascendancy of middle peasant castes (Reddys and Kammas; Lingayats and Vokkaligas) was followed by responses from spaces lower down, again making use of reservations, going up to more than 80% in Karnataka under Devraj Urs and later. In Kerala, caste identities became rallying points for class-like party formations, starting with Ezhawas, once the most depressed of all communities.

In Maharashtra, the influence of Dr. Ambedkar and the rise of the Mahars against the political monopoly of the Marathas produced a version of radicalization that has been based on a class-caste symbiosis. Even the organized militant left came under this influence and we had the birth of a Satyasodhak Communist Party in Dhule and other districts. In Gujarat, the anti-reservation riots and their communal (anti-Muslim) twist gave rise to ground level consolidation of Dalits, Adivasis and the minorities.

It is against this background of social mobilization in other parts of India that the impact of the Backward Classes "movement" in north India, particularly in Uttar Pradesh and Bihar, has to be gauged. Ram Manohar Lohia was the patron saint of this movement and made these classes the social base of the Samyukta Socialist Party, distancing these communities from the caste-based votebanks of the Congress. Karpoori Thakur followed in his footsteps and during his tenure as chief minister, in the late 1970s, tried to build a broad enough political consensus against the forward castes consisting of Dalits, tribals and minorities. Once again the effort, which produced a violent backlash from the forwards, was meant to generate a class-like formation.

The work of the Mandal Commission was built upon these diverse movements in different regions of the country. *Crucial to understanding its main message (even if it may not be fully realized in practice in the short run) is the class consciousness associated with a trans-caste mobilization based on a numerical majority of the population: it is the backlash from the upper and "forward" castes against the upsurge that is casteist, not the upsurge itself. And yet it is a class configuration that builds upon rather than destroys primary (caste) identities.* It is caste playing a secular historical role that we are witness to in the growth of social mobility that the Mandal Commission and its various antecedents have given rise to.⁹⁷

Thus, the constitution of Mandal Commission in 1979 epitomizes the recognition of the ascendancy of the intermediate castes in north India. And the partial acceptance of the Commission's propositions by the National Front regime instituting job reservations for the OBCs—who had already made their political presence felt—posed a major challenge at the national level to the upper caste dominance, especially over the highly coveted Central civil services. Hence the nationwide fierce opposition to reservations. Upper caste dominated institutions like political parties, interest groups and the press and the higher caste intellectuals and journalists (the "opinion makers") made common cause with the agitating students to oppose the policy, either covertly or overtly.

"Those who opposed the Mandal Commission during the nationwide ideological battle were invariably the twice-born, the high castes and some connected 'high caste' minority groups (those of the Brahmin/Kshatriya/Vyshya *varnas* plus Parsis, high caste Christians, etc.). Their 'caste strategy', as one may call it, requires such opposition. And a few of the twice-born, mostly those in the left or associated with mass struggles supported the Mandal Commission or remained neutral, one was even heading the implementation of the Report (i.e., V.P. Singh). These, we may say, were going in opposition to their 'caste strategy' to identify with the oppressed and exploited castes and their existence has to be noted because it represents one important thrust of democratic and secular elements in the system. Then there was a group of castes who were confused as they could potentially be included in the OBC list (and in some cases they had reservations) but they are included at present or they are ambiguously included. Therefore, they could have two 'caste strategies': to oppose Mandal or to argue for inclusion. This group includes primarily such Shudra peasant castes as the Jats, Kunbi Marathas, Vokkaligas, etc. But there is also the small but influential Kayashta category who were traditionally treated as Shudras in most places but whose orientation to service/mental work has aligned their interests with the twice-born.

Dalits and *adivasis* (especially the *Jharkand Mukti Morchd*) were supporting the Mandal Commission, in spite of the fact that the twice-born were using the name of Dalits and the "truly backward" to oppose the Mandal Commission on the grounds that it would benefit the "economically advanced" rural 'dominant castes' who are responsible for committing atrocities on Dalits. Dalits were quite aware that upper caste opposition was

not simply to OBC reservations but to any kind of reservations, and that if they succeed in beating back the Shudras on this they would next move to push back the Dalits. Moreover. Dalits want an alliance with Shudras that would give them a solid and effective majority against the twice-born whom they consider their main enemy".⁹⁸

Students and intellectuals who agitated against the Mandal Report did not appear to share the democratic spirit of the policy which is embedded in the Constitution and has been repeatedly affirmed by all major political parties. Their aim was to question the validity of the very policy of affirmative action as a means of dispensing social justice to groups which have been prevented from access to means of social mobility. The undermining of such a policy was achieved through violent agitation with the support of the intellectuals who have sought to alter the very nature of political discourse in India on the role of social policy in the structural transformation of the society. The opposition of the elite's to the Mandal Report was not really focused on the methodology of the Commission or on the method that should be followed in implementing its provisions. The elite response to the Mandal Commission indeed illustrates the "wordy opposition" of the Indian elite which mouths "progressive" rhetoric in order to oppose any social policy aimed at the structural transformation of our society.

A social policy like affirmative action—which affects the fundamental units of the social structure and disturbs the status quo—is scarcely formulated in a non controversial manner. So the arena of social policy making extends beyond the institutions of the state into the processes of opinion making in society. Whereas the modernizing elites, in the aftermath of Independence, saw themselves as autonomous mediators between the state and society, their counterparts in contemporary India have shaped their role as active collaborators with the state. Their rationale for supporting or opposing social policies is rooted in considerations of "governance" and "stability" rather than those of social change and transformation.

With the degeneration of political mechanisms which used to mediate between the state and society, and the weakening of the relative autonomy of the modernizing elite in this sphere, popular movements have tended to place less and less reliance on the discourse of political and social transformation which developed out of the efforts of the former to spearhead change at Independence through the Constitution. In effect the institutions of

liberal democracy have been rendered incapable of dealing with issues of social transformation within a rational-political framework. Even the demands made on the Indian state within the institutional arena of democratic politics have tended to reinforce the world-view of the dominant elites and to emphasize its primary responsibility for governance. Since the mid-'70s, anti-reservation agitations have successfully stalled not only further implementation of the policy, but also any rationalization or modification that might make it more effective.⁹⁹

The national turmoil over the OBC reservations provided a rare opportunity to gauge the nature of the print medium, i.e., its interests and social priorities. The press—the most powerful of mass media—was highly critical of the compensatory discrimination in favor of the OBCs. In effect, as the foregoing discussion shows, the national English language press operated as a propaganda vehicle for the anti-quota movement. The three largest circulated English dailies sensationalized the agitation by giving it excessive coverage in terms of the space allotted for reports, visuals and editorials. The tone and content of some of the overreactive editorials were highly inflammatory. Instead of educating the readers about the true implications of the policy, the press declared that it had unleashed a "civil war" and it would disintegrate the nation. During the thick of the agitation, a section of the press even advocated that the decision to implement the Mandal Report should be stayed by the Apex Court.

The national print medium's reaction (to the anti-Mandal movement) exposed its caste, and by implication, "class" character. The press sensationalized and glorified the acts of self-immolations and displayed the photographs of the victims on the front pages which instigated and motivated more students to emulate such acts. It was due to this extreme form of protest that the agitation turned more violent leading to large scale death and destruction. Interestingly, the same press "welcomed" (of course with certain reservations) the Supreme Court's landmark judgment validating the job reservations for the OBCs. This reflects the opportunistic nature of the print medium.

It should be noted that the press was also "divided" over the Mandal Commission. Of the three dailies studied, south-based *The Hindu* showed relative moderation and was less provocative in its coverage of the controversy. This is perhaps because south India has had a long history of reservations which have gained greater acceptability compared to the

north. Therefore, the anti-Mandal stir was relatively mild in the south. In sharp contrast, the *Indian Express*' coverage was highly inflammatory. So a kind of north-south divide in the press was also discernable. Therefore, the divisions in the press also reflect the larger differences between the south and the north in their reactions to the centralization of OBC reservations.

NOTES

¹. Kamal Nayan Kabra, "Reservation Policy: From False Start to Effective Design," *Third Concept*, October 1990, p. 17.

². Paranjape, H.K. "Implementing Mandal Report: A Disastrous Step", *Mainstream*, September 15, 1990, p. 6.

³. Harbhajan Singh, "Paranjape's Mandal Analysis: A Rejoinder," *Mainstream*, September 22, 1990, p. 6.

⁴. First one was headed by Indira Gandhi and the second by Rajiv Gandhi.

⁵. "Upper Castes Up in Arms" (Editorial), *Economic and Political Weekly* (hereafter: *EPW*), August 18, 1990, p. 1799.

⁶. Asghar Ali Engineer (Ed) in his "Introduction" to *Mandal Commission Controversy*, Ajanta Pubs, Delhi, 1991, p. IX.

⁷. Radhakrishnan, P., "Mandal Report: A Sociological Critique", *The Hindu*, August 11, 1996.

⁸. "V.P. Singh Cannot Win on the Caste Slogan" (interview with Rajiv Gandhi), *The Times of India*, September 2, 1990.

⁹. *Data India*, August 6-12, 1990.

¹⁰. Surendra Malik, *Supreme Court Mandal Commission Case*, 1992, Eastern Book Co., Lucknow, 1992, p. 276. See *Appendix: 11* for full text of the OM.

¹¹. *Data India*, August 13-19, 1990.

¹². *Data India*, August 27-September 2, 1990.

¹³. Ibid. In the meantime, the prime minister Mr. V.P. Singh exhorted the MPs belonging to the National Front to go to their constituencies and put across to the people the Government's decision to implement the Mandal Commission recommendations in its right perspective.

¹⁴. *Data India*, September 3-9, 1990.

¹⁵. *The Hindu*, 23 September, 1990.

¹⁶. *Data India*, September 17-23, 1990.

¹⁷. Ibid. To mollify the youth agitated over the new reservation policy, a major program was announced to facilitate generation of an additional three million jobs for the educated unemployed in the private sector by 1994-95.

¹⁸

. About 25 Janata Dal MPs belonging to the Chandrashekar-Devi Lal faction had decided to demand the resignation of the prime minister Mr. V.P. Singh at the National Front parliamentary meeting; *The Times of India*, September 30, 1990.

¹⁹. Effigies of the prime minister, V.P. Singh and his staunch pro-Mandal colleagues, Ram Vilas Paswan and Sharad Yadav, were also burnt by the agitators.

²⁰. *Data India*, September 24-30, 1990.

²¹. In the thick of the agitation, the protestors set fire to a government plane at Faizabad and managed to escape.

²². *The Times of India*, 30 September, 1990.

²³. *The Economic Times*, 1 October, 1990.

²⁴. *The Indian Express*, 21 October, 1990.

²⁵ *Data India*, October 15-21, 1990. In response to a question, Dr. Mandela clarified his position saying that he had no intention to interfere in the internal affairs of India. His remarks about the Report were due to his commitment to social justice and human equality. He added that he had complete confidence in the ability of the political leaders of India to settle their problems without any intervention from outside.

²⁶. *India Today*, September 30, 1990.

²⁷. *Data India*, August 6-12, 1990.

²⁸. *Data India*, August 13-19, 1990.

²⁹. *Data India*, September 3-9, 1990. Meanwhile, the chief minister of Bihar, Mr. Laloo Prasad Yadav said on September 17 that the Bihar Government had already implemented the Mandal Commission Report and the "Karpoori Formula" had been put in abeyance.

³⁰. *India Today*, September 30, 1990.

³¹. *Data India*, August 13-19, 1990.

³². *India Today*, September 30, 1990.

³³. *Data India*, August 27 - September 2, 1990.

³⁴. *Ibid.*

³⁵. *Data India*, September 3-9, 1990.

³⁶. *India Today*, September 30, 1990.

³⁷. *The Indian Express*, October 30, 1990,

³⁸. *India Today*, September 30, 1990.

³⁹. *Data India*, September 17-23, 1990.

⁴⁰. *Data India*, September 24-30, 1990.

⁴¹. *Data India*, October 22-28, 1990.

⁴². *India Today*, September 30, 1990.

⁴³. *Ibid.*

⁴⁴. *Ibid.*

⁴⁵. *Data India*, October 22-28, 1990.

⁴⁶. *Deccan Herald* (Bangalore), September 28, 1990.

⁴⁷. *Deccan Herald*, September 18, 1990.

⁴⁸. *Data India*, October 15-21, 1990.

⁴⁹. *Data India*, October 1-7, 1990.

⁵⁰. *India Today*, October 15, 1990.

⁵¹. Hiranmay Karlekar, *In the Mirror of Mandal: Social Justice, Caste, Class and the Individual*, Ajanta Pubs, Delhi, 1992, p.2.

⁵². *Mia Today*, October 31, 1990.

⁵³. Ibid.

⁵⁴. *The Times of India*, 26 October, 1990.

⁵⁵. *The Hindustan Times*, September 29, 1990.

⁵⁶. *India Today*, October 31, 1990.

⁵⁷. Ibid.

⁵⁸. The suicide note of a XI class girl requested that her eyes be donated to the prime minister "so that he can see better for himself the misery the Report had brought upon the student community".

⁵⁹. *India Today*, October 31, 1990.

⁶⁰. *Data India*, September 3-9, 1990.

⁶¹. *Data India*, September 8-14, 1990.

⁶². *Data India*, October 15-21, 1990.

⁶³. The Bihar chief minister Mr. Laloo Prasad Yadav set the meeting's tone by saying: "Even if heaven and earth clash, there will be no compromise on the implementation of the Mandal Report. The Union Ministers, in their speeches at the rally, said—Mr. S.S.Sahay: "Whoever opposes our *Chakra* of social justice will be crushed and wiped out"; Mr. Ajit Singh: "Only the newspapers and some political leaders are opposing the Mandal Commission, as well as English educated people who say Mandal will finish merit. You should prepare to even die for the Mandal recommendations"; Mr. R.V.Paswan: "V.P. Singh has changed history. This is a fight of 90% of the oppressed people against the remaining 10%. The servile era of Jagjivan Ram has gone, the militant era of Ram Vilas Paswan is at hand".

⁶⁴. "Ranganath" reference was to Ranganath Mishra, the then Chief Justice of the Supreme Court. It should be recalled here that the Constitution Bench, which had stayed the implementation of the Government's order on the Mandal Commission Report, appeared to be at the receiving end. The Chief Justice revealed in the Court on October 26, 1990 that he was receiving as many as 2,500 envelopes daily in the mail, each containing either ashes or words of threat about the safety of the Judges and their family members; "But, we are unruffled", stated Justice Mishra.

⁶⁵. *India Today*, October 31, 1990.

⁶⁶. The study done by the TISS for the Mandal Commission is titled: *Reactions to the Reservations for Other Backward Classes: A Comparative Study of Four States*. The Study constitutes Volume IV of the Commission's Report.

⁶⁷. Observation of R.R.Bhole—a member of Mandal Commission and former judge of Bombay High Court in "Standing up for Mandalism," (interview with R.R.Bhole) in Asghar Ali Engineer (Ed), op.cit., p.343.

. *Report of the Backward Classes Commission* (Chairman: B. P. Mandal), Vol. IV ("Reactions to the Reservations for the OBCs: A Comparative Study of Four States"). Govt. of India, 1980, pp. 235-258. (Hereafter: *Mandal Commission Report*).

⁶⁹. *Mandal Commission Report*, Part II, Vol.IV, pp.141-163.

⁷⁰. Andre Beteille, "Resistance to Reservations: Some North-South Differences", *The Hindu*, 20 October, 1990.

. In fact, the term "communal" had somewhat different shades of meaning in north and south India. In the north, it related to above all to divisions on the basis of religion.

particularly between Hindus and Muslims. In the south, the term, in such phrases as "Communal Award" or "Communal G.O.", referred primarily to divisions between castes or groups of castes, particularly between Brahmins and non-Brahmins.

⁷². The Opposition between the two points of view was well represented by the two leading dailies of Madras. *The Hindu*, representing nationalist interests under upper caste leadership, and *The Mail*, then representing British commercial interests and calling for safeguards against domination by the Brahmins.

⁷³. Brahmins adapted themselves to the new conditions in various ways, including migration to the north. They simply did not have the resources to organise a mass movement against caste quotas on their home ground.

⁷⁴. Andre Beteille, "Resistance to Reservations: Some North-South Differences," op. cit.,

⁷⁵. Ibid.

⁷⁶. Though the expression "freedom of the press" as such is not defined or referred to in the Constitution, the above Article says: "All citizens shall have the right to freedom of speech and expression". It includes not only the freedom of speech, which manifests itself through oral utterance, but also written or printed matter. However, this freedom received a setback in June 1975 during emergency.

⁷⁷. Sukumar Muralidharan, "Mandal, Mandir and Masjid: Hindu Communalism and the Crisis of the State", *Social Scientist*, 10 October, 1990, Vol. 18, No. 10.

⁷⁸. Rather, the *TOI* chose to make a morbid play upon the bravado of a dying man asking for water, so that he could continue to raise slogans against the Mandal Commission. And both the *IE* and the *TOI* provided extensive, even reverential, coverage to the manner in which the site of Chauhan's suicide had become an impromptu shrine for the faithful.

⁷⁹. The implication is that the backward classes should meekly submit to the pressure tactics of the upper caste students and the press organs which support them. Tarkunde, V.M., "Mandal Commission Controversy," in Asghar Ali Engineer (Ed), op.cit, p.53.

⁸⁰. Gill, S.S., "A Conflict of Interest," *ibid.*, p.25

⁸¹. Gail Omvedt, "Twice-Born Riot Against Democracy", *Ibid*, p. 13.

⁸². Chatterji, P.C., "Reservation: Theory and Practice," in Sathyamurthy, T.V., (Ed), *Religion, Region, Caste, Gender and Culture in Contemporary India*, Oxford University Press, Delhi, 1996,p.309.

⁸³. The first self-immolation attempt was made on September 19,1990 by Rajeev Goswami by setting himself ablaze in public. But he survived the attempt.

. Protagonist of a suicide attempt in one context, Tomar (or Tanwar) was to prove a lad of indefatigable spirit, suitably transforming himself into documentationist and publicist of Chauhan's suicide. The question that arises is: did Tomar (or Tanwar) have any foreknowledge of Chauhan's plans? And considering Tomar's (or Tanwar's) own earlier attempt at suicide, there is the further question: whether he had any role in instigating Chauhan into his act of supreme folly.

⁸⁵. And with most newspapers maintaining their conspiracy of silence, the strange case of Lakshman Singh Tomar, suicide artiste and photographer, has remained to this day, unresolved.

⁸⁶. Sukumar Muralidharan, op.cit. pp.34-36.

⁸⁷. "Media: Sensationalising Suicides", report in *EPW*, November 3, 1990, p.2392.

⁸⁸. "Mandal Commission Fallout: Pyres of Protest", *India Today*, October 31, 1990.

⁸⁹. Arvind N. Das, "Pathology of Uncivil Society," In Asghar Ali Engineer (Ed), op.cit., pp.44-45.

. Representatives of the Scheduled Castes, not without a sense of humour, believed that they faced opposition from six 'Ps', namely, the police, the press, the *patels* (landlords), the "pocket" (money), political parties and Probod Ravel (the then home minister of Gujarat).

⁹¹. Chatterji, P.C, "Reservation: Theory and Practice," op.cit., pp.306-7.

⁹². The familiar and oft-repeated contentions against preferential policies are: they destroy the democratic right of equality before the law; foster caste feudalism, polarize people on caste lines and endanger social unity; perpetuate dependence of the reserved communities on the state; they benefit the dominant sections of the Backward Classes; subject the upper caste persons to "destructive discrimination"; the "system" cannot survive if merit, efficiency and achievement are disregarded; and they leave considerable room for political manipulation. However, a majority of the opponents of the policy express sympathy for the disadvantaged groups but reject any quota system in their favour. They approve only compensatory action in the form of state support for free education, training or coaching, scholarships or financial support and such other efforts to enhance the competitive potential of the low caste persons so that they can meet the "meritocratic standard". See: Iyer, Ramaswamy, "Towards Clarity on Reservation Question," *EPW*, March 2-9, 1991. p.500.

⁹³. Suri, K.C., "Caste Reservation in India: Policy and Politics," *Indian Journal of Political Science*, Vol. 55, No. 1, Jan-March, 1994, pp.43-45.

⁹⁴. The dualism of the upper castes is clear from the fact that the Indians in America, 99% of whom are upper castes, while being critical of reservations in India, would like to enjoy the status of a preferred group there. The Association of Indian Americans wants that Indians in America should be covered under affirmative action program although statistics show that their scores in education are relatively high and their median earnings are far higher than that of blacks, American (Red) Indians and Hispanics.

⁹⁵. While the anti-reservation agitation by the students was mostly spontaneous, the government or its coalition constituents had to "sponsor" pro-reservation rallies.

⁹⁶. Rajni Kothari (Ed) in his "Introduction," to *Caste in Indian Politics*, Orient Longman. Delhi, 1970, pp.4-5.

⁹⁷. Rajni Kothari, "Caste and Politics: The Great Secular Upsurge," in Asghar Ali Engineer (Ed), op.cit., pp.32-36.

⁹⁸. Gail Omvedt, "Twice-Born Riot Against Democracy," op.cit., pp.7-8.

⁹⁹. Chatterji, P.C., op.cit., pp.317-330.

CHAPTER V

Political Parties and Interest Groups: Primary
Contradictions to the Fore

POLITICAL PARTIES AND INTEREST GROUPS: PRIMARY CONTRADICTIONS TO THE FORE

As the foregoing Chapter shows, the civil society reacted quickly and furiously to the OBC reservations. The initial stage of the institutional conflict over the Mandal Report centered around the caste conflict engendered by the nationwide anti-quota stir. The caste or "class" conflict involving the caste groups and national press had started polarizing the nation into two camps, "forward" and "backward". The fierce controversy steadily engulfed other social and political institutions. Thus, society was brought into conflict with the state with political parties—and several interest groups—entering the confrontation. The unprecedented social confrontation compelled the political parties and interest groups—the crucial media between the state and society—to react. The role played by the two institutions "exposed" their nature and the primary contradictions.

This Chapter examines the reactions of national political parties—National Front, Congress (I), BJP, CPI, CPI(M) and some Left extremist groups—and a wide range of interest groups to the momentous policy of job reservations for the OBCs; it also includes a study of the pre-election (1989) manifestos of the parties. The analysis attempts to explore the underlying contradictions, which conditioned the way the institutions responded, to study the nature and role of the two institutions vis-a-vis the compensatory discrimination in favour of the SEBCs. The concluding section presents a critical appraisal of the findings.

The Central Government's decision to implement the Mandal Commission recommendations had caught even the political parties unawares. Like other political institutions of the nation, the reaction of national political parties had also been ambivalent, confused and even contradictory. Initially, all the major political parties—the Congress (I), the left and the BJP—maintained a studied silence. They could not oppose a program purportedly benefiting a "Votebank" which they too were wooing. But as the anti-Mandal frenzy on the streets mounted, they started responding. Since no political party dares to openly oppose the principle of reservation for the backward castes (in order to maintain their pro-poor stance and the "votebank"), the Congress(I), the BJP and the disgruntled

leaders like Chandrashekhar and Devi Lal within the Janata Dal were using—not too surreptitiously—the anti-Mandal students' agitation in Delhi and other parts of north India as a convenient ploy in their war to topple the Government. In public, while supporting the principle of reservation, they plead that they are only opposed to the manner in which the prime minister had decided to implement the recommendations without a national debate and dialogue with the opposition. But had this been their real objection, they could have made efforts to persuade the agitators to sit for a dialogue. ' Significantly, all major political parties and groups across the ideological spectrum—from the BJP to the Left extremist groups—were conspicuously divided over the job reservation policy for the SEBCs. The divisions, both inter-party and intra-party, brought to the surface the ideological inconsistency and the political expediency of the parties vis-a-vis the question of caste and positive discrimination.

THE NATIONAL FRONT (NF)

The job reservation policy for the Other Backward Classes based on the Mandal Commission recommendations was taken by the short-lived (in power for 11 months) National Front—the minority coalition government led by the largest constituent, i.e., the Janata Dal (JD). The other partners of the National Front Government are: Telugu Desam Party (TDP), Dravida Munnetra Kazhagam (DMK), Assam Gana Parishad (AGP) and Congress (S). The ruling coalition was supported from outside by the Bharatiya Janata Party and the Left Front, i.e., the CPI and CPI(M). The National Front government was the second non-Congress coalition at the Center, And it may be recalled here that the Mandal Commission was constituted in 1979 by the first non-Congress coalition at the Center—the Janata government which was also short-lived.

Manifesto: The pre-general election (1989) common manifesto of all five Front partners states that restoring dignity to the nation and reaffirming commitment to the people is to be the motto of the National Front. The 39-page manifesto promises to initiate comprehensive electoral reforms to curb money and muscle power to revitalize parliamentary *and* other constitutional institutions and restore the true federal character of the polity; to secure a fair

deal to the oppressed and marginalized groups such as Scheduled Castes and Tribes and other backward classes and to accord special attention to women's problems. More importantly, among other things, the manifesto also promises to make the right to work a statutory right, to enshrine the right to information in the Constitution.

It further says: "The socially and educationally backward classes will be given special opportunities and substantial reservations in employment, education and public offices will be made. The recommendations of the Mandal Commission will be implemented expeditiously".²

The prime minister V.P. Singh's decision (announced on August 7, 1990) to implement the Report of the Mandal Commission had not only balkanized public opinion in the nation but also polarized political forces within the ruling National Front; friends turned into foes and enemies into allies. Much of the ferment in the ruling party was directly linked to the level of protests in various States. For example, when violent demonstrators fell to police bullets in Orissa, chief minister Biju Patnaik raised the first standard of revolt, angrily accusing the prime minister of inciting caste violence. Until he spoke out, Patnaik was among Singh's staunchest supporters. So when his statements were splashed countrywide a sense of doom gripped the party. He observed that Mandal Commission Report was "full of errors" and Orissa had no list of backward classes entitled for reservation. Also, the acceptance of the Report was "part of the Hindu heartland politics solely aimed at acquiring votes. The previous prime minister and his present counterpart both had promoted and have been promoting caste system for the same purpose".³ But when more than a dozen MPs from Orissa called on Mr. Singh and told him they were opposed to Biju's outburst, he sensed an incipient revolt in his own house, and within 24 hours he had softened his own stand. Clearly, few in the party could muster the courage to publicly decry the Mandal Commission Report. During the five-week parliament session, Mr. V. P. Singh called four National Front Parliamentary Party meetings—and not once did he face any hostility.

Senior Janata Dal leaders Messrs Chandrashekar, Yaswant Sinha and Harmohan Dhavan and their supporters condemned the Mandal move publicly. In a statement, issued to the press on 29 August, 1990, Mr. Chandrashekar said: "In view of the timing of the announcement made without adequate consultation with different parties and groups and

without getting into the details of the Commission's Report, made the Parliament, press and the academic community feel suspicious that narrow factional and electoral considerations have prevailed over national interests....the spontaneous reaction reminds us of the disastrous consequences produced by the colonial policy of reservations and separate electorates on communal lines".

However, he contradicted himself when he added that "while thinking on this complicated and highly sensitive issue, we cannot ignore the compulsions of social dynamics". Mr. Yashwant Sinha too, in a letter to the prime minister, regretted the manner in which the recommendations of the Commission were being implemented "generating avoidable heat and unnecessary controversy". But none of the dissenting leaders dared to oppose the policy in the parliamentary party meetings where the policy received widespread approval. Said Mr. Jaipal Reddy, spokesman of the Janata Dal: "It was part of our election manifesto and he as a loyal party soldier is determined to implement it". Retorted Dhavan, the general secretary of the National Front Parliamentary Party: "It is not a question of the manifesto. Should we plunge the country into a caste war just for retaining power?"

But the dissenting leaders were in a minority, and stood arrayed against powerful backward class leaders like Hukum Dev Narayan Yadav and Ram Avadesh Singh from Bihar; Satya Prakash Malaviya, Janata Dal general secretary, and Ram Dhan, a prominent Dalit leader, who from being arch foes of Mr. V.P. Singh had overnight become his most ardent supporters. Even Janata Dal president S.R. Bommai, after initial reticence, came out strongly in favor of the move. Said he: "If the Report is not implemented, there will be a bloody revolution in the country". Industry Minister Mr. Ajit Singh directed his supporters to organize pro-Mandal rallies. Messrs Arun Nehru and Arif Mohammad Khan were the only Central Ministers who dissented.

The realignment of political forces occurred in States too. Uttar Pradesh chief minister Mr. Mulayam Singh Yadav, who had been closely associated with Chandrashekar for quite some time, did a flip and almost disowned his mentor. Commenting on Chandrashekar's criticism of the reservation policy, he said: "I do not believe a senior party leader like Chandrashekar could make such a remark against the Mandal Commission". Interestingly, in the south, the bastion of caste-based politics, Mr. V.P.

Singh picked up supporters, with even several Congress (I) MPs privately pledging him their support in case of a political crisis. The net result was that while he had lost a following outside, he had gained it within the party. But it was still unclear whether the polarization would give him the political stability he desperately required. Mr. Singh's Thakur base was largely intact because the powerful Thakur lobby felt that a few piffling government jobs would affect them not in the least. Mr. Singh may be the first upper caste prime minister since Independence to take over the leadership of the Muslims and backwards, but his hold over the faction-ridden ruling party seemed increasingly tenuous.⁴

Mr. S.R. Bommai, referring to the Congress leader's (Rajiv Gandhi) statement that economic status be criterion for reservation, said that the Congress (I) Governments in the south have been implementing reservation policy for the backward classes based on caste only. He said that the NF Government had taken its election promise seriously. Achievements in the first ten months were significant, but publicity to the internal differences in the party had swallowed the good work of the Government. He also stated that the party was prepared to hold talks with the BJP which had expressed a different view on the matter. '

Mr. V.P. Singh's supporters maintained that he still clung to his original view that the Mandal issue would help the Janata Dal to knit together a coalition of backwards that make it electorally unbeatable in Uttar Pradesh and Bihar. Moreover, they pointed out, he had been vindicated in his belief that no political party could dare oppose reservation. However, it was true that nobody had openly opposed reservation, but—sensing the mood of the media and the middle class—nearly every party had found the perfect excuse for opposing the prime minister's decision to increase reservations. Generally, this was framed in terms of "we are all for the 'Backwards' but oppose the manner in which the Mandal Commission recommendations are being implemented". That this was a politically expedient stand became clear when the all party meet to discuss the Mandal Report ended in chaos with each participant producing its own reservation formula. Consequently, Mr. Singh stood isolated.⁶ Mr. V.P. Singh and his colleagues certainly erred when they did not seek the support of other political parties, particularly those which were propping up the National Front government, on such an important issue like job

reservation. The mere mention of reservations in Janata Dai's manifesto alone did not provide sufficient justification to go ahead with the implementation of the Mandal Report.⁷

Contradictions in the National Front

The abrupt decision to reserve 27% of the Central Government jobs for the SEBCs was announced by the then prime minister V.P. Singh who was heading the National Front minority government which was supported from outside by the Left and the Bharatiya Janata Party. The announcement (made on August 7, 1990) precedes the proposed farmers' rally (scheduled for August 9) by Mr. Devi Lal, then the deputy prime minister, who was dismissed from the Union Cabinet on August 1. The timing of the announcement was a sure indication of the cynicism with which Mr. Singh approached the matter. Soon after Mr. Devi Lal was removed from the Cabinet, he was replaced in the Cabinet Committee on Political Affairs (CCPA) by Mr. Sharad Yadav, a claimant to the national backward caste leadership. On August 6, when Mr. Yadav attended the first CCPA meeting, he joined the prime minister in suggesting that the Mandal Report be implemented immediately. Its supporters even went to the extent of openly citing its advantage in creating a "votebank". Some members suggested that Mr. Singh discuss the matter with the BJP and the Left. Later, Mr. Singh called Messrs L.K. Advani (BJP) and Harikishan Singh Surjeet (CPI[M]) and simply informed them. It was a fait accompli; the announcement followed on August 7.⁸

According to an analyst, three factors influenced the timing of Mr. Singh's decision on 27% reservation. The first was the rally staged in Delhi on August 9, 1990 by Mr. Devi Lal, deputy prime minister and Minister for Agriculture, to flaunt his strength in the wake of his removal from the Union Cabinet on August 1. By announcing his decision on reservation, Mr. Singh wanted to wean away the backward castes from Mr. Devi Lal and "delink" them from the Jats who constituted Charan Singh's old power base which Mr. Devi Lal was trying to take over. It was more in the power struggle within the party; it was "a pre-planned move to deflate the momentum a humiliated Tau wanted to build around his emotive urban versus rural theme to humiliate the prime minister". Mr. Singh

particularly wanted to squash the possibility of Mr. Devi Lal demanding the implementation of the Mandal Commission recommendations at the rally. This would have enabled Mr. Devi Lal to take credit for job reservation for OBCs if Mr. Singh implemented the recommendations promptly after that. On the other hand, he would have had to face the charge of stalling if he delayed.

The second factor was attributed to Mr. Sharad Yadav, Textile Minister in Mr. Singh's government. He hinted that the decision to implement the Mandal Commission Report was the Janata Dal's answer to the Vishwa Hindu Parishad's and the Bharatiya Janata Party's movement for building a Ram Temple at the site of what they considered to be the birthplace of Ram of *Ramayana*, revered as God by Hindus, at Ayodhya in Uttar Pradesh. The movement posed a serious problem before the National Front government because the temple, according to the VHP, had to be built after replacing the Babri Mosque which, it claimed, was built by Emperor Babur after he had demolished a temple which earlier stood at the site of Ram's birth. The approach of the VHP's extended deadline of October 30, 1990, for a negotiated settlement of the matter and the prospect of the VHP starting the construction of the temple unilaterally after its expiry, had been causing great anxiety to the NF government which favored a negotiated settlement or the acceptance of the verdict of the judiciary which was seized of the matter. It made sense for Janata Dal leaders to hope that the decision on reservation would undermine the temple movement by confronting the OBCs in the VHP and BJP with the choice of either having a government which gave them reservations and, through it, access to bureaucratic power, or the temple •if that came to that. A prominent Janata Dal leader who believed to have asked his people, "Do you want a Yadav Raj or do you want a Ram Mandir?" On their part, the BJP leaders were convinced that the religious sentiments aroused by the temple-mosque dispute would cut across caste barrier. The third factor was Mr. Singh's desire to convey his readiness to go for a mid-term poll if that came to that.⁹

Mr. Devi Lal's dismissal, on August 1, 1990 did not bring down the government. The National Front Parliamentary Party meeting on August 3, expressed its confidence in Mr. Singh's leadership. Nevertheless, Mr. Devi Lal continued to flex his political muscles and there was apprehension about what he might announce or do at the massive rally his supporters were organizing at the Boat Club lawns (Delhi) on August 9. It was under these

circumstances that Mr. V.P. Singh announced in Parliament on August 7, 1990 that the National Front government would reserve 27% of Central sector jobs for the SEBCs. The move's timing strongly suggested that the purpose was to win over the OBCs who were regarded as strong supporters of Mr. Devi Lal and thereby reduce the latter's potential for creating trouble. He also sought to take the wind out of the rural-urban issue which Mr. Devi Lal had raised. In an interview with the UNI (*Indian Express* October 4, 1990), he said that the Mandal Commission recommendations had to be implemented without delay to curb the rapidly growing resentment in the backward areas and the rising anti-urbanism.¹⁰

However, the conviction persisted among the upper castes that the partial implementation of the recommendations of the Mandal Commission was inspired by the *realpolitik* of expanding and consolidating the vote of the National Front.¹¹ After all, deposits into and withdrawals from votebanks have been routine democratic transactions and these were what Mr. Singh was engaged in. His motives were obviously mixed, as the timing of the announcement indicated. But the party manifesto and other measures taken since January (1990) show that it was not a tactic pulled abruptly out of a hat. He was striving to put together a coalition capable of challenging the Congress(I), the BJP and the traditional representatives of the haves. It extends to the minorities, specially the Muslims, the SCs and STs (by insisting that the existing reservations for them be filled) and the numerous OBCs.¹²

The majority of Janata Dal MPs and MLAs hailed from the middle and lower castes and classes. So it was quite apparent from the start that the new Janata leaders at the Center and in States would do something concrete in favour of the backward classes. This had now taken the form of accepting the Mandal Commission recommendations.¹³ Moreover, for Mr. Singh, the best way to prevent his party's MPs from rebelling or siding with Mr. Devi Lal was to send out the message that he would advise the dissolution of the *Lok Sabha* and holding of a mid-term poll if he was pushed to the wall. An important step in this direction was projecting himself as a champion of the downtrodden. This became even clearer when he stated in the *Rajya Sabha* on August 9, 1990—two days after announcing the decision on reservations in the *Lok Sabha*—that 40% of the seats in Parliament and the state assemblies should be reserved for people below the poverty line.

He also declared that the Government had decided to strengthen the Minorities Commission by giving it the statutory status that the Scheduled Castes and Scheduled Tribes Commission enjoyed.¹⁴

Significantly, though the Janata Dai's manifesto promised to implement the Mandal recommendations, the way in which Mr. Singh announced the policy—sudden, "unilateral" and "undemocratic"—created a widespread skepticism about his real motives. He announced the reservation decision suddenly in Parliament without any serious debate within the Janata Dal and the National Front and discussions with allies like the BJP and the Left Front, which were propping up the minority government. The National Front had a strength of a little more than one-third of the *Lok Sabha*. So the general feeling was that it had no mandate to take such a controversial decision on its own. And it had a "moral obligation" to have prior discussions with the BJP and the Left Front. In fact, given the highly controversial nature of the Mandal Commission's recommendations, Mr. Singh should have called an all party meeting and striven for a consensus before announcing the decision. As it turned out, he called such a meeting as late as September 3, 1990, after his announcement of August 7 on reservation had triggered an intense and widespread protest movement.¹⁵

The proceedings at the meeting, attended by as many as 25 political parties, showed marked differences on the issue of reservation. The National Front constituents—Janata Dal, Telugu Desam, Dravida Munnetra Kazhagam, Assom Gana Parishad and Congress (S)—and the CPI doubtless supported Mr. Singh's decision fully. But the Congress (I), the BJP and the CPI(M) were categorical about linking economic criteria to reservation. Mr. Chandrika Kania of Shiv Sena and Mr. Inderjit of the GNLF, also favored quotas based on economic considerations. So sharp were the differences that there was a volley of protests when Mr. V.P. Singh tried to announce at the end of the five-hour-long meeting that a consensus had been reached. He was forced to drop the reference to a consensus.¹⁶ Despite opposition, Mr. Singh stuck to his position that no economic criterion should apply to the proposed 27% reservation for the OBCs. He, however, was prepared to consider reserving 5 to 10 percent of government jobs for the poor of all castes.

Moreover, Mr. Singh's failure or refusal to consult other parties also indicates that he did not want the reservation decision to appear as the result of a collective consensus but as

exclusively his own. This in turn suggests that he wanted to project himself as the sole champion of the underprivileged. It is difficult to say what exactly prompted Mr. Singh to announce the 27% reservation for the OBCs. But as discussed above, several motives, each of them highly plausible, suggest themselves. All the three moves mentioned above can be seen as complementary to one another and adding up to a neat strategy—neutralizing Devi Lal's rally and subduing him and other rebellious elements in the party by conveying his readiness to go for a mid-term poll if they did not give in, and cashing in on his image as the sole champion of the downtrodden if a poll became unavoidable.¹⁷ Notwithstanding Mr. Singh's reiterations, the general suspicion persisted, particularly among the upper castes, that his timing of the announcement of the policy had more to do with his political calculations aimed at outmaneuvering Mr. Devi Lal and the BJP than with any genuine commitment to the cause of the downtrodden among the backward castes. But once having chosen the Mandal Commission Report as a tool, even for his own political advancement, he would have to be propelled by the compulsions.¹⁸ Though the Janata Dal was also internally divided, like other parties, it was most solidly with the Mandal Commission due to its strong Shudra element.¹⁹ The National Front government collapsed after the BJP withdrew its support to it during the last week of October 1990 over the Ramjanambhoomi-Babri Masjid controversy. The government bowed out when it failed to win a vote of confidence in the *Lok Sabha* on November 8, 1990.

THE CONGRESS (I)

The Mandal panel was constituted in 1979 by the Janata government. But the Commission submitted its Report in 1980 to the Congress government headed by Indira Gandhi as the Janata coalition had collapsed. The two successive Congress governments did not take any action on the Report. The Congress governments were unwilling to implement it as they enjoyed electoral support of twice-born castes along with Scheduled Castes and Tribes. The Congress did not have much of support among the OBCs. Hence it was not under pressure to implement the Report, though there were sporadic demands from the OBCs. The Congress kept on promising to consider the Report but did not act on it.²⁰ "Neither Indira Gandhi nor her son Rajiv wanted to take a firm stand on the issue as they would have been

opposed by the upper castes. The Congress(I) did not want to take the risk and kept buying time".²¹

Reacting to the unanticipated decision by the NF government on the Mandal Commission, Rajiv Gandhi, president of the Congress (I), made the Party's "official" position on the Mandal Commission clear at the Congress (I) Parliamentary Party's valedictory meeting. He devoted most of his speech to the Government's decision on the Mandal Commission. "The prime minister, Mr. V.P. Singh had taken the decision in a huff. There was no proper discussion even in the Cabinet and, according to our information, the Mandal Commission was not on the agenda paper even. There were also much quibbling among the Bharatiya Janata Party and the Left parties supporting the Government from the outside," Mr. Gandhi pointed out. Describing the government's decision to go ahead with 27% job reservation, irrespective of consequences, as a "political gimmick", the former prime minister said that by backwardness the Constitution makers meant socially and educationally backward classes and not just backward castes. But the government had arbitrarily changed a concept well-defined in the Constitution. "Yesterday, I was shocked when during the debate on the Mandal Commission in the *Lok Sabha*. Mr. V.P. Singh did not get up to say that he did not believe in caste. It was shocking that the country had a prime minister whose actions encouraged casteism", Mr. Gandhi said, reminding his party colleagues that "caste is a cancer in our society".

Spelling out the Congress (I)'s stand on job reservation issue, Mr. Gandhi said: "we are for helping the weakest and the poorest among backwards. The Congress (I) was never against the reservations but it was opposed to the proposal to define caste as the sole factor for determining the economic backwardness. The Mandal Commission had used the economic factor to identify castes but it had not used the economic factor to go beyond caste. It is worth noting that the Constitution had defined backwardness in class terms and not in caste terms. The Congress (I) man and woman should go to people and tell them that the advantage of reservation should not go to the privileged and vested interests. Assistance should be given to the truly poor people, to the landless, to people falling in the poorest category". He particularly asked the MPs belonging to Backward Classes to go to the rural areas and tell people "what Mr. Singh is doing is a total fraud on backward

classes and what the other backward classes needed is educational and financial assistance".

Manifesto: The Congress (I)'s pre-general election (1989) manifesto places the election for Ninth *Lok Sabha* in the perspective of a struggle between the ruling party (Congress I) which wants to give "power to the people", and the Opposition which wants to continue the regime of "power to power-brokers". The 60-page manifesto lays much stress on stability and secularism. It states, "One of the major issues in these elections is the future of secularism".²³

Interestingly, the Congress (I)'s manifesto does not mention the Mandal Commission at all.

The essence of the Congress' position on the SEBC reservations can be gleaned from the statements issued by its prominent leaders and members. The official spokesman of the Congress, Mr. M.J.Akbar called for "a national consensus" on the issue and demanded inclusion of "economic criterion" for reservations; he added that the implementation of Mandal Report had generated "an environment of caste-war in the country". Dr. Jagannath Mishra (former chief minister of Bihar), in a letter to the prime minister, urged the government to apply the economic criteria along with social and educational backwardness "so as to protect the small fry against the all pervasive lure of big fish among the BCs". The general secretary of the All India Congress Committee, Mr. N.N.Gadgil asked the prime minister to convene an all-party meeting to "discuss the Mandal Commission Report afresh"; and he opined that the new proposal to give five to ten percent reservation for the economically backward sections should also form part of the discussions.²⁴ The resolution adopted at the Congress Working Committee meeting (held on 31 August, 1990) had "rejected the concept of caste as the sole criterion for reservation; the definition of backward classes cannot exclude Muslims, Christians, Buddhists, Parsis and other religious minorities as well as the poor of the other castes....and to redefine 'classes' to only mean 'castes' was the most retrograde step".²⁵

Like all the other major political parties, the Congress (I) was also divided over the reservation policy based on the Mandal Report. While the ruling Janata Dal was mired in seemingly intractable conflicts, the Congress (I) was faring no better. In fact, its performance in Parliament and outside made it clear that the party was not only divided on

the issue but was as guilty as the Janata Dal in abetting violence. To begin with, it stood accused of tardiness, taking almost three weeks to make known its stand on the Mandal Report. While its student leaders protested in Delhi, the party maintained a cryptic silence. But this did not mean the party lacked opinions on the whole issue. In fact, when the 22-member Political Affairs Committee met jointly on September 3, 1990, the conclave turned out to be a stormy affair. Mr. Rajiv Gandhi brought a resolution which closely advocated the total rejection of the Mandal Report.

However, no sooner did the meeting begin than the party stood clearly divided along caste and class lines. Vasant Sathe (a Brahmin) attacked the Report, declaring "V.P. Singh is reviving the caste system, the party must fight it"—Only to come up against an aggressive array of backward class leaders like Mr. B. Shankaranand, Mr. Sita Ram Kesri, Mr. P. Shiv Shankar, Mr. D.P. Yadav and Mr. Margatham Chandrashekar. "The Congress had always fought for the downtrodden. How can we oppose the Mandal Report now?" they countered. Mr. Gandhi was forced to reach a compromise. A four-member committee consisting of Messrs. H.K.L. Bhagat, V.N. Gadgil, Shankaranand and D.P. Yadav was entrusted with the job of preparing a consensus draft. But the new draft the committee chiseled raised fresh dust. And it was almost seven hours of heated discussions later that the CWC was able to adopt a resolution. Some of Rajiv's suggestions were accepted, but he had to yield to the majority view that the Mandal Report could not be rejected in its entirety. Later, Mr. Gandhi admitted in an interview to a daily that he was overruled.

In Parliament he, however, stuck to his own views. During his three-hour speech, thin on substance, he attempted to demolish the entire Report. When pushed to the wall by the prime minister V.P. Singh, he even admitted that the Congress (I) policies of introducing caste-based reservations in Karnataka and Andhra Pradesh were a mistake. This backfired as it demoralized the south Indian MPs who constituted two-thirds of the party's *Lok Sabha* strength. Mr. Gandhi then tried to target Mr. Singh, and incited the MPs to fight the "obstinacy of the single individual". Mr. Singh, with his swift reaction, trapped Mr. Gandhi by quoting from the deposition of Mr. Shiv Shankar who, as Law Minister in 1981, advised the Mandal Commission against injecting any economic criterion for reservations. That the Mandal Report had hopelessly divided the party along caste lines as nothing ever before was evident when Mr. Charanjit Yadav, a backward class leader.

openly welcomed the reservations even as none of the three Congress (I) chief ministers supported Mr. Gandhi's viewpoint. In the final count, the Congress (I) failed to wrest any advantage from the Mandal move, and if anything, opened itself up to new contradictions.²⁶

The Congress as the main party of the bourgeois-brahmin combine which has tried to build an electoral base on an appeal to Dalits and *Adivasis* (or the "rural poor") against most of the *Shudras* (the middle peasants) now finds this strategy getting refuted in practice; the somersaults of the Congress indicate its dilemma and its apparent involvement in provoking conflicts in many areas indicate its cynicism regarding the nation whose integrity it claims to be the best upholder of.²⁷ The Congress had sat on the Mandal Report for almost one decade and did nothing because most of its top leaders belonged to the upper castes. They apprehended that if the Mandal Commission's recommendations were implemented, it would break the upper caste stranglehold on government jobs, This in turn would, they feared, break the nexus between politicians and bureaucrats of the upper castes which has been a notable feature of Congress rule in Bihar and elsewhere,²⁸ It should be mentioned in this context that the Congress(I) government which came to power in 1991 (headed by Mr.P.V.Narasimha Rao) amended the original Order of the National Front government reserving 10% posts under the Government of India for other "economically backward sections of the people who are not covered by any of the existing schemes of reservation" (*see Appendix; II*).

THE BHARATIYA JANATA PARTY (BJP)

The unanticipated decision on Mandal Commission had also caught the Bharatiya Janata Party (BJP) by surprise. The BJP was the largest of the three political parties—the other two being the CPI and the CPI(M)—which supported the minority National Front government from outside. Superficially, the BJP appeared united in favor of the Mandal Commission, while even the Left parties were almost vertically divided.

The BJP stood more undermined by the Mandal move than any other. Its meticulously orchestrated efforts to unite the Indians along religious lines were in danger of being defeated as the community stood divided along caste and class lines. Both

Mr.L.K.Advani and Mr. Atal Behari Vajpayee almost threatened to withdraw their support if the Government did not review its stand, yet they failed to come out with a clear thesis against the reservations. Even so, the BJP faced the wrath of the anti-reservationists. and the BJP-ruled Himachal Pradesh, which rejected the Report, was the first State to call in the army to quell the riots. But the BJP was not completely devoid of the Mandal supporters. Many of its backward caste MPs from Rajasthan and Bihar bore upon the party to keep its stand on the issue low-key. Pushed on to the horns of a dilemma, the party failed to take a consistent stand on the issue.²⁹

Manifesto: The 40-page pre-poll manifesto of the BJP—released on November 8 (1990) by its general secretary, Mr.Murali Manohar Joshi—says that the party stands for "justice for all. the appeasement of none", emphasizing what it has been saying all along, namely . all the major parties in the country have made a practice of appeasing the minorities. In line with this is the assertion that the BJP believes in "positive secularism".

In the opinion of the BJP, the question of reservations has to be viewed with an open mind free from all prejudices. The manifesto states:

1. Reservation should be continued for Scheduled Castes and Scheduled Tribes as before;
2. Reservation should also be made for other backward classes broadly on the basis of the Mandal Commission Report, preference to be given to the poor among these very classes;
3. As poverty is an important contributory factor for backwardness, reservations should also be provided for members of the other castes on the basis of their economic conditions.³⁰

The refrain of the stands taken by the divided BJP's largely upper caste leadership, like the Congress, had been the "economic criteria" and additional reservation for the economically backward. But the BJP did not oppose the job reservations for the OBCs as the party had promised, in its pre-election manifesto, the implementation of the Mandal Commission recommendations. However, the party president, Mr. L. K. Advani on many occasions stated that his party would "reconsider" its support to the National Front. Such statements created confusion and gave strength to the agitating students and the opposition parties, particularly the Congress. The BJP felt that while implementing the recommendations of

the Mandal Commission, the criteria of economic backwardness should be given proper weightage along with caste consideration. Mr. Krishanlal Sharma, BJP's general secretary, said it was high time that reservations for the economically backward, other than SCs, STs and OBCs, be considered immediately. Party's president, Mr. Advani said (on August 24, 1990) in the *Lok Sabha* that a minority government should not have ignored the advice of its supporting parties to apply economic criteria while implementing the Report. Both BJP and the Left had tendered this advice, he added.³¹

At the all-party meeting (held on September 3, 1990), the BJP leader Mr. A.B. Vajpayee clarified his party's stance on reservations and said that the BJP stood for reservations for SEBCs. But poverty is also a kind of backwardness. He favoured the formula evolved by late Karpoori Thakur in Bihar whereby the poor among the backward castes were given preference in recruitment. "Besides, there should also be some reservation for the poor belonging to the so called high castes," he further stated. And a possible split in the BJP on the issue of implementation of Mandal Report was averted when its fasting M.P., Dr. J.K. Jain gave up his protest after the intervention of the RSS chief, Balasaheb Deoras. Mr. Jain, who had been on hunger strike for about six days against the Mandal Commission, did not heed to the appeals from the BJP leadership to give up the fast. Moreover, the job reservation policy for the SEBCs had also exposed the lack of agreement between the BJP and the RSS over the issue. Mr. Deoras sought to impress upon Mr. Advani that the BJP will have to take a more pragmatic view on the Mandal issue as the party's base was among the upper castes. Mr. Advani was reported to have told Mr. Deoras that Dr. Jain's fast had put the party in an embarrassing position as it was against the expressed stand of the party. And when he was on fast, "he was representing a split in the party".³²

The divergent positions taken by the BJP's leadership in the States also reflected the divisions within the party over the OBC reservations. Mr. Gopinath Munde (BJP president, Maharashtra) demanded immediate implementation of the Mandal Commission recommendations in the State. BJP M.P., Mr. T.S. Jatav (representing Bharatpur, Rajasthan) observed that the neglected and oppressed people required social justice and a small problem had been magnified by the press and the opposition. The Bihar unit of the BJP was a divided house over the reservations. Despite the national leadership's support to the

policy, a large section of the State executive made their anti-reservation postures public. BJP's Punjab unit's president, Mr.M.M.Mittal had urged the prime minister to review the decision on the Mandal Commission; he favoured quotas on economic basis in the interests of the unity and integrity of the country. Another M.P. of the BJP from Uttar Pradesh. Mr. S.P. Goutam, a well-known advocate of the cause of the downtrodden, urged all political parties to find a solution to the problem. He added that the deprived sections of society needed immediate attention.³³

The BJP (along with the Congress) seemed to be the prime target of Mr. V.P.Singh's Mandal strategy. For the BJP, the political fallout of Mandal was potentially devastating. As a party that has tried to project the idyllic notion of an undifferentiated Hindu society, the legitimization of caste as a basis of political organization can be very damaging as it would weaken the *Hindutwa* concept of the BJP. The Mandal Commission attacks the basis of Hindu consolidation by reinforcing a set of alternative social allegiances. This caste-based regroupment may mean that the BJP will once again have to confront the familiar problem of being naturally identified with its Brahmin-Bania core. Having recently made inroads among the OBCs in the whole of north India (during the general elections in November 1989), the BJP was threatened, if caste polarization extended to electoral behaviour, with being reduced to a rump.

The focus on the Mandal Commission constituted an organized assault on the Ram Janambhoomi agitation. By making ritual backward status a political attribute, the government had, in effect, questioned the underlying Sanskritisation logic of participation in the quasi-religious ceremonies associated with the movement. Mr. Mulayam Singh Yadav had, in fact, made this direct link and equated the opposition to the Ram Janambhoomi agitation with support for the new reservation policy. It was also pointed out that Mr .Singh wanted to achieve his personal and party goals by garnering OBC votes (who constitute about 50% of the Indian population) to emerge stronger so that he would not then have to depend on the BJP's support.³⁴

"Among the political parties, the BJP is in the most helpless position because its rhetoric of Hindu unity is getting disapproved in practice and because while it wants to appeal to the masses it cannot go against its Brahmin leadership very much. The fundamental contradiction of the *Hindutwa* ideology—its brahminism versus its attempts

to get a mass base—is being exposed".³⁵ The above contradiction was also borne out by the caste cleavages within the Shiv Sena. While Mr. Bal Thackeray (Sena's chief) opposed the Mandal Report, Mr. Changan Bhujbal—who was an important leader of the Sena and then Mayor of Bombay and belongs to OBC himself—supported the policy. But the Shiv Sena did not take any official stand, as a party, against the Mandal Commission. Even the RSS (*Rashtriya Swayamsevak Sangh*) refused to take a categorical stand on the Mandal Commission. RSS's all India general secretary, Mr. H.V. Sheshadri said, "you cannot have a straightjacket answer for a complex problem" and called for more "broad-based reservations instead of the recommended caste-based one".³⁶

THE LEFT PARTIES AND GROUPS: CPI, CPI(M) AND EXTREMIST GROUPS

The Communist Party of India (Marxist) and the Communist Party of India—the two cadre-based parties—were also taken by surprise by the unanticipated decision taken by the National Front government which they were supporting from outside. Superficially, while the BJP appeared united in favour of Mandal, the left parties were almost vertically divided. The CPI was the first to come out in defense of the reservations, while the CPI(M)'s central committee took nearly two weeks to formulate its pro-Mandal tack, but not before displaying fissures along regional lines on the issue. While the West Bengal group was against, the Kerala group was for Mandal. In Parliament, CPI(M) Members were among the few aggressive supporters of the Government. Ms. Subhasini AH, CPI(M)'s most vocal *Lok Sabha* Member, declared: "We are for the implementation of the Report". And she went around campuses mobilizing support for the Mandal Report.³⁷

Manifestos: The CPI(M)'s pre-election manifesto—released on October 25, 1989 by the Party's general secretary, Mr. E.M.S. Namboodripad—lashed out at the Congress Government for its "failure on the economic and other fronts". The manifesto contains a "program of demand" which includes restructuring of Center-State relations, reversal of the Rajiv Gandhi's economic policy, resistance to US pressure and demands, steps to make the economy independent and self-reliant, etc. The manifesto pledges to defend "all minority rights and implement provisions of the Constitution"; fight against atrocities on

women, Scheduled Castes and other weaker sections. It says it will take immediate steps to create more jobs and embody the right to work as a fundamental right in the Constitution.

"The Communist Party of India will support a National Front government provided it does not have the BJP as a coalition partner," general secretary Mr. C. Rajeshwar Rao said on October 31, 1989, releasing the election manifesto of his Party. The 33-point manifesto is a strong indictment of Rajiv Gandhi government. It includes issues such as corruption, criminalisation of politics, refusal to carry out the land reforms, neglecting the plight of agricultural workers, Harijans and the tribal people, increasing unemployment, staggering foreign debt, spiraling prices, etc.

Significantly, both the manifestos of the CPI(M) and the CPI do not mention the Mandal Commission and the OBCs.³⁸

During the controversy over the Mandal Commission, the left had seemingly returned to a heritage that it had all but renounced. Along with other unconvincing arguments for not extending protective discrimination to sections of the population whose social and educational backwardness is undoubted, it too has put its "economic criterion" act together. Lately, class seemed to have lost its appeal for the CPI(M) and the CPI, but that it is a caste question that raises a problem they have chosen to rejuvenate the forgotten category.³⁹ Mr. Jyoti Basu, chief minister of West Bengal and leader of the CPI(M), felt that the Mandal Commission recommendations framed at least 15 years ago need to be modified in keeping with the changes in Indian society over the period. Mr. Basu had conveyed his views to the CPI(M) politburo during the last week of August 1990. Most of the CPI(M) leaders, including Mr. Basu, were unhappy over the way the National Front government decided to implement the almost mothballed Mandal Commission Report. Mr. Basu, on September 2, 1990, criticized the Front government for announcing the policy with undue haste. After the Supreme Court's stay (on October 2, 1990) of the government's order on the Mandal Commission, the politburo of the CPI(M) called on the Front government to use the interim period available for the widest possible consultation on the reservation policy. The Party once again called for finding a solution to the reservation issue on the basis of the Karpoori Thakur formula followed in Bihar.⁴⁰

At the height of the anti-Mandal turmoil, the CPI organized a pro-reservation youth rally in Delhi on September 6, 1990. Thousands of youths and students from all over the country owing allegiance to the two CPI outfits—All India Students Federation (AISF) and All India Youth Federation (AIYF)—participated in the rally. The general secretary of the CPI, Mr. Indrajit Gupta said at the rally that the implementation of Mandal Commission Report in its present form was not a revolutionary step. "It only implies to reserve jobs in the Central Government services. The Congress and the BJP have unnecessarily misguided the youth". The president of the AIYF, Mr. T. S. Sandhu warned the government of facing the consequences if the right to work was not made a fundamental right. Mr. R.N.Rai, president of AISF, criticized the BJP for raking up issues like Ramjanambhoomi to exploit the youth for its political gains. The rally was also addressed by Mr. Ram Vilas Paswan (Union labour minister) who said that the government had initiated steps for including right to work in the Constitution.⁴¹

The conflicting positions taken by the CPI(M)'s leadership reflected the ideological incoherence of the party over the question of OBCs. Mr. Jyoti Basu urged (on August 30, 1990) the National Front government to give "serious thought" to economic and other aspects in implementing the Mandal Report and reiterated his party's "general support" to the Commission's recommendations. Mr. Basu further stated that it was also true that there are rich people among these backward castes. "It must be seen that those rich did not grab the benefits of reservation". The CPI(M)'s general secretary, E.M.S. Namboodiripad announced his party's "conditional support" to the reservation policy. He declared that reservations are acceptable but only if an economic criterion is included as well as provision made for some reservation for the poor of the other castes.⁴²

The abrupt decision of the Central Government to implement job reservations for the SEBCs had also exposed the lack of consensus among the left parties too. Their reactions to the reservation policy were characterized by conflicting statements about the issue. The response of the left parties to the reservations was almost on the same lines as that of the other major rightist and centrist parties: they extended their support to the policy *per se* or in principle or suggested certain modifications. It is not particularly amusing to watch the left forces in the country accepting the intellectual leadership of Lohiaite socialism, in the persons of Bindeswari Prasad Mandal and Karpoori Thakur. A left position need not

necessarily he identified either by its crusading ardour against merit and efficiency or by its messianic zeal for reservations. The question that arises is whether Mandal Commission is right in the analysis and the remedial measures it suggests—or at any rate in the present form in which it is sought to be implemented. The more important question is to identify what the forms of discrimination and exploitation practiced are, and what bases these take place. Secondly, are reservations at all an effective means for off-setting these disabilities to any extent?

The really depressed backward castes remain even today at appalling levels of existence. It is they who should constitute the target group for any egalitarian measures. Yet, it is the "powerful group of dominant OBCs" who are likely to corner all the reserved posts, if experience is any guide. It needs to be understood that it is this group that is restive and is making a bid for entering the inner lobbies of state power so that their interests are secured on a permanent basis and do not depend on the vagaries of the electoral process, and the coming to and going out of power of Charan Singhs and Devi Lals. It is precisely because the target group is the dominant OBCs that one vital recommendation of the Mandal Commission, i.e., land reforms, is pointedly ignored. The one place where the Lohiaite Mandal speaks of Indian social reality in terms of the Marxist understanding seems to be totally absent from the left's own reactions, which have rather been preoccupied with the Karpoori Thakur formula. The relevant parts of the Commission's Report observe:

Reservations in government employment and educational institutions, as also possible financial assistance remain mere palliatives unless the problem of backwardness is tackled at its root. Bulk of the small landholders, tenants, agricultural labour, impoverished village artisans, unskilled workers, etc., belong to Scheduled Castes, Scheduled Tribes and Other Backward Castes... Through literal monopoly of means of production, higher castes are able to manipulate and coerce the backward classes into acting against their own interests. In view of this, until the stranglehold of the existing production relations is broken through radical land reforms, the abject dependence of the underprivileged classes on the dominant higher castes will continue indefinitely.

It has always been the endeavour of Marxists to expose the real nature of the exploitation and fight all attempts to perpetuate the false consciousness which posits other manifest non-class categories as the basis of exploitation. So in this sense, the parameters of discussion are set by the ruling class which is facing a crisis of legitimacy. Fundamental question, therefore, of radical land reforms, industrialization, creation of more job opportunities and the spread of mass education to show the alternative path to the "bankrupt path of capitalist development". Within this overall alternative, short-term measures may also be necessary. It may be instructive to recall that prior to August 9 (1990) declaration, things stood somewhat differently as regards the left: The Committee set up by the West Bengal government to identify the OBCs in the State, noted in August 1980 that, "Poverty and low levels of living standards rather than caste should, in our opinion, be the most important criteria for identifying backwardness". It recommended the identification of occupational groups below the poverty line as backward, for whom comprehensive programs for economic development and educational advance should be made available. That the West Bengal government accepted these recommendations is a fact of no mean significance.⁴³

Fissures in the Left Front in West Bengal

The unlooked-for acceptance of Mandal Commission recommendations also saw the emergence of dissensions within the Left Front in West Bengal—a longtime stronghold of the CPI(M)—over the positive discrimination for the OBCs. The newly-formed Mandal Commission Action Committee (MCAC) headed by a senior Left Front minister and chairman of the State Forward Bloc, Mr. Bhaki Bhushan Mandal had emphatically claimed that at least 50% of the total population of West Bengal belonged to the Other Backward Classes. This claim counters the official stand of the CPI(M). Chief Minister Jyothi Basu had already denied the existence of any OBCs in the State. He did not elaborate on the reason, nor did he provide any plausible clarification about the Mandal Commission itself identifying nearly 173 castes as belonging to the OBC group. The MCAC feels that such is the domination of the upper caste people in West Bengal that the government has failed to provide any opportunity to the OBCs. The President of the Committee openly charged

the CPI(M) with misleading the people and creating unnecessary controversy. He said that no one can deny that OBCs existed in West Bengal, it was simply for the sake of some political gains that the CPI(M) was trying to negate the issue.

While Mr. Mandal was determined to oppose the adoption of any policy decision at the government level pursuing the CPI(M) line, in 1980, deposing before the Mandal Commission, the West Bengal Left Front government had made it clear that the identification of OBCs should not be on caste lines but be based on the "life pattern" and poverty'. The official line of the Left Front government was determined by a Committee constituted by it on August 1, 1980. The Committee submitted its report before the Mandal Commission on August 30. The Commission on its part accepted the full report of the West Bengal Committee. However, the Action Committee leaders now say that the Committee was not given enough time to deliberate on the issue. Moreover, the Left Front government had come to power only three years back. The Left Parties were still to formulate their policies and take a political stand. The constituents of the Left Front were more under the political pressure of CPI(M) to toe its own political line. The MCAC leaders had brought out a comprehensive list of 177 castes belonging to OBC group. The leadership is of the opinion that OBCs constitute 50% of the total population of the State. but in order to avoid any identification on caste lines the CPI(M) leadership was tactfully pursuing the line that OBCs did not exist in the State. The castes belonging to OBCs are mainly engaged in agricultural production and/or work as artisans. Their representation in education, employment and other walks of life is negligible. It is quite obvious that the CPI(M) leadership, in a very tactful manner, have been trying to maintain the "status quo of the power structure which has crystallized in a social structure".

Interestingly, while the CPI(M) in other States, particularly the Hindi States, has been forcefully demanding implementation of the Mandal Commission Report, the party is not ready to concede the same in West Bengal. The MCAC leadership, demanding the total implementation of the Mandal Report, expressed themselves in favor of roping in all political parties except the CPI(M); it includes: Forward Bloc, CPI, RSP, CPI(ML), the Jharkhand Party and other radical communist groups.⁴⁴

The V.P. Singh government's decision to institute reservations for the OBCs has brought about a sharp turn in Indian politics. And it is instructive to witness the

predicament that political parties and forces are going through to justify their current stands. However much reservation for the Backward Classes may be condemned as a vote-catching gimmick, it is difficult for any of the parliamentary parties to take a clear stand against it. But the imperatives of "politics" have forced at least two of the left parties to make important, though not clearly stated, changes in their respective stands. The CPI(M), which has all along been against reservations for the Backward Classes, now finds itself forced to support the V.P. Singh government's decision. The CPI(M) has consistently maintained that there should be an "economic criterion" for reservation. The *People's Democracy* editorial of August 19, 1990 asks the rhetorical question, "In the sphere of reservation of jobs why should not an economic criterion be adopted?" A week later, the politburo modifies this general stand for an "economic criterion" to one of an economic criterion for the BCs. It maintains that "within the reservation allotted to them (BCs), there should be an economic criterion" (*People's Democracy*, August 26). There is no ambiguity that what is being asked for is some sort of cut-off point, an income level, or class, beyond which reservation should not be available.

A week later, the Central Committee of the CPI(M) makes the astounding claim that "The pattern of reservations for the BCs, introduced in Bihar in 1978 by the Karpoori Thakur government, provides for the economic criterion within the reservation for certain backward classes by having two lists" (*People's Democracy*, September 9). The two lists in Bihar divide the backward castes, but do not provide for any differentiation within a caste. This is very different from the "economic criterion" that CPI(M) has demanded. In fact, in West Bengal there is no list of BCs, precisely because the CPI(M) has opposed caste as a basis for reservation. For the CPI(M) to argue that its position is no different from that implemented by Karpoori Thakur in Bihar is sheer self-delusion.⁴⁵

In a clarificatory statement, the Delhi State Committee of the CPI(M) says that the Party has consistently stood for reservations for the Backward Classes. When the Mandal Commission submitted its Report, the CPI(M) is on record in Parliament, demanding its implementation in the debate on the Report in 1983. The Party has consistently maintained that unlike reservations for Scheduled Castes and Scheduled Tribes, in the case of OBCs, there should be an economic criterion, as there is greater differentiation within the OBCs. The CPI(M) has not demanded reservations for the OBCs in West Bengal and some other

north-eastern States. Because the caste structure and the nature of the socio-economic developments since Independence have not led to the type of caste divisions and oppression of OBCs as in other parts of the country. Instead, there are the united organizations of the rural poor which protect the interests of all the oppressed.⁴⁶ Nevertheless, this "clarification" neither explains nor addresses the revolt staged by the CPI(M)'s own left allies in West Bengal against the party's stance on the Mandal Commission. Moreover, it also overlooks the statement made by the party's veteran leader and its general secretary, Mr. Namboodripad advocating quotas for the upper castes on economic basis.

Left Extremist Groups

For the first time, the radical Left also joined the parliamentary Left and other mainstream (or "bourgeois") political parties in supporting the reservation policy based on the Mandal Commission. The CPI-ML (Liberation Group) was the first such formation to come out defending the Mandal Commission. If the CPI(M) exhibits one kind of bowing to political compulsions, the CPI-ML (Liberation Group) exhibits exactly the opposite kind of bowing to its political compulsions. In a hurry to become part of "mainstream politics" rather than trying to make the politics of the exploited the mainstream of Indian politics, the Liberation Group had made considerable changes in its line on caste question in order to accommodate "anti-democratic feelings of the upper castes". It was not long ago that the Liberation Group declared in its 1988 Party Congress Resolution: "As it (struggle for social dignity of Dalits and Backward Classes) strikes at the root of feudal authority, their struggle tends to become quite intense and the entire range of *babusahebs* (Rajputs), *bubhuns* (Bhumihars) and *babajis* (Brahmins) becomes the target". But the Group's post-Mandal pronouncements contradict the above ideology.

At the height of the reactionary anti-reservation movement, the IPF (Indian People's Front) held a rally in Delhi (see next para). Instead of using the occasion to strike a blow for the struggle against the caste system, the Liberation Group made an astonishing statement in its message to the rally: "Just as we do not approve of those politicians who want to take revenge on the present-day progeny of Babar, we also reject those

theoreticians who would punish the present-day offspring of Manu for the crimes of the ancestor". In the rest of the statement there are many declarations of support for reservations. But these statements do not square up with this statement appeasing upper caste reaction and branding reservation as a punishment. The Muslims of today, unlike in the days of Babar, are an oppressed and in no way an oppressor community. The Liberation Group's statement can only mean that they agree with the analysis of an eminent sociologist, "...caste has no function today except in politics" (Andre Beteille, *Times of India*, September 11, 1990). And does not that sound very like the traditional "left" formula that caste was an aspect of the superstructure alone and had nothing to do with production relations? ⁴⁷

In the thick of the anti-quota agitation, the IPF—the mass political outfit of several ultra-Left Communist formations of the country—organized a massive rally of the rural poor in the capital Delhi on October 8, 1990. The massive "red rally" of the oppressed, deprived and backwards imparted a new dimension to Left politics in India. It warned the NF government of dire consequences if it did not fulfil its pre-poll promises. This was part of the IPF's exercise to emerge as an independent third force on the national horizon. It resolved to fight caste domination (revealed in the anti-Mandal stir) and communal hatred (as was being fanned in the wake of BJP's *rath yatra* on Ramjanambhoomi issue) while waging class battles and projecting the right to employment. ⁴⁸

Interestingly, the People's War Group, arguably the most violent and widespread Naxalite group in the country, organized a *bandh* in parts of the; Telangana region of Andhra Pradesh. And later it also held a rally in the capital Hyderabad in November 1990. Here one should not gloss over the obvious political opportunism of Mr. V.P. Singh who, feeling certain about the imminent collapse of his government, resorted to this Mandal decision as a desperate move to consolidate the backward caste votebank and, curiously enough, this Thakur Raja has emerged as the Commander-in-chief on one side of this caste war. And if one goes by the reactions to the controversy, the radical left is to join this war under the generalship of Sharad Yadavs and Ramvilas Pasvans. It does not matter if the class-based mobilization built at the cost of enormous blood and toil are to be diluted and simply sacrificed at the alter of a Mulayam Singh Yadav or a Laloo Prasad Yadav, if not a Kamma supremo like NTR, so that they can further strengthen their social base. Or, to be

more precise, the Girijans and Dalits of Telangana are to be mobilized to give uncritical support to Kamma and Kapu gentry in what is essentially the later's caste war. Perhaps, the moment war cries are raised by the upper caste lobbies, the internal class differences within the backward castes as well as the class conflicts between backward caste gentry and the mass of Dalits and other rural poor simply vanish. In the face of the upper caste mobilization, is there no way out other than to resort to this suicidal course? ⁴⁹

It is nobody's case that one should oppose reservations. Rather, for a Marxist support for reservation goes without saying. But this support is not based on liberal illusions that reservations in themselves will attack the caste system and that the fight for the reservation usher in social justice. Instead, the point of departure for a Marxist is that reservations facilitate development of class polarization and class struggle. In this context it is relevant to quote from the statement of the Central Committee of the CPI(ML)'s national rally on October 8, 1990:

"We support reservations because we believe that, through a lot of initial tension, it will ultimately have a diminishing effect on the existing forward-backward schism, give a blow to the feelings of backwardness and forwardness and will bring about an element of equality among the forwards and backwards in their economic and political life as well as in the bureaucracy. And corresponding to the development of inter-elite cohesion in different castes there will also grow a matching class solidarity among the people below. Any blow to feudal, obscurantist traditions, any amount of bourgeois democratic liberalization, however superficial, will definitely accelerate the process of class polarization in the society, and as communists, as champions of class struggle, we welcome any such division in the society".

But this support does not mean that the radical left should take up the pro-reservation struggle as their own major plank and allow themselves to be swept away by the wave set in motion by Mr, V.P. Singh. And still less that they should take sides in this caste war and fight it out in street battles. And in any case, what will be the outcome of this caste war even if it is totally successful. 27% government jobs? Any reservation, by rule, is a substitution within the existing status quo and can the radical left afford to tone down their program to this narrow demand, paying an enormous political price in the process. True, marxists need to combine caste-struggle with class struggle. But

submerging our own independent class mobilization in the parliamentary power games of ruling class politicians is no way for such combination. A close interweaving of our class-based mobilization of the backward caste poor with the electoral political mobilization of the Sharad Yadavs *et al* is the last thing we want.

That the principle of reservation finds its place in the Constitution itself and it is an important instrument in the hands of the Indian ruling classes and Indian state to assimilate sections of Dalits into the establishment and accommodate the backward caste elites in the power structure to the extent their socio-economic clout increases on the ground. One really does not know what are the justifications offered by the People's War Group for its pro-Mandal turn. For, this group has never come out officially and committed itself in writing regarding its politics and practices for the past ten years. Perhaps it is a desperate move to come out of a self-imposed isolation. Perhaps it is being conceived as a short-cut to win new friends among newer social segments. But it is ironical that those who claim the untouchability of electoral politics as a great marxist virtue should unwittingly place themselves in a position where, in spite of all their noble intentions, they can be swept away by the electoral machinations of opportunist parliamentary politicians.

The divergent positions taken by the Left parties and groups indicate that there were both intra-party and inter-party divisions in the Left over the positive discrimination for the OBCs. "The Communist left has Brahminic leadership and its traditional Marxist ideology has not helped it to understand or appreciate the issue very well, but its main base among Shudras and Dalits generally puts it on their side and on the side of the Mandal Commission. In all these parties there is a predictable internal division falling along caste lines, and in all cases arguments about 'economic criteria' are being used to confuse the issue and advance twice-born interests. This is not to say that the issue of economic exploitation is irrelevant; only that the particular appeal to 'economic factors' made in the case of the Mandal Commission is invariably a smokescreen".⁵¹

INTEREST GROUPS ENTER THE FRAY

For the first time in the annals of public policies in the country, a very wide spectrum of, in fact innumerable, interest groups—ranging from chambers of industry to religious

organizations—had been drawn into the vortex of national controversy over the acceptance of Mandal Commission Report. They took part in the controversy, either overtly or covertly, in different ways: issuing statements and appeals; organizing independent rallies or demonstrations or participating in them held by other groups; and resorting to violence outright. The study of interest groups as "politically relevant social collectivities" has become more integrated with the central concerns of policy analysis. Interest groups are "social aggregates that serve as political intermediaries between the individual and the state".⁵² Interest groups are organizations which attempt to influence the direction of the government policy without themselves seeking to form the government.⁵³ Thus, this category includes organizations of various kinds.

The first such organization to react, opposing the job reservations for the SEBCs, was the Shiromani Gurudwara Prabandhak Committee (SGPC). Its secretary, Mr. Manjit Singh Calcutta, described the Center's reservation policy as a "political stunt" and said that with a "heavy dose of more reservations merit will be the first casualty". He said that experience has been that instead of narrowing caste cleavages and bringing about harmony in society, reservation has accentuated caste difference. Sikhism does not recognize the caste system. Hence, the Committee is opposed to reservations.⁵⁴

Thirty nine academics of Delhi University, in a signed statement on August 17, 1990, expressed their deep concern at the grave implications that the Government's decision to implement the Mandal Commission Report would have on the fabric and values of society. The academics stated that the decision would not only sharpen the dividing forces in our highly fractured society but would also prove disastrous for the country's development. They observed that the reservations will increase and not decrease the inequalities prevalent in society.⁵⁵

The All India Ex-servicemen Welfare Association (AIEWA) stated that the implementation of the Mandal Commission Report will deprive pensioned soldiers of around 30,000 yearly jobs they would otherwise have got. The AIEWA further said that pensioned soldiers, who generally retire early in life, are supposed to get a quota of a tenth of "C Group" jobs in the government and another fifth of the "D Group" ones.⁵⁶

And significantly, the Bharatiya Kisan Union (BKU) had also joined hands with the anti-reservationists. At a meeting with members of the Anti-Mandal Commission Forum

on September 1, 1990, BKU vice-president Mr. Bhopal Singh urged the students to demand withdrawal of the Report. The BKU promised the Forum that it would participate in anti-reservation rally scheduled for September 4, The BKU President, Mr, Mahindra Singh Tikait called upon the farmers for a social boycott of the all the legislators and parliamentarians elected from the western Uttar Pradesh from September 27.⁵⁷ "Students and farmers must fight unitedly", the BKU chief said at the anti-reservation rally. But the AMCF leaders were sore over the way Mr.Tikait attempted to take over the agitation. "It is a BKU conspiracy" and "he is just trying to cash in on the student movement", they alleged. The BKU supremo, in his fiery speech, said, "You may be educated and intelligent. But you lack experience and without it you cannot win the battle you have started. First you must go back to your districts and villages and tell your MPs and MLAs to resign. If they do not agree, douse them with kerosene and set them on fire". Interestingly, the AMCF blamed the BKU for virtually hijacking the platform during the Boat Club rally at Delhi. Forum members categorically declared that, "Mr. Tikait and other senior kisan leaders were never invited to speak, but they persisted in using the platform primarily meant for students. Those who indulged in violence were from Haryana and also members of BKU, and it is they who instigated the lathi-charge and subsequent police action".⁵⁸

Meanwhile, the Delhi University Teachers Association (DUTA) had split over the Mandal Commission Report. The pro-Congress and the Pro-BJP factions together wanted a discussion on the Report. The pro-left faction, led by Mr.M.P.P. Singh said DUTA should organize a seminar on the Mandal Commission Report without itself taking an explicit stand on the merits and demerits of the Report.⁵⁹ And a signed statement issued by a section of the staff members belonging to various colleges and departments of Delhi University observes: "We are profoundly disturbed by the recent spread of hatred and violence among the students and youth of this country in connection with the anti-reservation stir. We also feel shaken by the atrocities on Harijans in Uttar Pradesh, the explicit contempt for the lower castes in political slogans and the recent incidents of self-immolation by young students as part of the same stir....We believe that students of all castes and classes have a joint stake in demanding for greater investment in development expenditure in public sector employment, the spread of socially relevant education for all,

and safeguarding of civil rights. We appeal to sections of the press, interested political groups and intellectuals not to aggravate the situation by implicitly glorifying the acts of self-immolations".⁶⁰

The faculty of the Indian Institute of Public Administration (IIPA) also responded actively to the extension of job reservations to the SEBCs. They were critical of the manner in which the policy of far-reaching significance was unveiled without a national debate. They opined that "the better-off among the backward castes would monopolize all the gains, leaving the really deserving sections high and dry. And there is no justification for imposing the entire burden of job reservations on the middle income groups of the excluded castes. The proposed reservations leave intact the processes of increasing concentration of power and privileges in the hands of a small minority of industrialists, merchants, financiers and corrupt politicians. It is in this context that one has to see the spontaneous outburst of the student community". In view of the "patently iniquitous, unjust and ineffective nature of the present palliative policy of reservations from the point of view of the poor and needy backwards," they suggested the following modifications to the policy:

- (i) Exclude from reservations the second generation of the backward castes hailing from those families who have once availed of reserved Group A and B jobs;
- (ii) Exclude the scions of the MLAs, MPs, Councilors, etc., belonging to the OBCs, from job reservations;
- (iii) In the case of jobs where scholarship and merit are the key factors, like teaching, impose a minimum eligibility condition commensurate with the nature of the work;
- (iv) Identify the really backward and the poor from the backward castes and make reservations available for them only; and
- (v) Since the middle classes from the non-backward castes would have to pay the price of reservations, introduce some compensatory measures for their benefit.⁶¹

Even religious organizations made their presence felt during the nation-wide controversy over the Mandal Commission. The *Kashi Vidwat Parishad*, which had conferred upon Mr. V.P. Singh the title of "Rajarshi" at a function in Varanasi two and a half years prior to the controversy, described the recipient of the "rare honour" as a "despicable power hungry politician". Speaking to the press (in Varanasi), the Secretary of

the *Parishad* did not mince words to say that as a prime minister Mr. V.P. Singh was proving to be a disaster, "By thrusting upon the country his whimsical, ill-conceived decision to implement the Mandal Commission recommendations, the Raja Saheb has sown seeds of civil war in the country". He said Mr. Singh and his men in the Government had destroyed social and cultural harmony in one stroke. Instead of working for a casteless society, the Government had officially registered casteism by accepting the Mandal Commission Report. "The *Parishad* is not against reservation policy as such but is against the criteria set for the reservations: the job of the Government is to ensure that talent does not suffer", he added.

Industrial lobbies did not lag behind others in reacting to the contentious policy based on the Mandal Report. Leading chambers of trade and industry had criticized the Government's reservation policy in its present form and said when the country is faced with law and order and other economic problems, further tension should be avoided. The Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chamber of Commerce and Industry of India (ASSOCHAM) said in a joint statement on August 30, 1990 that the founders of the Constitution had not expected that reservations would last for ever or that it would be extended to other classes. This would divide the society on caste lines and keep the backward classes backward and would never motivate them to be equal to others.⁶² Another farmers' Association, the "Sarva Panchayat" of more than 800 villages of Bahadurgarh (Haryana), famed as the "land of the brave", had resolved to oppose all attempts by the Government to maneuver a snap poll to the *Lok Sabha* by making use of the Mandal Report as a political plank. Voicing its severe indictment of the Front government's decision on the reservation policy, representatives of a large number of "knaps" extended their total support to the anti-Mandal agitations all over the country. The resolutions passed at the massive rally accused the prime minister of dividing the country with his casteiest politics that threatened the very survival of the nation. The rallyists resolved to oppose the mid-term poll as and when announced till the anti-people reservation policy was withdrawn. The farmers' congregation that euphemistically issued "sack orders" to the prime minister, also decided to embark upon a long-drawn battle against the Report after taking stock of the three meetings scheduled for that month.⁶³

Lawyers join the Fray: Lawyers Forum for National Unity appealed to the then president (Mr. Venkataraman) to "refer the Mandal Commission Report for the opinion of the Supreme Court regarding its constitutionality". The Forum said it would request the President to order a stay of the implementation of the Report pending a decision by the Supreme Court or till a national consensus of students and all concerned was reached. In a related development, a committee of lawyers had been set up by a former High Court Chief Justice to give legal aid to the students arrested in anti-Mandal agitation. This was announced by Mr. Ranjan Dwivedi, a Supreme Court lawyer. The panel included Mr. U.N. Bachawat, former High Court Judge, Mr. Vikram Mahajan, former minister and a senior lawyer and Mr. Ram Panjawani, Supreme Court lawyer, besides Mr. Dwivedi.⁶⁴

Many Non-Government Organizations (NGOs) and socio-cultural groups demanded that while all efforts should be made to fully utilize the 27% reservation meant for the backward castes, the Government should also provide 20% reservation in the general quota on economic criteria. The decision was taken at a meeting of the organizations which included the Bandhua Mukti Morcha, Third World Studies Center, National Fishermen's Forum, Sampradaik Virodhi Andolan, Action India Women's Program and others.⁶⁵

Interest Groups in Support of Mandal Commission

The Presidium of the National Union of Backward Classes, Scheduled Castes, Scheduled Tribes and Minorities was the first interest group to support the implementation of the Mandal Commission Report by welcoming it (on August 8, 1990). In a statement, the President of the Presidium and former Union Agriculture Minister, Choudhary Brahm Prakash said that the implementation of the Mandal Commission was long overdue. The pro-CPI(M) Council of Indian Trade Unions (CITU) extended its support to the policy and appealed to the anti-Mandalites to "consider, with equal concern, the future of vast sections of youth in these backward communities; less than 10% OBCs are employed in Class I and II posts and only 18% in Class III posts; job opportunities are extremely limited and the backward classes are further handicapped by social, economic and educational backwardness". However, the CITU wanted an economic criteria within the 27% job

reservations. The *Dalit Sahitya Akadami* Chairman, Dr. Sohanpal Sumnakshar, also hailed the decision of the Center to provide job reservations for the SEBCs.⁶⁶

Swami Agniwesh, general secretary of the *Bharatiya Arya Pratinidhi Sabha*, demanded (on September 6, 1990) that the Mandal Report be implemented in toto. He said, at a press conference, that the present agitation was being led by vested interests which have been responsible for perpetuating the caste conflicts in the country. He opined that out of 27%, 7% reservations should be earmarked for women of the backward classes. Demanding the closure of all English medium schools, Swami Agnivesh said that such schools had been creating disparities in the society. Referring to the ongoing anti-reservation stir, he alleged that noted industrialists like Ambani and Hinduja were behind the agitation who wanted to topple the government for their vested interests.⁶⁷ Noted educationist and Backward Classes leader—and former chairman of the U.P. *Krishi Mandi Parishad*, the biggest State-owned farmers organization—Mr. Dhara Singh said, addressing a meeting of Gujar youths in Delhi (on September 30, 1990), that only urban educated class and the misguided students are creating confusion and damaging public property worth crores of rupees, in league with anti-social elements. Upper castes have no control on their children and even enlightened among them have not cared to study the recommendations of the Mandal Report, he added.⁶⁸

Interface Between Political Parties, Interest Groups and Mandal Commission: Emergence of Mobilisational and Ideological Crises

For the first time in the post-Independence era, all national parties, one of the vital institutions of India's liberal democratic polity, had to respond and make their ideological positions clear on a far-reaching national policy: the affirmative action in public sector employment for the SEBCs. The policy, for the first time, brought to the surface both inter-party and intra-party doctrinal divisions on the crucial question of caste and reservation. Initially, political parties of all ideological persuasions maintained a studied silence. But as the anti-Mandal agitation intensified, particularly in the wake of the self-immolations, they started reacting actively. Their stands on the Mandal Commission were equivocal and conflicting and they even contradicted with their earlier positions on the issue of Backward

Classes and reservation. The divisions were evident even within the ruling National Front coalition which announced the policy and had pledged to implement the recommendations of Mandal Commission in its common pre-election manifesto.

A study of the pre-general election (1989) manifestos of the national parties shows that only the National Front and the BJP mentioned the Mandal Commission- While the National Front pledged to implement the **recommendations** of Mandal Commission, the BJP promised to implement **reservations** for the OBCs as recommended by the Mandal panel. Interestingly, the national Communist parties—CPI and CPI(M)—had mentioned neither the Mandal Commission nor the OBCs.

Both the Congress(I) and the BJP, like other national parties., supported the reservations for the SEBCs in principle. At the same time, they emphasized the importance of "economic criteria" and advocated additional reservations for the economically poor of the upper castes and other communities. Their identical positions on the policy reflected their largely upper caste leadership and crucial upper caste constituency; and their attempts to broaden their social base by supporting the reservations for the OBCs, For the OBCs constitute, according to Mandal Commission, about 52% of India's total population.

The Congress party had always depended on the core support base of Scheduled Castes, Scheduled Tribes, upper castes and minorities, particularly Muslims. It had not made any serious attempts to either cultivate or mobilize the SEBCs. So they had not constituted a "votebank" for the Congress. Therefore, the two successive Congress governments (1980-1989) were not under pressure to implement the recommendations of Mandal panel as the party was able to come to power without mobilizing or addressing the special interests of the SEBCs. Similarly, the BJP's mostly upper caste leadership had tried to mobilize the Hindus on the basis of religion with its *Hindurwa* ideology. The party had to support the compensatory discrimination for the OBCs because they comprise about a half of the Hindu population. The mention of SEBCs in its pre-election (1989) manifesto reflects the party's recognition of the electoral significance of the OBCs as the main plank of BJP's electoral strategy has been the emphasis on Hindu unity. It may be recalled here that the BJP was a constituent (as *Bharatiya Jan Sangh*) of the first non-Congress coalition government of Janata Party which appointed the Mandal panel.

The Janata Dal—the largest and core constituent of the National Front—comprised largely the same political forces, after a series of splits and mergers, that amalgamated in 1977 to form the Janata Party. The Janata Party (1977-1980) came to power by consolidating its core support base of the ascendant north Indian *Shudra* category—Jats and OBCs—and a large section of Muslims. So it was the Janata government which appointed (in 1989) the second national Backward Classes Commission. But by the time the Commission submitted its Report in 1980, the Janata government had collapsed and the Congress came to power again. The Janata Dal, a party with a core OBC support base, had included the Mandal Commission in its pre-poll (1989) manifesto. But the timing of the partial acceptance of the Mandal Commission recommendations clearly indicated the power struggle within the Janata Dal and its "strategy", especially on the part of Mr.V.P.Singh, to undercut the *Hindutwa* ideology of the BJP—which was supporting the minority NF government from outside—which was trying to unite Hindus through Ramjanambhoomi issue.

Contradictions even within the left parties, came to the surface during the national controversy over the Mandal Commission. Both the parliamentary left parties, i.e., CPI and CPI(M), extended their support, in principle—under electoral compulsions—to the job reservations for the SEBCs. But both the Communist parties had mentioned neither Mandal Commission nor the OBCs in their pre-poll manifestos. Presumably, the left had been in favour of class-based mobilization. But it remains to be explained why did the left parties subscribe to reservation policy for the OBCs which was essentially based on caste? Moreover, the CPI(M) leadership in West Bengal (particularly Mr.Jyoti Basu) claimed that there were no OBCs in the State. The above position led to deep ideological fissures within the Left Front in West Bengal with the OBC members revolting against the domination of the upper castes over the party. What is more, Mr. Namboodiripad, then general secretary of the CPI(M), even went to the extent of suggesting reservation for the poor of the upper castes. The non-inclusion of the OBCs (or Mandal Commission) in the manifestos of Congress(I), CPI and CPI(M) suggests that the parties had not made any serious attempt to mobilize, or articulate the special interests of, the OBCs. They seemed to have taken their support for granted.

An analysis of the stands taken by the national parties across the ideological continuum shows that their positions on the reservation policy fall into a pattern and they are broadly the same despite their professed ideological leanings—right, left or center. All political parties extended their general support to the OBC reservations but suggested certain modifications to the policy; in particular they stressed the importance of economic factors in reservations.⁶⁹ As a result, the ideological distinctions of the parliamentary parties got blurred to a large extent regarding the question of caste and redistribution. To that extent, the parties seem to be "deideologized". The acceptance of Mandal Commission recommendations demonstrated that the national political parties are ideologically reactive rather than proactive to the issues of caste and compensatory discrimination.

For the first time in the history of public policies in India, the left extremist groups—which profess revolutionary ideology that aims at class mobilization against the present "bourgeois democracy"—had also been drawn into the vortex of controversy over the Mandal Commission. The Indian People's Front organized a massive rally in Delhi in support of the reservation policy based on the Mandal Commission. The Federation resolved to fight caste domination and communal hatred while waging class battles. And interestingly, the People's War Group—the most militant and widespread naxalite group—had come overground and held *bandhs* in support of Mandal Commission in Telangana region—its stronghold—of Andhra Pradesh. It may be recalled in this context that the PWG has been waging a Maoist guerilla warfare for about two decades against the class enemies to bring about a revolution. The unusual reaction of the radical Left reflects its recognition of the importance of caste factor in Indian society. The ultra-Left's assertive and open support to the reservation policy—adopted by a centrist parliamentary party—also indicates its failure to mobilize the Backward Classes on class lines for a revolutionary transformation.

In a series of unprecedented developments in the post-Independence era, a plethora of interest groups reacted actively to the introduction of job reservations for the OBCs in the Central sector. Presumably, the anti-reservation interest groups were the first to enter the fray over the Mandal Commission. They criticized the OBC reservations on several grounds. Some important interest groups which fall under the anti-reservation category are: Federation of Indian Chambers of Commerce and Industry (FICCI), Associated Chambers

of Commerce and Industry of India (ASSOCHAM), Bharatiya Kisan Union (BKU), Lawyers* Forum and some Teachers' Associations. Among the few interest groups which defended the reservations for the SEBCs are: Presidium of the National Union of Backward Classes, Scheduled Castes, Scheduled Tribes and Minorities, Council of Indian Trade Unions (CITU) and *Dalit Sahitya Akadami*.

An examination of the stands adopted by different interest groups shows that the groups were divided largely on caste lines. The upper caste-dominated organizations like FICCI, ASSOCHAM, BKU, Lawyers' Forum and sections of the University faculty opposed the affirmative action for the SEBCs while the Backward Caste-based groups, viz., National Union of BCs and Minorities, CITU and *Dalit Sahitya Akadami* supported it. But some Non-Government Organizations that responded to the national debate took "neutral" positions by suggesting reservations on economic basis for the general category while supporting the newly-introduced quotas for the SEBCs. This reflects the socially-mixed nature of their organizations and their objectives.

Political parties and interest groups—as vital intermediaries between the state and society—are expected to represent the interests of different social groups. But their responses to the OBC reservations indicate: their failure in this vital function; and their reactive nature. Because these institutions reacted only when the social contradiction were brought to the fore by the Mandal Commission. The polarization of the interest groups indicated their caste (rather "class") character; and their recognition of the OBCs as a major social force reflects the dynamics of the democratic process under which they operate. The internal conflicts in political parties, including the Janata Dal, also revealed their ineffectiveness in mobilizing or addressing the interests of a major emerging social segment, i.e., the OBCs.

NOTES

¹. "Mandal Commission; Bigoted Protests," report in *Economic and Political Weekly* (hereafter: EPW), October 6, 1990, p.2221.

². Agarwal. S.P. and Aggarwal, J. C., *Educational and Social Uplift of Backward Classes*, Concept Pub. Co, Delhi 1991, p.79.

- ³. Chanchreek. K. L and Saroj Prasad (Eds), *Mandal Commission. Myth and Reality: A Rational Viewpoint*, H.K.Publishers, Delhi, 1991, p.35.
- ⁴. *India Today*, September 30, 1990.
- ⁵. *Indian Express*, September 9, 1990.
- ⁶. *Sunday*, September 9-15, 1990.
- ⁷. Tharyan, P., "Attack Caste Not Mandal," *The Hindustan Times*, September 8, 1990.
- ⁸. *India Today*, September 15, 1990.
- ⁹. Chowdhury Neeraja, "Decision to Implement Mandal Report: Political Parties in a Fix," *The Indian Express*, August 22, 1990.
- ¹⁰. Hiranmay Karlekar, *In the Mirror of Mandal: Social Justice, Caste, Class and the Individual*, Ajanta Pubs., Delhi, 1992, p.31. Asked why he had to take up such a divisive issue at the time he did, Mr. Singh answered that over the last 40 years, entry into the elite of the country—its permanent power structure—had become blocked for the vast majority of the people, particularly from rural areas. Even the smaller towns were increasingly left out. Referring particularly to north India, he said that new economic power centers had emerged in the rural areas following the Green Revolution; but their conversion into political power centers was being blocked.
- ¹¹. Arvind N. Das, "Pathology of Uncivilized Society: Ritualism Unites Mandal-Mandir Moves," *The Times of India*, October 5, 1990.
- ¹². Ajit Bhattacharjea, "A Threatened Elite," in Asghar Ali Engineer (Ed), *Mandal Commission Controversy*, Ajanta publications, Delhi, 1991. p.58.
- ¹³. Naval Kishore Yadav, "In Defence of Mandal," *The Times of India*, October 10, 1990.
- ¹⁴. "For those below poverty line: VP for 40% quota in Parliament," report in *Indian Express*, August 10, 1990. The attempt to secure the support of the Muslims, implicit in this, came out in bolder relief in Mr.V.P.Singh's Independence day speech from the ramparts of the Red Fort on August 15, 1990, when he declared that the birthday of Prophet Mohammad would henceforth be a national holiday. That he was trying to weave together in his support a coalition comprising the OBCs, Muslims, SCs, STs and women, was further underlined when he argued strongly before the Janata Dai's National Executive in Bhubaneshwar on February 8, 1991, that the "submerged political groups" comprising the weaker sections, minorities and women, should be given a major share of power.
- ¹⁵. Hiranmay Karlekar, op.cit., p.115.
- ¹⁶. "All-party meet fails to arrive at a consensus," *The Indian Express*, September 4, 1990.
- ¹⁷. Hiranmay Karlekar, op.cit., pp.117-8.
- ¹⁸. As he acknowledged in his statement of September 26, 1990: "We have opened a small door to give them (the OBCs) a share in shaping the destiny of the nation. The door cannot be closed again".See "Mandal Commission : Bigoted Protests," op.cit.
- ¹⁹. Gail Omvedt, "Twice-Born Riot Against Democracy," in Asghar Ali Engineer (Ed). *Mandal Commission Controversy*, op. cit., p.9.
- ²⁰. Asghar Ali Engineer (Ed), in his "Introduction," to *Mandal Commission Controversy*, op.cit.. p.IX.
- ²¹. R. R.. Bhole, in an interview, "Standing up for Mandalism," in Asghar Ali Engineer (Ed), op.cit., p.345. Mr.Bhole, former judge of the Bombay High Court and also former Congress(I) MP, was a member of the Mandal Commission.

- ²². *The Hindustan Times*, September 8, 1990.
- ²³. *Data India*, November 6-12, 1989.
- ²⁴. Mr. Gadgil also described Mr. V.P.Singh as the "modern Manu" who was introducing the caste system among the non-Hindus and perpetuating the caste system among the Hindus.
- ²⁵. The resolution further says: "Mahatma Gandhi wanted social change without social conflict. V.P.Singh had achieved social conflict without social change, betraying a degree of cynical opportunism, intellectual dishonesty and political malfeasance never before seen at the highest level of the government. Chanchreek, K.L. and Saroj Prasad (Eds), op.cit. pp.48-50; and *The Times of India*, September 1, 1990.
- ²⁶. *India Today*, September 30, 1990.
- ²⁷. Gail Omvedt, op.cit, p. 10.
- ²⁸. Naval Kishore Yadav, op.cit., p.10.
- ²⁹. *India Today*, September 30, 1990.
- ³⁰. Agraval, S.P. and Aggarwal, J.C. op.cit., pp.77-78.
- ³¹. *The Hindustan Times*, August 14, 1990; *Indian Express*, 25 August, 1990.
- ³². *The Times of India*, 31 August, 1990.
- ³³. Chanchreek, K.L. and Saroj Prasad (Eds), op.cit., pp.62-67.
- ³⁴. Swapan Dasgupta, "Nationalist Disarray: Renewed Importance of Ayodhya," in Asghar Ali Engineer (Ed), op.cit., pp.253-4.
- ³⁵. Gail Omvedt, op.cit., pp.9-10.
- ³⁶. "RSS refuses to take categorical stand on Mandal," report in *The Indian Express*, 30 August, 1990.
- ³⁷. *India Today*, September 30, 1990.
- ³⁸. *Data India*, November 6-12, 1989.
- ³⁹. "Upper Castes up in Arms," (editorial), *EPW*, August 18, 1990.
- ⁴⁰. In Bihar, there are two categories of reservation: one for the Most Backward Castes who have a 12% reservation. These castes have been separately identified. The other category, i.e., the Other Backward Castes are given a 8% reservation, but whose income is less than Rs 12,000 per annum. *Data India*, October 1-7, 1990.
- ⁴¹. *The Hindustan Times*, 1 September, 1990.
- ⁴². Chanchreek, K.L. and Saroj Prasad (Eds), op.cit., pp.62-67.
- ⁴³. Aditya Nigam, "Mandal Commission and the Left," *EPW*, December 1-8, 1990, pp.652-53.
- ⁴⁴. Sweta Hushry, "Mandal Commission and Left Front in West Bengal," *EPW*, February 23, 1991, pp.419-20.
- ⁴⁵. D.N., "Dominant Castes, Ruling Classes and the State," *EPW*, November 10, 1990, p.2466.
- ⁴⁶. Grewel. P.S., "CPI(M)'s Stand on Reservations," *EPW*, November 21, 1990, p.2570.
- ⁴⁷. D.N., "Dominant Castes, Ruling Classes and the State," op.cit., p.2467. The reactions of the BJP and the Congress(I) do not cause any surprise; these two parties, traditionally dominated by upper castes, naturally find it difficult to stomach a situation in which the upper caste monopoly of the corridors of power is broken. The position of the CPI(M). however. is peculiar. It supported reservation for the OBCs in the *Lok Sabha*. while refusing to implement it for West Bengal, declaring that there are no OBCs in this Marxist-

ruled State. And Mr. Jyothi Basil goes on repeating ad nauseum that there are many rich persons among the BCs just as there are many poor ones among upper castes, as though all contradictions in society reduce to an easy rich-poor formula. It is this upper caste Marxists which continue to rule West Bengal. The core of the CPI(M) leadership in the State is constituted by upper castes: Jyothi Basu, Binoy Chaudhury, Sailen Dasgupta, Biman Basu, Biplab Dasgupta and Budhadeb Bhattacharya. There is none from the BCs and the subaltern. This is the reason for Left Front government's refusal to cooperate with the Mandal Commission and its insistence on poverty-based reservation: Anirban Biswas, "Reservation and CPI(M)," *EPW*, February 2, 1991, p. 186.

⁴⁸. Sumit Chakrawarthy, "Red Rally in the Capital," *Mainstream*, October 13, 1990. The IPF president and veteran revolutionary, Nagbhushan Patnaik and the CPI-ML leader, Ram Narayan Ram (who made his first public appearance after 20 years of underground life) also took part in the rally,

⁴⁹. B. Sivaraman, "This Mandalist Myopia," *EPW*, February 9, 1991, p. 314.

⁵⁰. *Ibid.*, p. 315.

⁵¹. Gail Omvedt, *op.cit.*, p. 9.

⁵². Joel Krieger (Ed), *The Oxford Companion to Politics of the World*, OUP, New York, 1993, p. 432.

⁵³. Vernon Bogdanor (Ed), *The Blackwell Encyclopedia of Political Institutions*, Basil Blackwell, Oxford, 1987, p. 590.

⁵⁴. *The Times of India*, August 11, 1990.

⁵⁵. *Data India*, August 6-12, 1990.

⁵⁶. *The Hindu*, August 11, 1990.

⁵⁷. *Data India*, September 17-23, 1990.

⁵⁸. *Data India*, October 1-7, 1990.

⁵⁹. *Data India*, August 27 - September 2, 1990.

⁶⁰. "DU Staff Decry Anti-Mandal Stir", *Mainstream*, October 6, 1990. The statement was signed by Manoranjan Mohanty, Sumit Sarkar and 28 others.

⁶¹. "Statement on Extension of Reservation Policy," *Mainstream*, September 8, 1990, The statement was signed by Kamal Nayan Kabra and others.

⁶². *Data India*, August 27 - September 2, 1990,

⁶³. *Data India*, September 3-9, 1990.

⁶⁴. *Data India*, September 17-23, 1990.

⁶⁵. *The Indian Express*, October 13, 1990.

⁶⁶. Chanchreek and Saroj Prasad (Eds), *op.cit.*, pp. 38-42.

⁶⁷. Mr. Kailash Nath Singh, MP and president of the U.P. *Arya Pratinidhi Sabha* demanded that the 27% reservation should be extended to all educational institutions. *The Indian Express*, September 7, 1990.

⁶⁸. Chanchreek and Saroj Prasad (Eds), *op.cit.*, p. 45.

⁶⁹. All the 25 parties—which attended the all-party meeting (on 3 September, 1990) convened by the government—extended their broad support to the job reservations for the OBCs.

- ²². *The Hindustan Times*, September 8, 1990.
- ²³. *Data India*. November 6-12, 1989,
- ²⁴. Mr. Gadgil also described Mr. V.P.Singh as the "modern Manu" who was introducing the caste system among the non-Hindus and perpetuating the caste system among the Hindus.
- ²⁵. The resolution further says: "Mahatma Gandhi wanted social change without social conflict, V.P.Singh had achieved social conflict without social change, betraying a degree of cynical opportunism, intellectual dishonesty and political malfeasance never before seen at the highest level of the government, Chanchreek, K.L. and Saroj Prasad (Eds), op.cit. pp.48-50; and *The Times of India*, September 1, 1990.
- ²⁶ *India Today*, September 30, 1990.
- ²⁷. Gail Omvedt, op.cit, p. 10.
- ²⁸. Naval Kishore Yadav, op.cit., p. 10.
- ²⁹. *India Today*, September 30, 1990.
- ³⁰. Agraval, S.P. and Aggarwal, J.C., op.cit., pp.77-78.
- ³¹. *The Hindustan Times*, August 14, 1990; *Indian Express*, 25 August, 1990.
- ³² *The Times of India*, 31 August, 1990.
- ³³. Chanchreek, K.L. and Saroj Prasad (Eds), op.cit., pp.62-67.
- ³⁴. Swapan Dasgupta, "Nationalist Disarray: Renewed Importance of Ayodhya," in Asghar Ali Engineer (Ed), op.cit., pp.253-4.
- ³⁵. Gail Omvedt, op.cit., pp.9-10.
- ³⁶. "RSS refuses to take categorical stand on Mandal," report in *The Indian Express*, 30 August, 1990.
- ³⁷. *India Today*, September 30, 1990.
- ³⁸. *Data India*, November 6-12, 1989.
- ³⁹. "Upper Castes up in Arms;" (editorial), *EPW*, August 18, 1990.
- ⁴⁰. In Bihar, there are two categories of reservation: one for the Most Backward Castes who have a 12% reservation. These castes have been separately identified. The other category, i.e.. the Other Backward Castes are given a 8% reservation, but whose income is less than Rs 12,000 per annum. *Data India*, October 1-7, 1990.
- ⁴¹. *The Hindustan Times*, 1 September, 1990.
- ⁴². Chanchreek, K.L. and Saroj Prasad (Eds), op.cit., pp.62-67.
- ⁴³. Aditya Nigam, "Mandal Commission and the Left," *EPW*, December 1-8, 1990, pp.652-53.
- ⁴⁴. Sweta Hushry, "Mandal Commission and Left Front in West Bengal," *EPW*, February 23, 1991, pp.419-20.
- ⁴⁵. D.N., "Dominant Castes, Ruling Classes and the State," *EPW*, November 10, 1990.p.2466.
- ⁴⁶. Grewel P.S., "CPI(M)'s Stand on Reservations," *EPW*, November 21, 1990, p.2570.
- ⁴⁷. D.N., "Dominant Castes, Ruling Classes and the State," op.cit., p.2467. The reactions of the BJP and the Congress(I) do not cause any surprise; these two parties, traditionally dominated by upper castes, naturally find it difficult to stomach a situation in which the upper caste monopoly of the corridors of power is broken. The position of the CPI(M). however, is peculiar. It supported reservation for the OBCs in the *Lok Sabha*, while refusing to implement it for West Bengal, declaring that there are no OBCs in this Marxist-

ruled State. And Mr. Jyothi Basu goes on repeating ad nauseum that there are many rich persons among the BCs just as there are many poor ones among upper castes, as though all contradictions in society reduce to an easy rich-poor formula. It is this upper caste Marxists which continue to rule West Bengal. The core of the CPI(M) leadership in the State is constituted by upper castes: Jyothi Basu, Binoy Chaudhury, Sailen Dasgupta, Biman Basu, Biplab Dasgupta and Budhadeb Bhattacharya. There is none from the BCs and the subaltern. This is the reason for Left Front government's refusal to cooperate with the Mandal Commission and its insistence on poverty-based reservation: Anirban Biswas, "Reservation and CPI(M)," *EPW*, February 2, 1991, p.186.

⁴⁸. Sumit Chakrawarthy, "Red Rally in the Capital," *Mainstream*, October 13, 1990. The IPF president and veteran revolutionary, Nagbhushan Patnaik and the CPI-ML leader, Ram Narayan Ram (who made his first public appearance after 20 years of underground life) also took part in the rally.

⁴⁹. B. Sivaraman, "This Mandalist Myopia," *EPW*, February 9, 1991, p.314.

⁵⁰. *Ibid.*, p.315.

⁵¹. Gail Omvedt, *op.cit.*, p.9.

⁵². Joel Krieger (Ed), *The Oxford Companion to Politics of the World*, OUP, New York, 1993, p.432.

⁵³. Vernon Bogdanor (Ed), *The Blackwell Encyclopedia of Political Institutions*. Basil Blackwell, Oxford, 1987, p.590.

⁵⁴. *The Times of India*, August 11, 1990.

⁵⁵. *Data India*, August 6-12, 1990.

⁵⁶. *The Hindu*, August 11, 1990.

⁵⁷. *Data India*, September 17-23, 1990.

⁵⁸. *Data India*, October 1-7, 1990.

⁵⁹. *Data India*, August 27 - September 2, 1990.

⁶⁰. "DU Staff Decry Anti-Mandal Stir", *Mainstream*, October 6, 1990. The statement was signed by Manoranjan Mohanty, Sumit Sarkar and 28 others.

⁶¹. "Statement on Extension of Reservation Policy," *Mainstream*, September 8, 1990. The statement was signed by Kamal Nayan Kabra and others.

⁶². *Data India*, August 27 - September 2, 1990.

⁶³. *Data India*, September 3-9, 1990.

⁶⁴. *Data India*, September 17-23, 1990.

⁶⁵. *The Indian Express*, October 13, 1990.

⁶⁶. Chanchreek and Saroj Prasad (Eds), *op.cit.*, pp.38-42.

⁶⁷. Mr. Kailash Nath Singh, MP and president of the U.P. *Arya Pratinidhi Sabha* demanded that the 27% reservation should be extended to all educational institutions. *The Indian Express*, September 7, 1990.

⁶⁸. Chanchreek and Saroj Prasad (Eds), *op.cit.*, p.45.

⁶⁹. All the 25 parties—which attended the all-party meeting (on 3 September, 1990) convened by the government—extended their broad support to the job reservations for the OBCs.

CHAPTER VI

Executive and Legislature: Decline of Legislature
and Legitimacy Crisis of Executive

EXECUTIVE AND LEGISLATURE: DECLINE OF LEGISLATURE AND LEGITIMACY CRISIS OF EXECUTIVE

Initially, it was the Executive Order—providing job quotas for the SEBCs—that unleashed the social conflict which was dominated by the violent movement against affirmative action. The anti-quota agitation was aided and abetted by the national press. As explicated in Chapter IV, the executive itself was deeply divided and had failed to enforce the policy in the face of unprecedented backlash from the dominant social forces. The executive also failed to contain the escalating agitation despite its desperate efforts to defuse the crisis, particularly by: inviting the agitating students for negotiations, mobilizing the Backward Classes, holding an all-party meeting and announcing pro-upper caste programs. Resultantly, the legitimacy of the executive was severely challenged. So when one state institution remained puzzled and ineffective, another crucial state organ, the judiciary, was constrained to intervene and stay the operation of the executive decision.

The legislature, another important and law-making state institution, was bypassed by the executive in adopting the preferential policy for the SEBCs. However, the executive and the legislature were impelled by the institutional conflict to initiate a debate in the parliament on the contentious issue. Therefore, this Chapter deals with the parts played by the executive and the legislature during the state-society confrontation. The initial sections are concerned with, by way of an introduction, a brief account of the evolution of the roles of executive and parliament vis-a-vis protective discrimination; and a profile of the ninth *Lok Sabha* which encountered the historic circumstances. The concluding part sets out the inferences of the material examined in this Chapter.

The executive has been taking the policy initiatives in the domain of compensatory discrimination since the inception of such programs. As discussed earlier, the roots of the reservation policy go back to the colonial period. It was the native princes and the colonial administrators who adopted the policies of positive discrimination, from time to time, in response to the demands from their subjects, particularly from the Backward Classes. But it should be noted here that during the British rule the distinction between the executive and the legislature was not as clear as it is today under a written Constitution of Independent India.

During the pre-Independence period, the first special program for the welfare of the depressed or deprived sections of society was taken by Madras government with the framing of Grant-in-Aid Code in 1885. Subsequently, in 1921, Madras government took steps for higher representation of non-Brahmins in Government services. The scheme was reviewed in 1927 and scope of reservations was enlarged further. In 1921, the Mysore Government, on the basis of Miller Committee's Report, issued orders extending special facilities to backward communities in education and State services.¹ In 1928, the Bombay Government set up State Committee to identify backward classes and recommend special provisions for their advancement. The Committee classified backward classes into three categories and recommended the provision of special facilities regarding education and recruitment in Government services.

At the all-India level, the first systematic attempt at the welfare of "depressed classes" was made with the introduction of Montague-Chelmsford Reforms of 1919, when separate representation on a number of public bodies was given to members of these classes. In official parlance, the omnibus term "depressed classes" included "Scheduled Castes", "Scheduled Tribes" and "Other Backward Classes". Under the Government of India Act, 1935, the "Scheduled Castes" replaced "Depressed Classes" and separate lists of Scheduled Castes were notified. It was only after Independence that the term "Scheduled Tribes" was used for Backward Tribes.²

The first attempt at giving a fair representation to depressed classes in public services was made when the Government of India issued instructions, in 1934. However, it was only in 1943 that orders reserving 8.3% of vacancies for Scheduled Castes were issued; the percentage was raised to 12.5 in 1946. No reservation was made for the backward tribes as their prevailing educational level was considered to be too low to qualify them for Government service. Curiously, provisions for the spread of education among depressed classes were made much later. It was in 1944 that the Ministry of Education prepared a scheme of post-matric scholarships, etc., for the students of SCs and it was extended to STs in 1948.³

But on the eve of Independence, there was no consensus, particularly in north India, about the category of "Backward Classes" (i.e., Other Backward Classes). It was also anticipated then that, the OBCs were to be designated at the local level in view of the

difficulties in designating them at the Central level. It may also have been that "Backward Classes" were sufficiently potent politically to look after their own interests on a local level, and Central control of their designation was required to ensure the inclusion of the deserving. However, the Center was not entirely excluded from the process. Even before the Constitution came into force, there was a great expansion in the employment of the Backward Classes category. Several States created such a category for the first time, and of those who already had it, several expanded the benefits conferred on them. Subsequently, the Central government was pressed to expand its scheme of post-matriculation scholarships to the OBCs, and when it did so, it compiled lists of Backward Classes in each State for the purpose.⁴

POST-INDEPENDENCE INITIATIVES: FOCUS ON THE EXECUTIVE

In the British period, arrangements for the distribution of power and benefits according to membership in communal groups were accepted methods for the adjustment of the political balance among communities as well as for the amelioration and the protection of the lowly.⁵ The Constitution of Independent India drastically restricts the use of such arrangements. They are described as a general principle of governmental operation and may be used only for the purpose of promoting equality. The protective discrimination authorized by the Constitution is envisaged as an exceptional and temporary measure to be used only for the purpose of mitigating inequalities.⁶ But while the preferential principle is thus confined to the purposes for which it may be used, it has been expanded in scope and covers a wide array of governmental schemes and programs.⁷ The policy of compensatory discrimination comprises a wide array of preferential schemes. These programs are authorized by Constitutional provisions that permit departure from formal equality for the purpose of favouring specified groups. The provisions for compensatory preference appear as exceptions within a framework of Fundamental Rights.⁸

In India, the state is by far the largest employer and the greatest dispenser of all sorts of patronage. Employment under the state and admission to various technical and professional institutions represent to an Indian citizen two most important opportunities to participate in the life of the nation. It is a telling comment on our unequal society that till

the introduction of reservation of seats for the SCs and STs, nearly 90 percent of higher posts under the state and seats in medical and engineering colleges were filled by candidates from about 18% of the higher castes. It was the enormity of this inequality that gave rise to various lower castes movements, particularly in the south, right from the beginning of this century. As a result of sustained agitations, specific quotas of seats and appointments had been earmarked in southern States much before Independence.

In post-Independence India, the first important step to remedy this situation was taken by the Union Executive with the incorporation of Clause 4 under Article 15 of the Constitution which empowered the State to reserve posts in favour of inadequately represented backward class citizens. This was effected through the First Amendment to the Constitution in 1951.⁹

Therefore, the First Constitution Amendment marks the beginning of the Union Executive's active policy initiatives in the realm of preferential treatment. But, as set out earlier, the Center's role in relation to reservations in favour of the OBCs has always been controversial. In contrast, the reservation policy for the SCs and STs has largely been far from contentious. Resultantly, the process of the centralization of OBC reservations has been slow and unsteady.

It was only after Independence that the Union Executive tried to define the SEBCs with a view to making special provisions for their advancement. So the second major policy initiative by the Center in the domain of reservations for the SEBCs took the form of the First Backward Classes Commission (1953-55). But the Union Government did not accept the recommendations of the Commission on various grounds and ultimately took a decision that no all India lists of backward classes should be drawn, nor any reservation made in the Central Government Services for any group of backward class other than the SCs and STs. While rejecting the recommendations of Kalelkar Commission, the Center had informed the State Governments that they were free to draw their respective lists of backward classes on the basis of criteria worked out by them and take whatever further action they deemed necessary (see Chapter on Mandal Commission). Consequently, a number of State Governments set up their own Commissions/Committees for defining criteria for backwardness and recommending measures for its removal. The

list of Commissions appointed by various States and the Central Government is given in the following Table:

TABLE; 6
COMMISSIONS ON BACKWARD CLASSES: 1918-1990

<i>Andhra Pradesh</i>	Manohar Pershad Committee (1968-69) Ananta Raman Commission (1970) Muralidhara Rao Commission (1982)
<i>Bihar</i>	Mungeri Lal Commission 1971-76)
<i>Gujarat</i>	A.R. Bakshi Commission (1972-76) Justice C.V. Rane Commission (1981-83) Justice R.C. Mankad Commission (1987)
<i>Haryana</i>	Gurnam Singh Commission (1990)
<i>Jammu & Kashmir</i>	Justice Gajendragadkar Commission (1967-68) Justice J.N. Wazir Commission (1969) Justice Adarsh Anand Commission (1976-77)
<i>Karnataka</i>	Justice L.C Miller Cimmittee (1918-1920:Mysore) Naganna Gowda Commission (1960-61) L.G. Havnur Commission (1972-75) T. Venkataswamy Commission (1983-86) Justice Chinnappa Reddy Commission (1989-90)
<i>Kerala</i>	Justice C.D. Nokes Committee (1935:Travancore-Cochin) V.K. Vishwanathan Commission (1961-63) G. Kumar Pillai Commission (1964-65) N.P. Damodaran Commission (1967-70)
<i>Maharashtra</i>	O.H.B. Starts Committee (1928-30: Bombay Presidency) B.D. Deshmukh Committee (1961-66)
<i>Punjab</i>	Brish Ban Committee (1965-66)
<i>Tamil Nadu</i>	A.N. Sattanadhan Commission (1969-70) J.M. Ambasankar Commission (1962-86)
<i>Uttar Pradesh</i>	Chhedi Lal Satbi Commission (1975-76)
<i>All India</i>	Kaka Kalelkar Commission (1953-55) B.P. Mandal Commission (1979-80)

Note: The years in the brackets refer to the year of appointment and the year of submission-

Source. *Indra Sawhney vs Union of India* (Mandal Commission Case), AIR, Supreme Court, 1992.

It was about twenty four years after the First Backward Classes Commission submitted its Report in 1955 that the Union Executive took the third significant and decisive step towards providing reservations for the OBCs. The first non-Congress Janata government at the Center (pursuant to the resolution of the Parliament) appointed the Second Backward Classes Commission (popularly known as Mandal Commission) in 1979. The Report of the Commission (submitted in 1980) was placed before the *Lok Sabha* in 1982 for debate. The whole House supported the Report. Nobody opposed the caste criterion as it would affect their standing with the electorate. The Home Ministry, then created a Backward Class Cell to examine the issue of OBCs. But the political will for reserving the seats and posts was lacking till the emergence of OBCs as a political force in 1989 Parliamentary elections.¹⁰ As a result, the Report was put in a cold storage.

The year 1990 marks a watershed in the annals of protective discrimination in India. The year witnessed the centralization of the reservation policy in favour of the Other Backward Classes by the second non-Congress National Front government. On 7 August, the prime minister announced, in a fairly unilateral manner, his government's decision to implement some of the recommendations of the Mandal Commission by reserving 27% of the Central Government jobs for the OBCs. The policy triggered a countrywide violent agitation by the upper castes. Almost all vital social and political institutions of the nation had been drawn into the unprecedented controversy. It was in this explosive situation that the Supreme Court intervened—in response to several writ petitions filed against the policy—and stayed the operation of the executive order thus putting an end to the violent anti-quota agitation.

The adoption of the contentious job reservation policy for the SEBCs brought, for the first time, the role of the Executive—vis-a-vis affirmative action—under close national scrutiny. In fact, the role of the executive was one of the focal points of the nationwide debate over reservations. The timing of the announcement and the minority status of the Executive had only made the policy more controversial. Since the Executive itself, and the society in general, were divided over the issue, the judiciary was expected to deliver the last word on the matter. Therefore, the following section examines how the judiciary had grappled with the contested matter.

for reservations of posts/appointments in the services of all such bodies besides providing for in respect of services under the Central/State Government?" This aspect would become clear if we notice the definition of "Law" in Article 13(3)(a). It reads: "Unless the context otherwise requires, 'Law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law...."

The words "order", "bye-law" and "regulation" in this definition are significant. Reading the definition of "State" in Article 12 and of "Law" in Article 13(3)[a], it becomes clear that the measure of the nature contemplated by Article 16(4) can be provided not only by the Parliament/Legislature but also by the executive in respect of their respective services. Some of the local bodies and some of the statutory corporations like Universities may have their own legislative wings. In such a situation, it would be unreasonable and inappropriate to insist that reservations in all these services should be provided by Parliament/Legislature. The situation and circumstances of each of these bodies may vary. *The rule regarding reservation has to be framed to suit the particular situations. All this cannot reasonably be done by Parliament/Legislature* (emphasis added).

The apex judiciary further says that the very use of the word "provision" in Article 16(4) is significant. Whereas clauses (3) and (5) of Article 16 and clauses (2) to (6) of Article 19 use the word "Law". Regulation of service conditions by orders and rules made by the Executive was a well known feature at the time of the framing of the Constitution. Probably for this reason, a deliberate departure has been made in the case of clause (4). Accordingly, the Supreme Court holds, the provisions contemplated by Article 16(4) can also be made by the executive wing of the Union or of the State, as the case may be, as has been done in the present case (implementation of Mandal Commission Report). *Balaji* has been followed recently in *Comptroller and Auditor General of India vs Mohan Lal Mehrotra* (AIR 1991 SC 2288). Regarding the argument of abuse of power by the political executive, the Court says that there is adequate safeguard against misuse by the political executive of the power under Article 16(4) in the provision itself. Any determination of the backwardness is not a subjective exercise nor a matter of subjective satisfaction. As held herein—as also by earlier judgments—the exercise is an objective one. Certain objective social and other criteria have to be satisfied before any group or class of citizens could be declared as backward. *If the Executive includes, for collateral reasons, groups or*

classes not satisfying the relevant criteria, it would be a clear case of fraud on power (stress added).¹⁵

Alternative Judicial Pronouncements

On the question whether reservation under Article 16(4) can be made by an Executive Order, Justice S.R. Pandian (of the Special Constitution Bench, in his separate but concurring judgement) observes that the submission that the provision for reservation of appointments or posts under Article 16(4) can be made only by a legislation and not by an executive order is unsustainable. This contention has already been answered in *Balaji and Comptroller & Auditor General of India vs Mohan Lal Mehrotra*. The Supreme Court while reserving the judgement of the Punjab and Haryana High court in favour of the appellant (State) in *State of Punjab vs Hira Lal* (1970 3 SCC 567: 1971 2 SCR 267) upheld the reservation made by an executive order. The Court handed down similar verdict in *Mangal Singh vs Punjab State* (AIR 1968 Punj 306).

Opinion by State is Subjective: The expression "in the opinion of the State" would mean the formation of opinion is purely subjective process. It cannot be challenged in a Court on the grounds of propriety, reasonableness and sufficiency though such an opinion is required to be formed on the subjective satisfaction of the Government whether the identified "backward class of citizens" are adequately represented or not in the services under the State. But for drawing such requisite satisfaction, the existence of circumstances relevant to the formation of opinion is a *sine qua non*. If the opinion suffers from the vice of non-application of mind or formulation on collateral grounds or extraneous material then that opinion is challengeable.¹⁶ In the present case (Mandal Commission), nothing is shown that the opinion of the Government as regards the inadequacy of representation in the services is vitiated on any of the grounds mentioned above.¹⁷

"The language of Article 16(4) is very clear. The provision may be made either by an Act of Legislature or by rule or regulation made under such Act or in absence of both, by an executive order. The provisions of reservation under Article 16(4) being relatable to the recruitment to services under the Union or a State, may be regulated by the rules made by the President or the Governor, as the case may be. Further, wherever the Constitution

requires that the provisions may be made only by an Act of Legislature, the Constitution has in express terms stated so," observes Justice P.B. Savant in his separate but concurring verdict in the *Mandal Commission case*.

Justice Savant further states that the impugned orders (Office Memorandums) are no doubt neither enactments of the legislature nor rules or regulations made under any Act of legislature. It is not suggested that in the absence of an Act or rules, the Government cannot make provisions on the subject by executive orders nor is it contended that the impugned orders made in exercise of executive powers, have transgressed the limits of legislative powers of the Parliament. What is contended by Mr. Venugopal is that the power to make provisions on such vital subject must be shared with, and can only be exercised after due deliberations by, the Parliament. The contention, in essence, questions the method of exercising the power and not the abuse of it. The method should be left to the discretion and the policy of the Government and the exigencies of the situation.

It may be pointed out that, so far the reservations made by the Central Government in favour of the SCs/STs and the State Governments in favour of all backward classes, have been made by executive instructions or rules made under Article 309 of the Constitution. No reservations have been made by Acts of legislatures. There is, therefore, no illegality attached to the impugned orders.¹⁸

However, the minority judgment (in *Mandal Commission Case*), comprising three separate dissenting judgments, do not agree with the above decisions. Justice Kuldeep Singh in his dissenting judgment observes that, "the Executive Instructions can be issued only when there are no statutory provisions on the subject or to supplement the statutory provisions when these are silent on the subject of reservations. These propositions of law are unacceptable and I reiterate the same. I, however, make it clear that any Executive Instruction (issued under Article 16(4), 73 or 162) providing reservations, which goes contrary to statutory provisions or rules under Article 309 or any other statutory rules, shall not be operative to the extent it is contrary to the statutory provisions/rules".¹⁹ Justice R.M. Sahai, in his dissenting verdict, observes that the 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 the potential of

constitutional repercussions. Reservation by executive order may not be invalid but since it was being made for the first time in services under the Union, propriety demanded that it should have been laid before Parliament not only to lay down healthy convention but also to consider the change in social, economic and political conditions of the country as nearly ten years had elapsed from the date of submission of the Report, a period considered sufficient for evaluation if the reservation may be continued or not²⁰

ENFORCEABILITY OF EXECUTIVE ORDERS

Another closely related dimension of the Executive-Legislature relationship in the realm of reservation policy is whether an executive order making a "provision" under Article 16(4) can be enforced forthwith. Addressing this question the Summit Court (through its majority judgment in *Mandal Case*) posits: "Once we hold that a provision under Article 16(4) can be made by the executive, it must necessarily follow that such a provision is effective the moment it is made".²¹ The Court further observes that it is well settled by the decisions of this Court that the appropriate Government is empowered to prescribe the conditions of service of its employees by an executive order in the absence of the rules made under the proviso to Article 309 are made, the Government can issue orders/instructions with respect to matters upon which the Rules are silent, (see *Sant Ram Sharma vs State of Rajasthan*, 1968 (1) SCR III: AIR 1967 SC 19107). This view had been reiterated in a recent decision of the Court in *Comptroller & Auditor General vs Mohan Lal Mehrotra* (AIR 1991 SC 2288 atp. 2293).

It would therefore, the Court reiterates, follow that until a law is made or rules are issued under Article 309 with respect to reservation in favour of backward classes, it would always be open to the Executive (Government) to provide for reservation of appointments/posts in favour of Backward Classes by an executive order. We cannot also agree with Mr. Jethmalani that the impugned Memorandums should be treated as rules made under the provisions to Article 390. They were executive orders issued under Article 73 of the Constitution read with clause (4) of Article 16. The mere omission of a recital "in the name and by order of the President of India" does not affect the validity or enforceability of the orders, as held by this Court repeatedly.²²

The earlier judicial pronouncements had also addressed the role of the Executive vis-a-vis the preferential treatment. In its landmark verdict in *Balaji* (1963), the Apex Court ruled that, "a provision under Article 15(4) need not be in the form of legislation; it can be made by an executive order". The Government can make reservation in favour of the backward classes under Article 16(4) through an executive order and no legislation is necessary. In *Mangal Singh vs. State of Punjab*,²³ it was held that the relevant service rules stood amended as a result of an executive order issued by the government under Article 16(4). In *K.S. Nair vs Oil & Natural Gas Commission* (1974 Guj LR 7), it was held by the Gujarat High Court that though reservations under Article 16 (4) could be made by an executive order, such an order or direction must be published so as to bring it to the notice of all the employees concerned.²⁴

As for the discretionary power of the executive in making policies of positive discrimination, the judiciary states that there is no constitutional right in any individual to ask for reservation. This point has been brought out in several cases. In *C.A. Rajendran vs Union of India* (AIR 1968 SC 507), the Supreme Court stated that Article 16(4) did not confer any fundamental right on backward classes as regards the reservation of posts, whether it be at the stage of recruitment or promotion. It is only an enabling provision which conferred "a discretionary power on the State to make reservation of appointments in favour of backward classes of citizens which in its opinion is not adequately represented in the services of the State". In making reservations the government has to take into account not only the claims of the members of the backward classes but also the maintenance of efficiency of administration which is of paramount importance. Here the government had made reservations in promotions to classes II and I posts which was subsequently abolished. The Court upheld the action of the government in abolishing the reservations.²⁵

THE PARLIAMENT

Under the separation of powers model, the legislature is the most important branch of the Government. It lays down the basic principles which the Executive has to apply in the implementation of laws and which the judiciary has to use as its frame of reference in adjudicating cases relating to these laws. The legislature, then, takes precedence over the

other two branches of Government. This is because, according to the classical tradition of representative Government, the legislature alone represents the sovereign people, and which alone is competent to express the will of the people *in the form of law*.²⁶ The Parliament of India occupies a pivotal position in India's democratic polity. A representative parliamentary democracy has come to strike roots in the Indian political system over a period of four decades during which it has encountered many trials and tribulations. It is in this forum that the ideas, the ideals and fears of the people of the country find expression through their elected representatives. The Parliament today is not restricted in its function to a merely a legislative body; rather, it has emerged into a multi-functional institution encompassing in its scheme of actions the legitimacy function, representative function, grievance redressal function, national integration function, the conflict resolution function and so on. These multifarious activities of the Parliament make it the cornerstone of the Indian polity.²⁷

Parliament and OBC Reservations

Several States have been implementing different programs of positive discrimination in favour of the Other Backward Classes for a long time. As discussed, the origins of such policies go back to the pre-Independence period. The first systematic attempt towards giving representation to the Backward Classes in public services was taken with the appointment of Miller Committee in 1918. At the all-India level, the first step for the welfare of "depressed classes" (which included the present SCs, STs, and OBCs) was taken with the introduction of Montague-Chelmsford Reforms of 1919, when separate representation on number of public bodies was given to members of these classes.²⁸ It was only after the Independence that the Central Government tried to define the OBCs. It was with this objective that the Kalelkar Commission was appointed in 1953.

After a detailed examination of the Report, the Government laid its copy, together with a memorandum of action taken, before each House of the Parliament on September 3, 1956. The memorandum pointed out several serious flaws in the Report and gave its reasons for its rejection.²⁹ More importantly, the Commission's Report was not discussed by the Parliament. The Central Government ultimately took a decision not to draw up a

national list of OBCs, Despite the repeated pressures from the Backward Class organizations, the Union Government kept its policy of aloofness with respect to the national list of SEBCs till 1979. It was after a gap of almost three decades that the Janata Government appointed a new national Backward Classes Commission in February 1979. By the time the Commission submitted its Report in 1980, the Janata Government fell and the Congress Government returned to power Hence the Report was submitted to the Congress regime.

Mandal Commission decided to sail on the same boat of caste criteria on which Kalelkar Commission had sailed on. However, it made improvement on the number of Backward Castes. While the First Commission had located 2,399 castes, the Mandal Commission identified 3,743 castes forming 52% of the population. The Mandal Commission recommended wide-ranging measures, including 27% job reservation for the welfare of the OBCs. Since Mandal Commission Report was considered to be an "aggravation" of Kalelkar Report, the Central Government chose to put it too into cold storage.³⁰ Even the Chief Ministers' meeting held on April 4, 1983 expressed its reservations about the Report and the Chief Ministers of northern States were apprehensive that further reservations would only encourage sub-casteism and create vested interest.³¹

But it is interesting to note that the Mandal Report, on its presentation, was unanimously endorsed by the Parliament on August 11, 1982. And "what was acclaimed by all Parties in Parliament was the spirit of equality embodied in the Commission's Report".³² But the two successive Congress governments did not implement any of the proposals of the Commission. And it was the National Front government that revived the Mandal Report. The prime minister, V.P. Singh's statement, made in the Parliament (in the *Lok Sabha*) on 7 August, 1990 regarding "Decisions on the Mandal Commission Report" marks the entry of Parliament into the national dispute over OBC reservation,

Before analyzing the reaction and the role of the Parliament vis-a-vis the Mandal Commission, a brief profile of the Ninth *Lok Sabha* is presented in the following section by way of an introduction. For it is, in effect, the Ninth *Lok Sabha* that was drawn into the reservational controversy.

THE NINTH LOK SABHA: AN OVERVIEW

Parliament is the supreme legislative body of the country. Indian Parliament comprises the President and the two Houses: *Lok Sabha* (House of People) and *Rajya Sabha* (Council of States). After the Ninth General Elections held in November 1989, the first sitting of the Ninth *Lok Sabha* was held on 18 December, 1989. The five year term of the *Lok Sabha* was to expire on 17 December, 1994. It was, however, dissolved on March 13, 1991. There were in all 7 sessions of the House covering a period of 168 days; the number of days on which the House actually sat was 109. During its span, the Ninth *Lok Sabha* held 109 sittings with a duration of 754 hours as against 485 sittings with a duration of 2,323 hours, 52 minutes during the Eighth *Lok Sabha*. The life of the Ninth *Lok Sabha* was one year, two months and 26 days. The average duration of a sitting during the Ninth *Lok Sabha* comes to 7 hours, 30 minutes.

Legislative Work: During the Ninth *Lok Sabha*, legislative measures pertaining to constitutional, administrative, social, financial and legal spheres were brought on the Statute Book. The number of enactments aggregated 63 of which 32 related to financial subjects. The Constitution was amended 7 times. Among the laws enacted in other spheres, mention may be made of: The National Commission for Women Act, 1990; The *Prasar Bharathi* (Broadcasting Corporation of India) Act, 1990; The President's Emoluments and Pension (Amendment) Act, 1990; The Salaries and Allowances of Officers of Parliament (Amendment) Act, 1990; The Salaries and Allowances of Leaders of Opposition in Parliament (Amendment) Act, 1991; and the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill. 1991.

Adjournment Motions: During the span of the Ninth *Lok Sabha*, notices of as many as 375 adjournment motions were received. Of these, 9 notices on 8 subjects were admitted and discussed for a total time of 36 hours and 2 minutes. The matters discussed through these motions related to the terrorist activities in Punjab, threat to democracy as a result of criminalisation of politics, unabated rise in prices, *widespread violence triggered off by decision to implement the Mandal Commission Report*, failure of Government to curb

communal forces, and failure to uphold the provisions of Constitution in regard to the disqualification of M.Ps., etc,

Motions: Several discussions on matters of urgent public importance were raised during the Ninth *Lok Sabha* through motions under Rule 191 (No-day-yet-named Motions); Rule 342 (for taking into consideration a policy or situation or a statement or any other matter); Rule 193 (short duration discussions on matters of urgent public importance) and Rule 55 (half-an-hour discussions on matters of sufficient public importance arising out of answers to questions). Twenty-four short duration discussions were held and six motions under Rule 191 and Rule 193 were discussed. The number of half-an-hour discussions held was eleven. Some of the important discussions raised related to the activities in Assam, atrocities an SCs and STs, price rise, LTTE activities in Tamil Nadu and *reservation in services for socially and educationally backward classes*.³³

Political Parties: In the Ninth General Elections to the *Lok Sabha*, candidates of eight national parties, twenty State parties and eighty nine other registered parties contested. The Ninth *Lok Sabha* was constituted on 2 December, 1989; and it comprised 529 members of which two were nominated under Article 331 of the Constitution. The following Table provides the party-wise position of the Ninth *Lok Sabha*:

TABLE: 7
Strength of Political Parties in the Ninth *Lok Sabha*

1.	Indian National Congress (I)	195
2.	Janata Dal	137
3.	Bharatiya Janata Party	86
4.	Communist Party of India (Marxist)	32
5.	Communist Party of India	12
6.	All India Anna Dravida Munnetra Kazhagam	11
7.	Other Parties	36
8	Independents	12
	Total	522
	Vacancies	21
		543*

OTHER PARTIES:

- a) Telugu Desam 2; All India Majlis-Ettehad-ul-Muslimeen 1.
 - b) Jharkhand Mukti Morcha 3; Indian People's Front 1; Marxist Coordination 1.
 - c) Maharashtrawadi Gomantak party 1.
 - d) National Conference 3.
 - e) Muslim League 2; Indian Congress Socialist 1; Kerala Congress 1.
 - f) Shiv Sena 1.
 - g) Shiromani Akali Dal 6; Bahujan Samaj Party 3.
 - h) Sikkim Sangram Parishad 1.
 - i) Akhil Bharatiya Hindu Maha Sabha 1.
 - j) Revolutionary Socialist Party 4; Forward Bloc 3; Gorkha National Liberation Front 1.
- * Does not include two Members of Anglo-Indian Community whom the President nominated.

The Ninth *Lok Sabha* met for the first time on 18 December, 1989. After having been in existence for a period of one year 2 months and 26 days, the House was dissolved on 13 March, 1991. There were in all 7 sessions consisting of 109 sittings, lasting for 754 hours. The Ninth *Lok Sabha*, constituted on December 2, 1989, managed to hold only seven sessions with two of them being just one day duration. It had the shortest life of all the Houses since 1952.³⁴

LEGISLATIVE REACTION TO MANDAL COMMISSION: SPILLOVER OF CONTRADICTIONS

The Union Legislature was brought face to face with the Mandal Commission with the then prime minister, Mr. V.P. Singh making the following historic statement on 7 August, 1990 in the *Lok Sabha*:

" I am happy to announce in this August House, a momentous decision of social justice that my Government has taken regarding the Socially and Educationally Backward Classes on the basis of the Report of the Mandal Commission.

Honourable Members are aware that the Constitution which we gave to ourselves 40 years back envisages that the SEBCs to be identified, their difficulties removed and their conditions improved in terms of Article 340(1) read with Article 15(4) as well as Article 16(4). It is a negation of the basic structure of our Constitution that till now this requirement was not fulfilled.

In accordance with our commitment before the people, we included the Mandal Commission in our manifesto. I am glad to announce that my Government has taken the following decision on the Mandal Commission's Report:

- i) In order to avail ourselves of the benefit of the long experience of a number of States in preparing lists of Socially and Educationally Backward Classes and in order to ensure harmonious and quick implementation, we have decided to adopt in the first phase, the castes common to both the Mandal list as well as the State lists;
- ii) The percentage of reservation for the SEBCs will be 27%;
- iii) This reservation is applicable to Services under the Government of India and Public Undertakings.

Honourable Members are aware that on 14 April, 1990, we declared the commencement of Ambedkar Centenary year and designated it as the *Year of Social Justice*. We have taken a number of measures of social justice pertaining to Scheduled Castes, Scheduled Tribes and other weaker sections like the removal of injustice done to Neo-Buddhists, vesting of Constitutional status and substantial powers to the National Commission for Scheduled Castes and Scheduled Tribes, according due but long-delayed honours to Dr. Ambedkar, and so on. The present decisions are in the same line and belong to the tradition of this Government's dedication to the cause of the SCs, STs, SEBCs and other weaker sections".³⁵

After making the above statement in the *Parliament*, in a swift follow up move, the Union Executive issued an Official Memorandum on August 13 giving effect to the Government's decision. Therefore, the controversial policy was not discussed by the Legislature before the Order was issued to implement it. But the House *had to* react and deliberate the issue due to the anti-Mandal agitation and the consequent social and political conflict. The role played by the Legislature under those unprecedented circumstances can be gauged from the debates (three in all) on the Mandal Commission. Relevant extracts from the debates are presented verbatim in the following section to assess: the tone and tenor of the deliberations; the issues raised; and the motives of the Members.

The FIRST DEBATE in the Parliament (*Lok Sabha*) over "the situation arising out of Government's decision to implement Mandal Commission recommendations" took

place on August 24, 1990—amid violent anti-reservation agitation. The following is a brief account of the debate:³⁶

Madan Lal Khurana: There should be either a Calling Attention or a full-fledged discussion on this issue. This (agitation) has been going on for a week and I have been repeatedly saying that the Government should have initiated a discussion on the issue on its own. Delhi is on fire. Normal life has been totally disrupted in the capital. We will not stand as mute witness to the destruction of Delhi like this. Since the last one week, work has come to a grinding halt in the capital.

Dinesh Singh: The Government should bring the Resolution on its own to enable a decision to take place. This is very important matter which affects the country as a whole. The Government has, by an executive order, done something which has created an upheaval in this country. Now that Parliament is already in session, the normal course for the Government would have been to bring the matter before Parliament and discuss it before issuing an Executive Order.

Ram Vilas Paswan: (Minister of Labour and Welfare): It was announced in Parliament.

Dinesh Singh: Announcement is different from discussion. The Government has shown disregard to the Parliament by issuing an Executive Order on a matter which should have been discussed in Parliament. We request you to permit a discussion because the youth of this country and the country as a whole is agitated. I want to warn the Government that for each lathi on the youth, each drop of blood by the youth, the Government will be held responsible.

L.K. Advani: A few days back when Mr. Bhogendra Jha raised this issue in the House, prominent party representatives voiced their reservations as well as apprehensions on this issue. They opined that the Government should consult everybody concerned and endeavor to arrive at a rational consensus on the issue. They also expected the Government to explain its difficulties and future course of action. However, the Government did not do it. Meanwhile, the situation in the country, especially in Delhi, started deteriorating. Such a situation where normal life remained disrupted continuously for seven days is without any precedent in the past forty years and this has happened despite the fact that no political party in the country is against the recommendations of the

Mandal Commission. Today, the students are faced with difficulties due to the growing unemployment and they are quite uncertain about their future.

If any party or government ignores the doubt created in the minds of the youth, I think it would be injustice to the youth and the society. It would have been better, if the Government had done something in accordance with what Mr. Karpuri Thakur did in Bihar. You took a hasty decision despite our counsel. Neither of our parties is opposed to the recommendations of the Mandal Commission but we are certainly of the opinion that the economic factor has to be added to the reservation policy if it is to be enhanced. Therefore, the real backward among the backwards would benefit.

Dinesh Singh: Not only two parties, we too have the same opinion.

L.K. Advani: Many sections of the House, including the Congress Party, welcomed the concept that economic factor should be added while enhancing the purview of reservations. I thought that there would be talks but what is happening is that the people agitating outside are being ignored or rebuked. This agitation should not be taken lightly; it is dividing our society and it is not a healthy sign. The backward people should get reservations. A discussion on this issue should be held. But the Government should make a statement today explaining its stand and the steps proposed to be taken to normalize the situation in Delhi.

Geetha Mukherjee: The tension in the capital is so much that the entire life in the country is being disrupted. We can make an appeal to the students—both pro and anti-reservationists—to be patient first. The Government should call an all-party meeting and also talk to the student groups. If we want to make an appeal for a peaceful way of agitation, then we shall take responsibility of calling them for talks.

Saifuddin Chowadhury: It is very unfortunate that the people in the country are getting divided due to the acceptance of the Mandal Commission recommendations. We understand that the intention of the Government was to help the poor among the Backward Classes and not to perpetuate a division among them. What is very much required now is to have the consensus of all political parties. We had a discussion with different political party leaders where some suggestions were put forward like the economic criteria. The students have been non-violent so far. I appreciate them for that. We should not further escalate the situation. We do not have much time and we cannot allow them to go on like

this. I request the Government to call the political parties of the House and also the leaders of the agitation to try to find out a method by which the Backward Classes and the poor among the other classes are also helped.

R.V. Paswan: It is a serious matter. The House is supreme. The Mandal Commission is not a new issue; the Report of the Commission had been pending for the last ten years. It was discussed thrice in this very House. When I was in the Opposition, I moved the motion twice and Prof. Madhu Dandavate moved it once and at that time the Members from all sections and parties unanimously emphasized the immediate implementation of the recommendations of the Mandal commission. You can yourself see from the Debate that there was not a single political party that opposed it. The question of consensus was raised at that time also. The matter has been kept pending for the last ten years on the ground that a consensus was being achieved. Some members mentioned about Karpuri Thakur formula in Bihar which had also given rise to no less an agitation on this. Article 15(4) and 16(4) of the Constitution clearly enumerate the provisions for the SEBCs. If you want to add an economic clause, this Parliament being supreme, you can do so separately. But this clause will not be added at the cost of the SCs, STs and OBCs. The present reservation is constitutional and it is no party matter.

I do not think that all the members of a party would have the same views as expressed by its leader. Every party represents people from different strata of society having different views. The people agitating against reservations should be condemned. The 80% people of this country who support the policy can launch a counter-agitation too. We should not get emotional. We, the 540 Members of Parliament do not constitute the country. This is a great step and it is for the first time after thousands of years in Indian history that the backward people are getting their rights. Whenever the cycle of history moves and calls for change obstacles come its way. There cannot be any compromise on the question of reservations based on the Mandal Report.

M.L. Khurana: At least talks should be held with these people (agitating students)

Vasant Sathe: On the Boat Club, students have been lathi-charged and 20 students are in a pool of blood. Should not the House take note of this fact; is it not serious?

P.C. Thomas: Many students have been seriously beaten up and they are in a pool of blood. Is this the way to deal with them?

The SECOND DEBATE on the controversy over the Mandal Commission Report took place in the *Lok Sabha* on 27 August, 1990 with the prime minister V.P. Singh making the following statement about the measures for promotion of employment for the youth in addition to reservations for SEBCs:

V.P. Singh: On 7 August, 1990 I announced in this House the decision taken by my Government to implement the Mandal Commission Report (MCR). The Mandal Commission submitted its Report in 1980. Thereafter, it has been discussed a number of times in both the Houses and there was substantial support and forceful demands for the implementation of the Report. The National Front had declared in its manifesto that it would implement the MCR at the earliest and during the election it had made a solemn commitment to the people to implement it within a year of its coming to office.

When this Government took office, the President stated in his address that the Government is committed to the implementation of the MCR. In both the Houses there was persistent demand from a large section of the Members for its implementation. In the last session, I had assured in the *Rajya Sabha* that the Government will take its decision expeditiously.

This government has taken a number of decisions to render justice to Scheduled Castes, Scheduled Tribes, Women, Minorities, Labourers and Other Weaker Sections. The decision on the MCR, in accordance with its prior commitment to render justice to the Socially and Educationally Backward Classes who constitute 52% of our population, is part of these measures in this "Year of Social Justice", Dr. Ambedkar Centenary Year.

In extending reservation to them, the intention of the government is to give them social justice and a share in the governance and shaping of the country in fulfillment of our constitutional obligations. A number of States have already provided reservation for the Backward Classes. The MCR is only with regard to SEBCs. Introduction of economic criteria into it will dilute its purpose. So the Government wants to make it clear that it is not possible to make any dilution of the 27% reservation for the SEBCs. At the same time, the Government is equally concerned about the future of our youth in general. We would sympathetically consider the suggestion, made by some members in the *Rajya Sabha*, to provide reservation for the poor, irrespective of social groups. We propose to provide an

additional reservation of 5% to 10% for the poor entirely on the basis of appropriate economic criteria, after taking sense of this august House.

It was another commitment of the National Front to enshrine the Right to Work as a Fundamental Right in the Constitution. The Government intends, after interacting with political parties, to introduce in this session a Constitution Amendment Bill to give effect to the same within the available resources and seeks the cooperation of all parties in passing it after due deliberations.

Arising from our concern for our youth is our decision to make employment the central thrust of the Eight Plan. The Plan target has been fixed in terms of annual rate of increase in employment and has been fixed at 3% per annum over the next decade. The Government intends to establish a National Youth Council to ensure the involvement of the youth in the building of the Nation and to focus on the problems of the youth. In the light of this Government's concern for the employment prospects and the future of our educated youth in general, on August 15, 1990, I announced our decision to increase the flow of resources for various programs of youth from Rs. 20 crores to Rs. 265 crores, mainly for self-employment, higher studies and for involvement of youth in literacy programs. This was done in view of the fact that Government jobs alone cannot solve the unemployment problem.

P.R. Kumaramangalam: Please note the present situation in Delhi and rest of the country. The Prime Minister's statement had already come out in the papers. The misfortune is that the students are agitating with no real political support at all, no party supports them.

Sharad Yadav: (Minister of Textiles and Food Processing): You are supporting them.

Kumaramangalam: In this delicate situation, instead of talking to the students, we find the Ministers openly calling for violence and dividing the society. If they have courage, let them resign. They are inciting violence and starting a class war. I demand their resignations.

M.L. Khurana: I have just come from hospital where a youth of 16 years had been admitted with serious brain injury and whose condition is critical. This situation is created by you.

Subodh Kant Sahay: (Minister of State for Home Affairs): The boy received injury as he fell down from the roof of a bus. Police action has nothing to do with it

M.L. Khurana: The situation in Delhi has come to such a pass that two rival groups—anti and pro-reservationists—duly armed with hockey sticks were about to start a pitched battle. Where do you want to take this country? I am not concerned as to who is behind these disturbances; the Government should initiate a dialogue with parties concerned and youths. No one is against reservations as such but they are creating such a situation as if only they are in favour of reservation and others are against it.

Prof. K.V. Thomas: Government's action has divided the country on the basis of caste.

Prof. Vijay Kumar Malhotra: There has been a ban on creation of posts and filling the existing vacancies under the Central Government since 1984. When there are no posts to be filled up, to whom are you giving 27% or 5% or 10% reservations? When you have not given the right to work to the people, what for this reservation has been made and caste war like situation is being created in the country. The Prime Minister has been repeatedly urged to initiate a discussion so as to arrive at a consensus. We want a peaceful solution to this issue. Unfortunately, the Prime Minister has not made any statement about this.

R.V. Paswan: To enlighten the people belonging to the SCs, STs and BCs about their rights cannot be considered a call for waging a caste war.³⁷

The THIRD DEBATE on Mandal commission took place on September 6, 1990 under Rule 193, i.e., "discussion on matters of urgent public importance".

Kashiram Chabbildas Rana: People will have to be given social and economic freedom also. One or the other hurdle comes in the way when some announcement is made to give these freedoms. Before the election, most people had promised that recommendations of the Mandal Commission would be implemented. It will be better if all the parties are consulted and a decision is taken after arriving at a consensus. Had the Government made this announcement immediately after coming to power, people would have widely welcomed it I was distressed when I heard the views of the Congress Party in this regard—The Backward Classes account for 52% of the total population but people do not accept their views. The Congress party says that it is not against the recommendations of the

Mandal Commission. It also expresses apprehensions that the implementation of recommendations would fragment the country into 1000 pieces. They cite the incidents of 1947 when the country was partitioned into two parts. In 1985 when an agitation was launched in Gujarat, the then prime minister and the present leader of the opposition, Mr. Rajiv Gandhi advised the agitationists to withdraw their agitation and promised them that a national consensus would be arrived at. When they were in power, they did not do anything for 4 to 5 years to reach a national consensus. People who claim that they are the well-wishers of the downtrodden in the House are trying to snatch away their rights. They never made any efforts to implement the recommendations of the Mandal Commission.

Today the condition of 52% of the people is deplorable. The BJP has also made a promise to the people that it would implement the Commission's recommendations. But in practice, quite a reverse view is being expressed. I request all the parties to extend their cooperation to the decision to give some rights to Backward Classes. Though the BCs constitute 52% of the total population, only 4.65% of them are employed. Higher classes should make some sacrifices for their fellow brethren. Except 3 to 4 years of Janata Party rule, the Congress Party has been in power for the last 43 years. But there has been no change in the plight of BCs in these 43 years. Then how the country could remain united today? If at all there are certain communities which have been backward and yet have not been included in the MCR, should also be provided reservation on economic basis. The proposal providing 5 to 10 percent reservation to them has already been made. The decision taken in the House today should have been taken 43 years back when the Constitution was made.

Indrajit Gupta: On behalf of my party, I extend our wholehearted support to the decision of the Government to introduce 27% reservation for the Backward Classes. Congress Party is in difficulty over this issue. It cannot say that it is opposed to the Mandal Commission as such. They were given a golden opportunity. During the last ten years in which MCR was available, it was the Congress which was in power and if they were really true to their promises, they could have taken the initiative. They could not do it because they were not serious or sincere. Now they cannot oppose the Mandal Commission. The atmosphere in the country is now highly emotionally surcharged and it is very difficult for anyone to take an objective stand. The Hindu social structure has been given a shake up by

this decision. It is only natural that those groups or elements who think that they are going to lose the privileges, which they have enjoyed uninterrupted for so many years, should be angry and apprehensive of the future. My party is deeply sorrowful at the loss of lives and public property. It appears to me that it is quite a modest and truncated implementation of the MCR. An exaggerated and distorted picture has been given to the agitators. This conflict should not be allowed to degenerate into a pro and anti-reservation issue.

This limited reservation is not a panacea for the caste system, nor is it going to cure the problem of unemployment. But if these downtrodden and backward people remain like this as a drag on our society, on our future development, this country can never go forward. Therefore, these people—15 or 17 percent—who are really and consciously, because of their own interests, are opposed to this reservation. We cannot allow them to exercise a veto on this at all. We cannot abolish the caste system overnight. But when you want to bring about changes, you must begin here by taking certain concrete steps. If you take the lists tabulated by the Mandal Commission, you will find classes there. If there are errors in the Report, they can be gone through in due course. Some people have now suddenly become very much considerate for the fate of the less educated and less affluent people within each of these backward classes. They are saying, "Oh! They will never get these benefits. All the benefits will be cornered by a few people at the top". But this is the way our society functions. What about the upper classes? Are not their privileges, benefits and rights also cornered by small group of people? So, such argument is very wrong. For the first time, this reservation is being introduced on a limited scale, i.e., 27%, it would not be desirable to insist on the introduction of some economic criteria or means test.

We can go into them later, after this thing has worked for some time and these classes are able to make some progress and come up, then the whole thing can be gone into again. The OBCs are being given, for the first time, an opportunity to have a share in the administration of the country. We have suggested in our Party Resolution that let this scheme work for ten years and after ten years, let all these things be gone into again and they can be modified. And I urge upon the Government that it should take up follow up measures. New opportunities should be created, particularly in the rural areas. Land reforms have to be carried out. And educational opportunities should be provided on an increased scale to all these people. Then only this reservation will have some concrete

meaning. And all this talk about merit and efficiency—an argument we heard before Independence also from the foreign masters—is bogus. I do not think that our administration which is dominated by upper class people is a great model of honesty, integrity and efficiency. I do not believe that merit is a monopoly of certain *upper* caste people only.

The modalities of implementing the policy could have been better considered and a broader agreement reached if there had been some broader consultation and discussion. The step is long overdue. But the haste with which it was announced perhaps was not altogether wise. The intensity and the height of the agitation has probably reached its peak now. It may begin to decline after that. No agitation can go on forever.

Vasant Sathe: If every citizen of this country hereafter is going to be asked to have a label on his head of his caste, that will be taking us back to the crudest era of Manu and dividing this country on caste lines.

Sharad Yadav: Those members in the House may please raise their hands who made inter-caste marriage. (No hands were raised!).

Rajiv Gandhi (Leader of the Opposition): The timing—of the announcement by the Prime Minister—is a time when the nation is going through a number of very serious problems. The situation in Punjab and Kashmir is worse than ever. Assam has joined the list and Tamil Nadu is drawing close to that. In fact the Prime Minister had asked—in this very House—the nation to be prepared for a war. Moreover, we already have North-South tension brewing on the question of language. There is also the question of communal tension. And the problem of rural-urban divide, created just recently, because of certain differences within the ruling party. On top of that, there has been, after a long time, a caste tension which is on two levels—the first was caused by the formula used by the National Front to get together, and the AJGAR formula which brought back casteism to electoral policy after a break of ten years. In this situation, with pressures from within and outside, what was needed was the soothing touch from the Government. But they announced a hasty decision without preparing the ground. And the proof of that is that the people are getting killed, buses, trains and buildings are being destroyed.

Nathu Singh: What happened in 1975?

Rajiv Gandhi: The Prime Minister is causing a rift in the society and it is a totally irresponsible stand that the Government has taken. There are a number of natural goals like the removal of backwardness, poverty and casteism. The first thing in removing backwardness and poverty is to look at the root of the problem, to give equal opportunity. Whether the child is a Scheduled Caste or a Scheduled Tribe or a backward or a forward, the merits are all there, but it does not get the opportunity to develop these merits. So it is imperative that we harness all our energies to help all these children. The problem of backwardness cannot be handled just by looking at only one aspect. Only reservation or education or financial help will not do. You need a comprehensive plan. We, the Congress, are in favour of a comprehensive action plan for the backward communities. The problem cannot be solved by playing politics or by manipulations.

The recommendations of the Mandal Commission are extremely wide-ranging. For example: land reforms, reorganization of village economy, Bhoodan movement, development of livestock, rural cottage industries, rural housing, public health, rural water supply, representation in Government, etc., We are in favour of all such measures for SEBCs. But all such measures should go to those groups of the SEBCs who deserve such help most. We are not in favour of having such measures being cornered by one particular group among SEBCs. There are some people who, under no circumstances, can be described as socially and educationally backward. Even if there is one such person, the assistance should go to somebody else.

Sharat Yadav: Why it was not done in the Congress-ruled States or during the regime of Mr. Rajiv Gandhi?

Rajiv: Do we want all these benefits to be taken away by landlords and senior Government officers. Yes, they are very few, but why should they corner all the privileges?

Harish Pal: Whether this was the only reason that you did not provide them during your tenure.

Rajiv: I would like to put a question to the PM: Is the Government looking at one particular vested interest or is it really looking at the SEBCs?

V.P. Singh: (Prime Minister): The issue being addressed is: the whole section of society, i.e., backward—educationally and socially and not economically backward persons. When a class moves up, then, of course weeding out can be there. But when the whole class is

just one percent, that is not the issue. The issue is whether the whole class has gone up or not.

A Member: How many?

Rajiv: If the number is negligible, only one or two, then you should have no objection at all because you are eliminating two out of 42 or 43 crores. What is your objection then? The benefits should go to the landless labour, coolies, rikshaw-wallahs, nais and dhobis.

R.V. Paswan: You want reservation to be limited to sweepers only?

Ram Dhan: *Dhobi* (washerman) is a Scheduled Caste and not a backward caste-

Rajiv: Mr. Ram Dhanji you may not be aware that there are dhobis among Muslims also. Benefits should also go to the underprivileged groups from all religions. They are looking almost entirely at caste. For example, the vast majority of the Muslims are backward—educationally, socially and economically. The same thing is true for Christians and some sections of Sikhs. Another point is our national goal of a casteless society. I agree with you that caste counts for a tremendous amount in this country. But what is our goal? And I would appreciate it if the Members especially from the Left parties whom I thought—before they got into this alliance—were responsible and principled members and believed in certain things.

Somnath Chatterjee: The Leader of the Opposition is a self-confessed juvenile. He does not understand why he had 450 Members in the earlier House; how the poor people were alienated from the Congress; why people lost faith in them. Whether I am here or not. I am for the poor people, the struggling people of this country.

Rajiv: The Honourable Member is a very old Member of the House and I do not want to contradict him. But while we may have lost confidence of the people in the country. At what point of time have you crossed 5% to 6%?

Somnath Chatterjee: But we have never let down the people.

Rajiv: Unfortunately, the step we are taking today is a casteist formula. We must dilute and break that formula. This is where the leftists are not carrying out their responsibly. If the present Government goes in a casteist direction, the Left is partly responsible. I would like to ask the Prime Minister a very specific question: "Do you personally believe in a casteless society as the goal of a developing nation like India"? *Raja Sahib* is putting caste into our society, once again.

Ramdhan: Which *Raja Sahib*?

Rajiv: Raja Vishwanath Pratap Singhji. I request *Raja Sahib* to expand the definition of caste and include SEBCs from other religions, viz., Muslims, Christians, Sikhs, Buddhists, Parsis and others.

Ramdhan: Anglo-Indians have been left out

Rajiv: Yes, Anglo-Indians too.

V.P. Singh: Jawaharlal Nehru also talked about casteism like you and condemned it, but the fact remains. He says that half a dozen or may be ten so-called superior castes dominate the Indian scene among the Hindus. And if I talk about removal of casteism, do not understand that I want to perpetuate the present classification as some people at the top and others at the bottom.

Rajiv: I am perhaps more knowledgeable about what Panditji said than himself. I noticed that the piece of paper the Hon. Prime Minister read was handed over to him from behind.

Geetha Mukherjee: This quotation is from Mandal Commission itself. He read from that.

Syed Masudal Hussain: Have you read the Mandal Commission Report?

Rajiv: I think I have read Mandal Commission Report better than you. On many occasions *Raja Sahib* has said that he is going to implement the MCR in toto. A lot has been said about what was the Congress Party doing (when it was in power) about the Mandal Report?

A Member: Sleeping.

Rajiv: No, we were not sleeping. When implementing any such measure which has major social ramifications, it is very important to lay the ground.

Nirmal Kanti Chatterjee: You were digging the ground.

Rajiv: I will put it in a simple language then you will understand it. Mr. Indrajit Gupta said exactly the same thing, "You need to lay the ground before taking any such measure". The Government has not laid the ground. We had a number of Cabinet meetings. I don't remember any vociferous comment at all at that time.

V.P. Singh: In laying the ground, you have lost the ground.

Rajiv: **There** are many contradictions in the MCR. What is the scientific basis on which **the Report** is prepared. I am not saying that the Report is useless, there are merits **in it** Mandal Commission itself denounces the Kaka Kalelkar's Report on several grounds. Did

Mandal Commission give solid scientific foundations to its Report? Three famous sociologists (Professors B.K.Roy Burman, M.N. Srinivas and Yogendra Singh), who were involved with the Commission have today said that they were denied opportunity to participate in Commission's work and they have not contributed to the Commission.

Chiranji Lal Sharma: 90% of the Members have not read the Report and they are making comments.

Somnath Chatterjee: Leader of the Opposition points out serious deficiencies in the Report. Why did not his Government reject the Report?

Ramdhan: Congress Party may reject it.

Rajiv: The Commission says that the data was collected on the basis of 1891 and 1931 Census. Is that valid today? Mandal himself admits that the operation is not scientific, not sophisticated and not even academically satisfying. And the 52% calculated by Mr. Mandal includes some Scheduled Castes and forward castes. I know that Brahmins, Reddys, Vokkaligas, Karnrnas, Lingayats, Gounders and Chettiyars are included. Are these backward castes? This is how 52% has been arrived at.

Nani Bhattacharya: Mr. Gandhi is misleading the House and let me quote from the Report itself that he is giving wrong information. Mandal Commission clearly states that 52% of the total population of India constitute backward class which includes both Hindus and non-Hindus.

Rajiv: On what basis then has this Government and the Mandal Commission accepted caste as the sole definer?

V.P. Singh: Please protect us from the atrocity being committed through the MCR he is reading out.

Rajiv: The Congress is for all types of action including reservation for SLBCs But we have some serious problems with some definitions. We have problems if caste is defined to enshrine casteism. The Congress cannot stand by and watch this nation being divided for the political convenience of one individual. Mr. Mandal has listed three types of assistance out of which you have picked up only reservations. All this will remain a mere palliative. The manner in which you have implemented the Mandal Commission is breaking up the country. We would like the Government to present a White Paper to the

House explaining all the issues raised. Such a national dialogue will reduce the tension all over the country.

Five months ago when some Editors warned the Prime Minister of the direct consequences of the implementation of the MCR, in the form of caste wars, Mr. Singh had said that the Report was purely a political strategy and he was not foolish. I believe that the implementation of the MCR was not even part of the Cabinet Agenda on the day it was brought in. It was put on the table and it was passed in hurry, because something was happening outside. There was a rally taking place. If that rally got the support of certain Chief Minister, then, there would be tremendous problems inside the House. So, to protect himself against internal party wranglings, you have taken the country to the edge of caste wars. *Raja Sahib's* policies are not very different from what the British did; they tried to divide our country on caste and religion. Let us not allow one man's obstinacy to hold India to ransom.

V.P. Singh: What was your government doing in Andhra Pradesh?

R.V. Paswan: It is wrong. When a big tree falls the earth below it shakes. This is what the Prime Minister had said. What happened when Hindu- Sikh riots took place ?

V.P. Singh: It is a record that no national leader has given such a long speech opposing the Mandal Commission till now. But I would like to thank him for supporting the reservations for Backward Classes. It is a matter of great national importance that even though we have different opinions on other issues we are unanimous on the issue of reservations for OBCs. The political importance of this issue is that it has been accepted by the nation that social injustice is prevalent in our society. The Government and the Prime Minister can be changed. A religion can be changed but the caste, decided by birth cannot be changed till death. A person born in a downtrodden or backward class had to face insults and indignities for the whole life.

Rajiv: They were victims of feudalism only.

V.P. Singh: This is related to Government jobs only. There is no question of feudalism because this is the only way we can ensure the welfare of a particular class. This is a question of social justice also. If we want to bring about changes in the society we will have to bring about changes in the bureaucracy also, which is a decision making institution. We have to place the downtrodden in bureaucracy to bring about social

reforms. Even after 43 years of Independence, the BCs could get only 4.5% of Class I posts. We are not making these reservations just for providing them some facilities or means of livelihood but we are trying to give them share in the institutions of power. Aryan invaders defeated the Dravidian inhabitants of this country and established their supremacy and today these defeated people have remained downtrodden. If you want to bring them at par with others, then you should have the courage to make them equal partners in the power structure. You should be bold enough to provide 40% reservation to them in all decision making bodies including State Legislatures and Parliament. The number of people who talk eloquently about eliminating poverty has increased considerably. It is essential to remove them and hand over power to the poor themselves.

Rajiv: Many mistakes have been made in many States. Not only Andhra but almost every State has gone through the rout of caste based reservations. I categorically say that it is wrong. There is no need to compound the mistakes committed by the States. What we need is a national consensus. Almost all these reservations took place before I came to power.

V.P. Singh: The Leader of the Opposition has accepted the mistake committed by his predecessors. I hope that he would rectify that mistake and give necessary directions to the Chief Minister of Andhra Pradesh, even if it means that your government will fall in Andhra Pradesh, you should have the courage to do so. When a reference has been made to A.P., the Leader of the Opposition started looking for excuses and talking about a national consensus. If you are bold enough, you should go alone. We have courage and going ahead alone. We are not listening to your opinion in this regard. We are going by our own consensus and appealing for a national consensus. We too are not for reservations—it is not a permanent remedy to the existing problems. You provide food, clothes and housing to all people. Then there will not be any need for reservations. We can withdraw all existing reservations. But even if a disease is not properly and fully diagnosed by a doctor, the patient is advised to take *crocin*. Reservation is not a magical wand. But it is a step in the right direction. This policy will lead us to a confrontation with the existing system. But this conflict will result in the creation of an egalitarian social order.

At the moment, the parameters of the society, the scales are in favour of the affluent. We are just trying to balance these pans. Regarding the time of the announcement, yes, according to your calculation, it has been done in a wrong way, at a wrong time. Had it been done according to your calculation, it would have taken another ten years to implement and we would have reached 21st century then. Then, they say that we did not have any discussion on it. Do not confine your vision to the time of its implementation, you look at the way these downtrodden people have struggled. We had included the issue in our manifesto. Discussions were held not only within the Janata Dal but also among its constituents. It was accorded approval by all the constituents of National Front. After that it was included in the President's address both the times. Earlier, Members of the Opposition used to ask us as to when were we going to implement the MCR. Now, when we have implemented it, they are saying that it is a hasty decision.

During the discussion, it was alleged that the recommendations of the Commission were caste-based. If you look at it carefully, you will find that caste was not the only basis. Recommendations were made after taking social, educational and economic backwardness into account. You are giving a casteist colour to the Report to achieve your narrow political ends and stall the initiative taken by us. The denial of reservations to the financially well off people among the OBCs can be done, once these communities are rescued from the vortex of poverty and destitution. We accept your suggestion about the need to include certain other parameters also. The Commission suggested a review of the entire gamut, after every ten years and it is acceptable to us.

We have taken precautionary measures in many States where there have been riots and bloodshed. So far as the approval of the States is concerned, most of them have prepared a list of backward classes. Are we creating anything new by doing just what is mentally and physically accepted in many States. We are doing nothing except bringing the Centre at par with the States which are ahead in this task.

I appeal to the students that this decision has been taken in the interest of social justice. This is for the fulfillment of the dreams of Dr. Lohia, Chowdhari Charan Singh, Mahatrnaji, Jayaprakashji, Ramaswamy Periyar; and all in the opposition are requested to co-operate with us. We have received a report from Bihar Government that some Congress Legislators were behind these incidents of violence. I request the Congress party

and the Opposition that they should take disciplinary action against those who are inciting violence.¹⁸

DECLINE OF A DIVIDED LEGISLATURE: LEGITIMACY CRISIS OF THE EXECUTIVE

Political Scientists and others have talked a great deal about the "decline of legislatures". This talk about the decline is not confined to India; it is almost a world-wide phenomenon. For some, "decline" is a mild term. Some academics have gone much farther and announced the "irrelevance" and even "death" of legislatures.³⁹ A general survey of the working of legislatures indicates a decline in certain striking respects, particularly, in powers in relation to the executive organ of the Government. The legislature is undoubtedly a supreme authority to which the executive has been expressly responsible. The work of the executive has to be scrutinized and questioned by the legislature and subjected to its ultimate control. But in practical terms, executive dominates the legislature to get its proposals passed and the executive has control over legislative behavior. The executive has taken away a part of legislature's power in the matter of making laws, particularly due to the growth of "delegated legislation". It meant that legislatures no longer make all the laws or even all the important laws.⁴⁰

Increase in powers of executive has not been the result of taking away from the legislatures things which it did before. Today, legislatures indeed do more than what they did and legislatures work longer hours and interest themselves in wider range of subjects. Absolutely, their "powers" have increased. Relatively to the executive, however, they have, in almost all cases, declined.⁴¹ In the world parliamentary history, there has been a continuous change in the functional position of the legislatures which can be termed as a decline. In forming parliamentary procedures and legislative framework of debate the executive plays a crucial role in maximizing its power rather than preserving the spirit of legislature in accordance with the democratic norms. Political parties remained rigid in their structures at the cost of democratic principles just for electoral gains, and to reach the goal of achieving power. Along with the varied growth of modern society, legislatures are increasingly burdened with unfinished work resulting in such facilitate measures like

delegated legislation, ordinance, guillotine, etc. But these facilities have proved to be double-edged, and turned out to be potential instruments for executive ascendancy at the cost of legislature. Also, the anti-defection law emerged as a "discipline-enforcing tool" in the hands of political party bosses compromising constituency interests and democratic ethics. Hence, a strong trend emerged wherein the legislatures are bounded by various limiting factors, thus declining their effectiveness.⁴²

The executive has played a pivotal role in the decline of the parliament. The executive invariably tries to dominate and direct the proceedings of the parliament. A quantitative analysis of questions, calling attention motions, ordinances, adjournment motions, half-an-hour discussions, etc., of the Indian Parliament reveal that they have been manipulated by the executive, defeating the purpose for which they have been established. The basic unit of parliamentary democracy—people's representative or the legislator—failed to fulfil the expected role. A study of attendance of members in the sessions makes it clear that legislators show less interest in serious issues and take up only those which serve their short-term interests. The present party system did not help a sincere legislator, who is forced to operate within the ambit of the party manifestos and the intentions of the party leadership. The opposition in India has been degraded as an institution. The various weaknesses of such an important democratic device has been helping the increasingly dominant role of the executive in the law-making function of the parliament. This usurpation has been one of the main causes of the decline of legislature. With its limited perspectives, and little maneuvering space in the parliamentary discussion, the opposition frequently used walk-outs, and no-confidence motions as weapons to force the discussion on issues. Alarming, while the legislative work has increased, the number of sittings of the *Lok Sabha* has been decreasing.⁴³

In these days of executive ascendancy and of its "glorification", it is not often that legislatures make any significant impact or important contribution to the policies of the country. Ever since Bryce bemoaned about the "decline of legislature",⁴⁴ - an idea echoed by Wheare, when he declared that "the unwillingness of legislatures to do all these things (to be the sole forum of debate, or the sole committee of grievances in the country's political system) that has resulted in many countries, in a decline not in 'powers' but in efficiency",⁴⁵ - there has been an actual "decline of parliaments". The general assumption

is that in the years to come the legislative bodies would have no effective role. This is because of the widespread criticism and doubts about legislative competence, efficiency, integrity, and even its representative character. Even the devices available to supervise the executive have either been inadequate and ineffective or at best been deployed only to further partisan ends. Some political scientists have come to believe that legislatures in general, have in the last analysis, been reduced to mere "sounding boards" or "rubber stamps", endorsing policies already framed by the executive.⁴⁶

Even though, in theory, the deliberation and adoption of laws may rest with Parliament, in practice the Executive makes a number of significant inroads into Parliament's legislative power, like the initiation of legislation; the extra-parliamentary consultation on an item of legislation; the delegation of legislative powers to the Executive; and the position of the Executive in promulgating laws and in possible vetoing of them.⁴⁷

EXECUTIVE, LEGISLATURE AND MANDAL COMMISSION

The executive has been taking the policy initiatives in the domain of affirmative action since its inception during the colonial era. But, as explicated, the unanticipated policy announcement on OBC reservations set off an institutional chain reaction on an unprecedented scale. The national turbulence over Mandal Commission, for the first time, spotlighted the role of the Executive in the realm of protective discrimination. The Executive Orders; issued to enforce the reservation policy, were challenged by several petitioners. The anti-Mandal stir was so furious—which turned more violent because of the protest suicides—that the Supreme Court was constrained to stay the implementation of the policy.

By contrast, constitutionally, the Executive branch of the state has complete autonomy in formulating and implementing reservational policies, particularly under the Article 16(4). The power of the Executive to institute and implement such programs under the above Article has been validated by several judicial pronouncements, especially the landmark verdict of the Supreme Court in the *Mandal Commission Case*. In fact, the role of executive is the very first issue that the Apex Court addresses. "The judgment observes

that, "even the appointment of a Commission under the Article 340 is not necessary to identify the OBCs. The Government could have specified the OBCs on the basis of such material as it may have before it, e.g., lists prepared by the States".

Though the Executive is constitutionally empowered to adopt any policy of preferential treatment for OBCs, it could not push ahead with such a policy based on the Mandal Commission Report. The anti-Mandal movement exposed the limitations of the Executive in implementing the redistributive policy which disturbs the status quo loaded in favour of the higher castes. The legitimacy of the Executive was further eroded by: the minority status of the government which tried to expand its social base by implementing the Mandal Report; the immediate cause of the sudden adoption of the policy was the power struggle within the ruling Janata Dal; and fairly unilateral nature of the policy which was adopted without consulting the parties supporting the government from outside. The cumulative effect of all these factors was that the ruling National Front coalition—particularly its largest constituent the Janata Dal—got deeply divided over the controversial policy. And the Executive could neither defuse the disturbances nor enforce its policy. Though the Executive made delayed and desperate attempts to mobilize the Backward Classes to counter the anti-reservation agitation, they could not make the intended impact (see Chapters on political parties and caste groups). As a result of the Mandal fallout, ultimately, the government collapsed after the BJP withdrew its support to it.

The Legislature is generally considered as the most important branch of the Government. Though the Indian Constitution has not strictly adhered to the doctrine of Separation of Powers, it is clear from the different provisions that, barring special exceptions, the power of making laws shall be exercised by the Parliament.⁴⁸ But in effect, the powers of the Parliament are being increasingly eroded by the Executive. Even in the realm of compensatory discrimination too, the Executive has primacy over the Legislature which has largely been reduced to a mere deliberating body or a "sounding board".

It has been unequivocally held by the judiciary that the Executive is empowered to make and enforce any reservational policy through its orders and the Executive need not enact a legislation to implement such policies. The Executive merely announced in the *Lok Sabha* on 7 August 1990, its decision to partially implement the Mandal Report. And the

Executive promptly issued an Office Memorandum on 13 August giving effect to the above policy.

Initially, the Parliament had been bypassed by the Executive, though the House was in session, by issuing orders to implement the contentious policy after it had just "announced" its decision in the parliament. The Executive neither initiated a debate in the Legislature (to elicit the views of the Members) nor tried to enact a legislation on the policy. It is interesting to note that—as an overview of the House shows—the Parliament enacted laws relating to relatively less significant and non-controversial subjects like the National Commission for Women Act, 1990, the *Prasar Bharathi* (Broadcasting Corporation of India) Act, 1990, etc. However, the national conflict over the OBC reservation and the resultant institutional fissures compelled both the Executive and the Legislature to react and address the issue by initiating a discussion in the House.

As the profile of the Ninth *Lok Sabha* shows, the policy was discussed by the House under *adjournment motions* and *discussion on matters of urgent public importance*. The Legislature under study had just three debates (for three days) over the Mandal Commission though the total number of days on which sittings were held was 109. The Ninth *Lok Sabha* represented Members from eight national parties, twenty State parties and eighty nine other registered parties. But a study of the debates shows that most of the Members participated were from national parties. Moreover, the debate was dominated by a couple of prominent Members. The content and tone of the debate indicates that the divided Parliament largely reflected the controversy over the policy which was raging outside.

The divisions in the House were clearly along the party lines. The ruling party Members (particularly the Janata Dal) justified the policy, and the manner in which it was being implemented—in terms of social justice and empowerment—and declined to make any modification to the policy despite repeated requests from the Opposition Members. All the participating Members from the Opposition—including the CPI which supported the policy—felt that the policy should have been discussed by the political parties to reach a consensus before its implementation. All the Opposition Members, except those from the CPI, found faults with Mandal Commission. The debate was also characterized by personal invective. The House did not make any serious efforts either to defuse the agitation or to

build a consensus over the policy. Therefore, the Legislature could not influence the reservation policy in any way. Instead, the sharp divisions in the *Lok Sabha* only added to the institutional conflict. As borne out by the unparalleled controversy over the Mandal Commission, in the sphere of protective discrimination, the Legislature proved to be powerless and ineffective.

So the divided and ineffective Ninth *Lok Sabha* had to be dissolved on 13 March, 1991. The life of the Ninth *Lok Sabha* was only 15 months. And it had the shortest life of all the Houses since 1952. Similarly, the Executive, though vested with constitutional powers of making and enforcing reservation policy, could not push through the OBC reservations in the face of massive backlash from the upper castes and the resultant institutional conflict. As an ultimate outcome of the post-Mandal crisis, the National Front government collapsed in November, 1990—following the withdrawal of support by the BJP—after having been in power for just about 12 months.

The parts played by the two important state organs during the extraordinary circumstances shows that: the role of the Indian parliament has declined considerably, particularly in the area of positive discrimination. The ambiguous and conflicting positions taken by the parties in the House reflected the controversy in the society at large. The discussion in the Chapter also shows that the reactions of both legislature and executive are conditioned by the larger social reality and their vulnerability to the social forces. As a result, the institutions failed to resolve the crisis over SEBCs and reservations.

NOTES

¹. *Report of the Backward Classes Commission* (Chairman: B.P. Mandal), Vol.1, Government of India, 1980, p.5. (Hereafter: *Mandal Commission Report*).

². *Ibid*

³. *Ibid* p.6.

⁴. This is a brief account of the evolution of the role of the Executive in formulating different programs of affirmative action for Backward Classes. For a detailed discussion see Chapters on: OBCs; Mandal Commission; and Introduction.

⁵. Quotas and preferences in recruitment for government service were not uncommon. Similar arrangements occurred in education, housing, revenue and agricultural administration. The Government of India Act 1919, provided for communal representation for Mohammadans, Sikhs, Anglo-Indians, Indian Christians, Depressed Classes, Aborigines and other groups. Similar communal representation was provided by the Government of India Act, 1935.

⁶. There are Constitutional provisions for the protection of the identity and integrity of groups: religious denominations have a Fundamental Right to manage their own religious affairs and to maintain and administer institutions (Article 26); groups with a distinct language, script or culture are guaranteed "the right to conserve the same" (Article 29); religious and linguistic minorities have the right to establish and maintain educational institutions (Article 30 [1]). No similar guarantees are extended to caste groups. However, the governmental commitment to Scheduled Tribes does include preservation of their distinctiveness.

⁷. Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, Oxford Univ. Press, Delhi, 1984, p.363.

^a. For a detailed discussion of Constitutional provisions see the Chapter on OBCs.

⁹. *Analysis of Court Cases under Article 15(4)*, a study prepared by the Indian Law Institute (Delhi) for Mandal Commission, *Mandal Commission Report*. Vol. III, p.4.

¹⁰. Singh, S.N. *Reservations for Backward Classes*, Rawat Publications, Jaipur. 1996, p.90.

¹¹. The Clause says: "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".

¹². *Balaji vs the State of Mysore* is a trend-setting verdict of the Supreme Court. The relevant decision of the judiciary in that case states: "A provision under Article 15(4) need not be in the form of legislation; it can be made by an executive order".

¹³. The expression "Local Authority" is defined in Section 3(31) of the General Clauses Act. It takes in all Municipalities, Panchayats and other similar bodies. The expression "other authorities" has received extensive attention from the Court. It includes all statutory authorities and other agencies and instrumentalities of the State/Central Government

¹⁴. *Indra Sawhney vs Union of India* (popularly known as Mandal Commission Case), Supreme Court, AIR, 1993, pp. 536-37.

¹⁵. Ibid, pp. 537-38.

¹⁶. The Justice mentions the following cases to support his view: (1) *Dr N. B Khare vs State of Delhi* (AIR 1950 SC 211); (2) *Govindji Vithaldas & Congress (1) vs Municipal Corporation, Ahmedabad* (AIR 1959 Bom 26: 59 Bom LR 129); (3) *Virendra vs State of Punjab* (AIR 1957 SC 896); (4) *Barium Chemicals Ltd vs Company Law Board* (AIR 1967 SC 295: (1966) 36 Comp Cas 639); and (5) *Rohtas Industries vs SD Agarwal* (1966 1 SCC 325).

¹⁷. Surendra Malik. *Supreme Court Mandal Commission Case*, 1992, Eastern Book Co, Lucknow, 1992, pp.111-13.

¹⁸. Ibid., pp. 261-62. Justice Savant also cites the cases of *Balaji. Mangal Singh and Comptroller & Auditor General of India*.

¹⁹. Ibid. P. 199, Three separate and dissenting judgements by Justices R. M. Sahai, T.K. Thommen and Kuldeep Singh constitute the minority judgement in the Mandal Commission Case. The minority Judges, after delivering separate verdicts, also issued a joint order declaring the two impugned Office Memorandums (issued by the Union Executive on August 13, 1990 and September 25, 1991 providing the job reservation to the OBCs) unenforceable for want of valid identification of backward class of citizens. They direct the Union of India to reexamine the question of identification of the backward classes in accordance with the principles and directives contained in their respective judgments and pass appropriate orders providing for reservations under Article 16(4).

²⁰. Ibid pp.333-34.

²¹. The judiciary had declined to agree with Mr. Ram Jethmalani who submitted that Article 16(4) is merely declaratory in nature; it is an enabling provision and that it is not a source of power itself; unless made into a law by the appropriate legislature or issued as a rule in terms of the provision of article 309, the "provision" so made by the Executive does not become enforceable.

²². *Indra Sawhney vs Union of India*, op.cit., pp.538-39.

²³ AIR 1968 Punj 306. Also *Triloknath vs State of Jammu & Kashmir*, AIR 1968 SCI.

²⁴. *Mandal Commission Report*, Vol.III, pp. 116-7.

²⁵. Ibid.

²⁶. *Parliaments of the World (Vol.II)*, Gover Publications Ltd., England, 1986, p.835.

²⁷. Bal Ram Jakhar (in his "Foreword" to) Subhash C, Kashyap, *Parliament of India: Myths and Realities*, National Publishing House, Delhi, 1988, pp. VII-VIII.

²⁸. Singh, S.N. op.cit., pp.39-40.

²⁹. See Chapter on Mandal Commission for details.

³⁰. Even the Minorities Commission, headed by the former Chief Justice of India, Mr. M.H. Beg, warned the Government that the implementation of the Report would sharpen caste conflicts in the country.

³¹. Aniruth Prasad, *Reservation Policy and Practice in India: A Means to an End*, Deep & Deep Publications, Delhi, 1991, pp.127-8.

³². Andre Beteille, "The Indian Road to Equality: More Jobs for More Castes", *The Times of India*, 28 August, 1982.

³³. *Parliament in India: The Ninth Lok Sabha, 1989-1991*, Lok Sabha Secretariat/Northern Book Centre, Delhi, 1992, pp.3-19.

³⁴. The Longest tenure on record is that of the Fifth *Lok Sabha* with a total of 5 years, 10 months and 6 days. The 42nd Constitution Amendment promulgated during the emergency had extended the life of *Lok Sabha* and State Assemblies for six years.

³⁵. *Lok Sabha Debates*, No.1, Vol.VIII, August 7,1990,

³⁶. *Lok Sabha Debates*, No. 11, Vol. IX, Third Session (August 24, 1990), pp.320-332.

³⁷. *Lok Sabha Debates*, No. 12, Vol.IX, Third Session (August 27, 1990), pp. 470-83.

³⁸. *Lok Sabha Debates*, Nos.1 1-21, Vol.IX, Third Session (September 6, 1990), pp.463-542.

³⁹. Bal Ram Jakhar, op.cit, p.IX.

⁴⁰. Wheare, K.C., *Legislatures*, Oxford University Press, London, 1963, P.221

⁴¹. Ibid

- ⁴². Srinivas Reddy, K., *Decline of Legislatures: A Study of Lok Sabha of the Indian Parliament, 1972-1989* (unpublished M.Phil, dissertation), Dept of Political Science, University of Hyderabad, 1992, p.121.
- ⁴⁵. Ibid, pp. 122-23.
- ⁴⁴. Lord Bryce, *Modern Democracies*, Macmillan, London, 1921, pp.367-77.
- ⁴⁵. Wheare, K.C. op.cit., p.234.
- ⁴⁶. Jain, R.B. "The Legislative Process in Development: A Conceptual Analysis." in Jain. R.V. (Ed), *Legislative Process in Development*, Gitanjali Pub. House, Delhi, 1985, pp.1 -2.
- ⁴⁷. *Parliaments of the World*, (Vol.II) Gower Pub. Co. Ltd. England, 1986, pp.835-36.
- ⁴⁸. Basu, D.D., *Constitutional Law in India*, Prentice Hall of India, Delhi, 1985, pp. 147-48.

CHAPTER VII

Judicial Response: An Exercise in Counterbalancing

JUDICIAL RESPONSE: AN EXERCISE IN COUNTERBALANCING

All the vital institutions of both the state and civil society were engulfed by the unprecedented national turmoil, set off by the unexpected and partial adoption of the Mandal Commission recommendations. It was the nationwide furious agitation against the Mandal Report that forced the institutions to react and address the highly contested issue of reservations for the SEBCs. Perhaps the most significant dimension of the Mandal controversy is that it mostly occurred outside the institutional framework. The intensity of the controversy was so pervading that all the institutions under the study got deeply divided exposing their internal contradictions. As a result, the political institutions themselves reflected the fissures in society. Paradoxically, the institutions, instead of defusing the explosive situation or resolving the contradictions, aggravated the conflict by mishandling the crisis.

While the anti-Mandal flare-up polarized the nation and turned more violent due to protest suicides, the national print medium, instead of playing an objective and neutral part, added fuel to the anti-Mandal flames by its sensationalism and highly critical and provocative attitude towards reservations. A section of the press even indulged in direct incitement to violence. Political panics—which act as a medium between the state and society—took conflicting positions on the policy which reflected their internal contradictions, both ideological and mobilisational. As the political parties failed to perform their basic functions in resolving the reservational crisis, for the first time in the post-Independence era, a large number of interest groups actively took part in the national controversy over positive discrimination. But they were also divided largely along caste lines merely reflecting the social conflict.

The Parliament—representative legislative body of the nation—emotionally debated the highly disputed job reservations for the OBCs. But the Members in the *Lok Sabha* had failed to reach a consensus; in fact the Parliament had failed to address and influence the policy in any way. The executive is constitutionally empowered to adopt and implement any policy for the upliftment of SEBCs. The executive's order or policy need not be ratified or made into a legislation by the Parliament. However, the executive itself

could neither reach a consensus nor push ahead with the policy by defusing the crisis. Consequently, the judiciary was called upon to tackle the crisis. Therefore, the divided nation looked up to the judiciary to resolve the conflict.

Before setting out the interface between the judiciary and the Mandal Commission, this Chapter discusses certain landmark judgments from the pre-Mandal judicial pronouncements on the contentious policy of affirmative action. This discussion is an introduction, and complementary, to the historic verdict of the Apex Court in the *Mandal Commission Case*,

The Articles 15(4) and 16(4) are looked upon by the Backward Classes as a sort of Chapter of Rights. Whereas the forward classes feel greatly cramped by the provisions. This greatly hurts their self-interest and they consider it as denial of "equality of opportunity", "equality before the law" and a breach of Fundamental Rights. Consequently, scores of aggrieved parties filed petitions before various High Courts and the Supreme Court for the enforcement of their alleged Fundamental Rights and, over the years, a considerable body of case law has grown on this issue. It is well known that the development of a case law on really important issues seldom follows a smooth curve. In view of the highly controversial and emotive nature of the reservation policy, a large number of judgments delivered over the last two or three decades contain quite divergent findings on some vital aspects of the issue. However, by taking an overall impressionistic view, one can discern the emergence of some broad consensus on the really important issues agitated before the Courts.¹

About half a dozen Supreme Court judgements are regarded as landmarks in the evolution of case law on positive discrimination. The Supreme Court's decision in *Balaji vs. State of Mysore* is the most celebrated judicial pronouncement (before the historic *Mandal Commission Case*) on the question of reservations and it had exercised a decisive influence on all the subsequent judgments.² Therefore, the following section deals with these trend-setting pre-Mandal verdicts.

Judicial Decisions Leading to the First Amendment

Soon after the enforcement of the Constitution, two cases reached the Supreme Court *from* the State of Madras: *State of Madras vs. Champakam Dorairajan* (AIR 1951 SC 226) under Article 15; and *Venkataram vs. State of Madras* (AIR 1951 SC 229) under Article 16.³ By virtue of certain orders prior to coming into force of the Constitution—popularly known as "Communal G.O."—seats in Medical and Engineering colleges in the State were apportioned on the basis of religion, caste and race.

Even after the advent of the Constitution, the G.O. was being acted upon which was challenged by Mrs. Champakam as violative of the Fundamental Rights guaranteed to her by Articles 15(1) and 29(2) of the Constitution. A Full Bench of the Madras High Court declared the said G.O. as void and unenforceable with the advent of the Constitution. The State of Madras brought the matter in appeal to the Supreme Court. A Special Bench of Seven Judges heard the matter and came to the unanimous conclusion that the allocation of seats in the manner aforesaid is violative of Articles 15(1) and 29(2) in as much as the refusal to admit the respondent notwithstanding her higher marks, was based only on the ground of caste. The State of Madras sought to sustain the G.O. with reference to Article 46 of the Constitution. Indeed, the argument was that Article 46 overrides Article 29(2). This argument was rejected. The Court pointed out that while in the case of employment under the State, clause (4) of Article 16 provides for reservation in favour of backward class of citizens, no such provision was made in Article 15.

In the matter of appointment to public services too, a similar communal GO was in force in Madras since prior to the Constitution. In December, 1949, the Madras Public Service Commission invited applications for 83 posts of District Munsifs, specifying that the selection of the candidates would be made from the various castes, religions and communities as specified in the Communal G.O.⁵ The petitioner Venkatram (it was a petition under Article 32 of the Constitution) applied for and appeared at the interview and the admitted position was that if the provisions of the Communal G.O. were to be disregarded, he would have been selected. Because of the G.O., he was not selected. Whereupon he approached the Supreme Court. Justice S.R. Das, speaking for the Special Bench, referred to Article 16 and in particular clause (4) thereof and observed

"Reservation of posts in favour of any backward class of citizens cannot, therefore, be regarded as unconstitutional". He further observed; "... This ineligibility (of the petitioner) created by the Communal G.O. does not appear to be sanctioned by clause (4) of Article 16 and it is an infringement of the fundamental right guaranteed to the petitioner under Article 16(1) and (2). The Communal G.O., in our opinion, is repugnant to the provisions of Article 16 and 15 and as such void and illegal",⁶

In this connection, Mr. Ram Jethmalani, an eminent jurist, says that the decision in *Venkatraman* clearly supports the identification of backward classes on the basis of caste. The Communal G.O. was struck down, only in so far as it appointed the remaining vacancies between sections other than Harijans and backward classes. It is rather curious, he says, that the decision in *Venkatraman* has not attracted the importance it deserves all these years: All the subsequent decisions of the Supreme Court refer to *Champakam*. Hardly any decision refers to *Venkatraman* notwithstanding the fact that *Venkatraman* was a decision rendered with reference to Article 16.⁷

Soon after the two decisions were rendered, the Parliament intervened and in exercise of its constituent power, amended Article 15 by inserting clause (4), which reads:

"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"⁸

Trend-setting Judgment in *Balaji*: The judicial pronouncement in *Balaji* marks an important milestone which influenced most of the subsequent decisions delivered on reservation policy. After the enactment of the First Amendment, the first case that came up before the Apex Court is *Balaji vs. The State of Mysore* (AIR 1963 SC 649).⁹ In Karnataka, reservations were in force since a few decades prior to the advent of the Constitution and were being continued even thereafter. On July 26, 1958 the State of Mysore issued an order under Article 15(4) declaring all the communities excepting Brahmins as socially and educationally backward and reserving a total of 75% seats in educational institutions for them. Such orders were being issued every year, with minor variation in the percentage of reservation. On 13 July, 1962, a similar order was issued wherein 68% of seats in all Professional Colleges and Technical Institutions in the State were reserved for the SEBCs, SCs and STs. SEBCs were again divided into two

categories: backward and more backward. The validity of this order was questioned under Article 32 of the Constitution. While striking down the said order the Supreme Court enunciated the following principles:¹⁰

- (1) Clause (4) of Article 15 is a proviso or an exception to clause (1) of Article 15 and to clause (2) of Article 29;
- (2) For the purpose of Article 15(4), backwardness must be both social and educational. Though caste in relation to Hindus may be a relevant factor to consider in determining the social backwardness of a class of citizens, it cannot be made the sole and dominant test. Christians, Jains and Muslims do not believe in caste system; the test of caste cannot be applied to them. In as much as identification of all backward classes under the impugned order has been made solely on the basis of caste, it is bad;
- (3) The reservation made under clause (4) of Article 15 should be reasonable. It should not be such as to defeat or nullify the main Rule of equality contained in clause (1). While it is not possible to predicate the exact permissible percentage of reservations, it can be stated in a general and broad way that they should be less than 50%;
- (4) A provision under Article 15(4) need not be in the form of legislation; it can be made by an executive order; and
- (5) The further categorization of backward classes into backward and more backward is not warranted by Article 15(4).

It should be remembered here that *Balaji* was a decision rendered under and with reference to Article 15 though it contains certain observations with respect to Article 16 as well.

Soon after the decision in *Balaji*, the judiciary was confronted with a case under Article 16: *Devadasan vs. Union of India* (AIR 1964 SC 179), This was also a petition under Article 32 of the Constitution. It related to the validity of the "carry forward" rule obtaining in Central Secretariat Service. The reservation in favour of Scheduled Castes was 12.5% and Scheduled Tribes 5%. The "carry forward" rule considered in the said decision was in the following terms: "If a sufficient number of candidates, considered suitable by the recruitment authority, are not available from the communities for whom reservations are made in a particular year, the unfilled vacancies should be treated as unreserved and filled by the best available candidates. The number of reserved vacancies

thus, treated as unreserved will be added as an additional quota to the number that would be reserved in the following year; and to the extent to which approved candidates are not available in that year against this additional quota, a corresponding addition should be made to the number of reserved vacancies in the second following year". Because sufficient number of ST/SC candidates were not available during the earlier years, the unfilled vacancies meant for them were carried forward as contemplated by the said rule and filled up in the third year, that is in 1961. Resultantly, the extent of reservation in the third year came to 65%. The rule was declared unconstitutional by the Constitution Bench, with Subba Rao, J. dissenting. The majority held that the carry forward rule which resulted in more than 50% of the vacancies being reserved in a year, is bad. The principle enunciated in *Balaji* regarding 50% was followed.¹¹

In 1964 another case arose from Mysore, again under Article 15: *Chitralkha vs. State of Mysore* (AIR 1964 SC 1823). The Mysore Government had by an order defined backward classes on the basis of occupation and income, unrelated to caste. One of the arguments urged was that the identification done without taking the caste into consideration is impermissible. The verdict held that the identification or classification of backward classes on the basis of occupation-cum-income, without reference to caste is not bad and does not offend Article 15(4).¹²

During the years 1968 to 1971, the Apex Court had to consider the validity of identification of backward classes made by Madras and Andhra Pradesh governments. *Minor P. Rajendran vs. State of Madras* (AIR 1968 SC 1012) related to specification of socially and educationally backward classes with reference to castes. The question was whether such an identification infringes Article 15. Wanchoo, C.J., speaking for the Constitution Bench dealt with the contention in the following words:

"The contention is that the list of socially and educationally backward classes for whom reservation is made under Rule 5 nothing but a list of certain castes. Therefore, reservation in favour of certain castes based only caste consideration violates Article 15(1), which prohibits discrimination on the ground of caste only. Now if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it must not be forgotten that *a caste is also a class of citizens and the caste as a whole*

is socially and educationally backward, reservations 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). It is true that in the present case, the list of SEBCs has been specified by caste. But that does not necessarily mean that caste was the sole consideration and that person belonging to these castes are also not a class of socially and educationally backward citizens".

Though the list shows certain castes, the members of those castes are really classes of educationally and socially backward citizens. No attempt was made on behalf of the petitioners to show that any caste mentioned in this list was not socially and educationally backward. The castes included in the list are as a whole educationally and socially backward and therefore the list is not violative of Article 15.

The shift in approach and emphasis is obvious. The Court now held that a caste is a class of citizens and that if a caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste under the Article 15(4). Moreover, the burden of proving that the specification was bad was placed upon the petitioners ¹³

Another Constitution Bench took a similar view in *Trilok Nath* (AIR 1969 SC 1)

Rajendran was expressly referred to and followed in *Periakaruppan vs State of Tamil Nadu* (AIR 1971 SC 2303). This was a petition under Article 32 of the Constitution and one arising under Article 15. The argument was that identification of SEBCs having been done on the basis of caste alone is bad. Repelling the argument, Hegde, J held "There is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life. Hence, we are unable to uphold the contention that impugned reservation is not in accordance with Article 15(4)." ¹⁴

Again in *State of Andhra Pradesh vs Balram* (AIR 1972 SC 1375), a Division Bench adopted the same approach and upheld the identification made by Andhra Pradesh Government on the basis of caste. Answering the criticism (that the Backward Classes Commission appointed by the State Government did not do a scientific job, the Bench observed:

"The Commission has taken considerable pains to collect as much relevant material as possible to judge the social and educational backwardness of the persons concerned

When, for instance, it had called for information regarding the student population in classes X and XI from nearly 2,224 institutions, if only 50% of the institutions sent replies, it is not the fault of the Commission for they could not get more particulars. If the Commission has only to go on doing the work of collecting particulars and materials, it will be a never ending process. In spite of best efforts that any Commission may make in collecting the data, its conclusions cannot be always scientifically accurate in such matters. Therefore, the proper approach should be to see whether the relevant materials referred to in the report of the Commission justify its conclusions. In our opinion, there was sufficient material to enable the Commission to be satisfied that the persons included in the list are really socially and educationally backward. No doubt there are few instances where the educational average is slightly above the State average, but that circumstance by itself is not enough to strike down the entire list".

Answering the main criticism, the Bench observed: "*Though prima facie*, the list of Backward Classes which is under attack before us may be considered to be on the basis of caste, a closer examination will clearly show that it is only a description of the group following particular occupations or professions, exhaustively referred to by the Commission. Even on the assumption that the list is based exclusively on caste, it is clear from the materials before the Commission and the reasons given by it in its report that the entire caste is socially and educationally backward and therefore their inclusion in the list of Backward Classes is warranted by Article 15(4)".¹⁵

In certain cases including *Janaki Prasad Parimoo vs. State of Jammu and Kashmir* (AIR 1973 SC 930) and *State of Uttar Pradesh vs. Pradip Tandon* (AIR 1975 SC 563), it was held that poverty alone cannot be the basis for determining or identifying the social and educational backwardness. It was emphasized that Article 15(4), or for that matter Article 16(4), is not an instance of poverty alleviation program. They were directed mainly towards removal of social and educational backwardness.¹⁶

Thomas (AIR 1976 SC 490) marks the beginning of a new thinking on Article 16, though the seed of this thought is to be found in the dissenting opinion of Subba Rao, J. in *Devadasan*. The Kerala Government had, by amending relevant Service Rules, exempted, for a specified period, employees belonging to Scheduled Castes or Scheduled Tribes from passing the mandatory test for promotion. The Government order granted temporary

exemption to SC and ST employees from passing all such tests for a period often years. As a result, a large number of employees belonging to SCs and STs, who had been stagnating in their respective posts for want of passing the departmental tests, were promoted. They were now required to pass the tests within the period of exemption. This was questioned by Thomas, who argued: but for the said concession/exemption he would have been promoted to one of those posts in view of his passing the relevant tests. He contended that Article 16(4) permits only reservation in favour of backward classes but not such an exemption. This argument was accepted by the Kerala High Court. It also upheld the further contention that inasmuch as more than 50% vacancies in the years had gone to the members of SCs as a result of the said exemption, it is bad for violating the 50% rule in *Balaji*.

The State of Kerala carried the matter in appeal to the Supreme Court which was allowed by a majority of 5:2. All the seven Judges wrote separate opinions. Ray, C.J held that Article 16(1), being a facet of Article 16(4), clarifies and explains that classification should be on the basis of backwardness. Classification of Scheduled Castes does not fall within the scope of Article 16(2) since SCs, historically oppressed and backward, are not castes. The concession granted to them is permissible under Article 16(1). The rule giving preference to un-represented or under-represented communities does not contravene Article 14, 16(1) or 16(2). Mathew, J. agreed that Article 16(4) is not an exception to Article 16(1). that Article 16(1) permits reasonable classification and that Scheduled Castes are not "castes" within the meaning of Article 16(2) He espoused the theory of "proportional equality" evolved in certain American decisions

Beg J. adopted a different reasoning and observed that the said order was "a kind of reservation" falling under Article 16(4) . Krishna Iyer, J was also of the opinion that Article 16(1) being a facet of Article 16 permits reasonable statement of what is inherent in Article 16(1) and further that SCs are not "castes" within the meaning of Article 16(2) but a collection of castes, races and groups. He approved the dissenting opinion of Subba Rao, J. in *Devadasan*. Fazal Ali, J. too adopted a similar approach. The Judge pointed out, "if we read Article 16(4) as an exception to Article 16(1) then the inescapable conclusion would be that Article 16(1) does not permit any classification at all because an express

provision has been made for this in clause (4). This, however, is contrary to the basic concept of equality contained in Article 16 which implicitly permits classification".

The Judge also observed that the rule of 50% evolved in *Balaji* is a mere rule of caution and was not meant to be exhaustive of all categories. The extent of reservation depends on the proportion of the backward classes to the total population and their representation in public services. He expressed a doubt as to the correctness of the majority view in *Devadasan*. Among the minority, Khanna, J., preferred the view taken in *Balaji* to the effect that Article 16(4) is an exception to Article 16(1). He opined that no preference can be provided in favour of backward classes outside clause (4). A.C. Gupta, J. concurred with this view.¹⁷

The last decision of the Supreme Court on this subject of reservations is in *K.V. Vasant Kumar vs. State of Karnataka* (AIR 1985 SC 1495). The Five Judges constituting the Bench wrote separate opinions, each treading a path of his own. Chandrachud, C.J. opined that the present reservations should continue for a further period of 15 years making a total of 50 years from the date of the commencement of the Constitution. He added that the means test should be applied to ensure that the benefit of reservations actually reaches the deserving sections, Desai, J. was of the opinion that the only basis upon which the backward classes should be identified is the economic one. Chinnappa Reddy, J. was of the view that identification of backward classes on the basis of castes cannot be taken exception to, for in the Indian context caste is a class. Caste, the learned Judge said, is the primary index of social backwardness. If it is found in the case of a given caste that a few members have progressed far enough so as to compare favourably with the forward classes in social, economic and educational fields, an upper income ceiling can perhaps be prescribed to ensure that the benefit of reservation reaches the really deserving.

He opined that identification of SEBCs in the Indian milieu is a difficult and complex exercise which does not admit of any rigid or universal tests. It is not a matter for the Courts- The "backward class of citizens", he held, are the very same SEBCs referred to in Article 15(4). He condemned the argument that reservations are likely to lead to deterioration in efficiency or that they are anti-merit. He disagreed with the view that for being identified as SEBCs, the relevant groups should be comparable to SCs /STs in social and educational backwardness. He agreed with the opinion of Fazal AH, J. in *Thomas* that

the rule of 50% in *Balaji* is a rule of caution and not an inflexible rule. At any rate, he said, it is not for the court to lay down such hard and fast rule. A.P. Sen, J. was of the opinion that the predominant and the only factor for making special provision under Article 15(4) or 16(4) should be poverty and the caste should be used only for the purpose of identification of groups comparable to SCs/STs. The reservation should continue only till such time as the backward classes attain a state of enlightenment.

Venkataramaiah, J. agreed with Chinnappa Reddy, J. that identification of backward classes can be made on the basis of caste. He cited the Constituent Assembly and Parliamentary Debates in support of this view. According to him, equality of opportunity revolves around two dominant principles: (i) the traditional value of equality of opportunity and (ii) the newly appreciated, though not newly conceived, idea of equality of results. He too did not agree with the argument of "merit". Application of the principle of individual merit, unmitigated by other considerations, may quite often lead to inhuman results. He supported the imposition of the "means" test but disagreed with the view that the extent of reservations can exceed 50%. Periodic review of the list of SEBCs is stressed.¹⁸

After the above pronouncement, the Apex Court had to grapple with all the important and controversial dimensions of affirmative action in the historic *Mandal Commission Case*. Through this case, the Supreme Court was also constrained to review the whole gamut of protective discrimination under the shadow of the national turbulence over the OBC reservations and the extraordinary developments that followed it. The ensuing discussion starts with the first intervention of the judiciary in the reservational controversy.

APEX COURT'S RESPONSE TO MANDAL COMMISSION

The Supreme Court intervened in the fray over the Mandal Commission on 21 September 1990. On that day, the Apex Court asked the authorities concerned to handle the anti-reservation agitation with "appropriate care". As discussed earlier, the partial acceptance of the Mandal Commission Report (27% job reservations for the OBCs) sparked off a nation-wide anti-reservation agitation which paralyzed the normal life, particularly in north

India. The violent protest against the OBC reservation culminated in the phenomena of self-immolations by scores of students. The whole nation got polarized into pro and anti-reservationist camps.

It was in this explosive situation—amid self-immolations—that the Apex Court intervened actively by staying the operation of the Official Memorandum (dated August 13, 1990) issued by the National Front Government to implement the Mandal Report.¹⁹ On change in the Government at the Centre, an amended Memorandum was issued by the Congress Government on September 25, 1991.²⁰ This was also challenged. The writ petitions throughout the country were transferred to the Supreme Court. The petitions were heard in the first instance by a Constitution Bench presided over by the then Chief Justice Mr. Ranganath Mishra. After hearing them for some time, the Constitution Bench referred them to a special Bench of Nine Judges, *to finally settle the legal position relating to reservations. The reason for the reference being that the several judgements of the Court have not spoken in the same voice on this issue and a final look by a larger Bench in our opinion should settle the law in an authoritative way* (emphasis added).²¹

The stay on the operation of the Office Memorandum continued and the Supreme Court after hearing the several petitions and the respondent Union of India and several States and interveners, gave its final verdict on November 16, 1992. Six opinions were delivered (the majority judgement runs into 279 pages). The leading judgment was delivered by Justice B.P.Jeevan Reddy on behalf of the majority, i.e., six Judges.²² The other three Judges dissented by their separate judgments.²³ As a result, the Apex Court's verdict in the Mandal Commission Case (*Indra Sawhney vs. Union of India*) has emerged as the most comprehensive judicial pronouncement on the policy of compensatory discrimination. The judgement addresses almost all relevant issues of reservation policy by reviewing all important decisions delivered since Independence.²⁴

Before discussing all the issues that came up and giving its verdict, the Supreme Court had framed them into 11 questions for the sake of convenience and clarity. Then the Court proceeded to answer them in the same order.²⁵ The first two issues the Supreme Court answered—*l(a): Whether the 'provision' in Article 16(4) must necessarily be made by the Parliament/Legislature; and l(b): Whether an executive order making a 'provision' under Article 16(4) is enforceable forthwith*—have been discussed in the

second section of the preceding Chapter. Therefore, the following section begins with a discussion of the question 2 (a).

THE JUDICIAL PRONOUNCEMENTS

2(a): Whether clause(4) of Article 16 is an exception to clause (1)

In *Balaji* it was held that, "Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2)". It was observed that Article 15(4) was inserted by the First Amendment in the light of the decision in *Champakam* with a view to remove the defect pointed out by this Court, namely, the absence of the provision in Article 15 corresponding to clause (4) of Article 16. Following *Balaji*, it was held by another Constitution Bench in *Devadasan* (AIR 1964 SC 179), "this Court has already held that clause (4) of Article 16 is by way of a proviso or an exception to Article 16(1)". This view, however, received a major setback from the majority decision in *State of Kerala vs. N.M. Thomas*. Though the minority stuck to the view that Article 16(4) is an exception, the majority held to the view that Article 16(4) is not an exception to Article 16(1) but that it was merely an emphatic way of stating a principle implicit in Article 16(1).

In the opinion of the Supreme Court, the view taken by the majority in *Thomas* is the correct one. The Court too believes that Article 16(1) does permit reasonable classification for ensuring this goal, it may well be necessary in certain situations to treat unequally situated persons unequally. Not doing so would perpetuate and accentuate inequality. Accordingly, the Court holds that the clause (4) of Article 16 is not an exception to clause (1) of Article 16. It is an instance of classification implicit in and permitted by clause (1). Regarding the view expressed in *Balaji* and *Devadasan*, it must be remembered that at that time it was not yet recognized by this Court that Article 16(1), being a facet of Article 14, does implicitly permit classification. Once this feature was recognized the theory of clause (4) being an exception to clause (1) became untenable. It has to be accepted that clause (4) is an instance of classification inherent in clause (1), So, just as Article 16(1) is a facet or an elaboration of the principle underlying Article 14, clause (2) of Article 16 is also an elaboration or a facet of clause (1). If clause (4) is an exception to clause (1) then it is equally an exception to clause (2). Question then arises, in what

respect is clause (4) an exception to clause (2), if "class" does not mean "caste". Neither clause (1) nor clause (2) speaks of class. Does the contention mean that clause (1) does not permit classification and therefore clause (4) is an exception to it ? Thus, from any point of view, the contention of the petitioners has no merit.

2 (b): Scope of Article 16(4) vis-a-vis the concept of reservations.

The meaning of "reservation" has to be ascertained having regard to the context in which it occurs. The relevant words are "any provision for the reservation of appointments or posts". The question is whether the said words contemplate only one form of provision, namely reservation simpliciter, or do they take in other forms of special provisions like preferences, concessions and exemptions. In the Court's opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16(4) induces the Premier Court to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions, consistent no doubt with the requirement of maintenance of efficiency of administration—the admonition of Article 335.

The several concessions, exemptions and other measures issued by the Railway Administration and noticed in *Karmachari Sangh* are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective, i.e., to ensure that the members of the reserved class fully avail of the provision for reservation in their favour. The other type of measure is the one referred to in *Thomas*: AIR 1976 SC 490 (discussed earlier).

The provision for exemption in *Thomas* was a lesser form of special treatment than reservation. There is no reason why such a special provision should not be included within the larger concept of reservation. In *Thomas*, the majority opined, accepting the arguments of the petitioners, that clause (4) permits only one form of provision namely reservation of appointments/posts and that if any concessions or exemptions are to be extended to backward classes, it can be done only under clause (1) of Article 16.

The Apex Court, however, by a majority, reversed the view taken by Kerala High Court. In the Court's opinion, therefore, where the State finds it necessary, for the purpose of giving full effect to the provision of reservation, to provide certain exemptions.

concessions or preferences to members of backward classes, it can extend the same under clause (4) itself. In other words, all supplemental and ancillary provisions to ensure full availment of provisions for reservations can be provided as part of the concept of reservation itself. Similarly, the State can also provide only preferential concessions (other than reservation of posts) under clause (4) itself. In this sense, clause (4) of Article 16 is exhaustive of the special provisions that can be made in favour of "the backward class of citizens".

Addressing a related question, the Supreme Court observes that clause (4) is exhaustive of reservations in favour of backward classes alone. It is in very exceptional situations that any further reservations, of whatever kind, can be provided under clause (1). In such cases, the State has to satisfy that making such a provision was necessary (in public interest) to redress a specific situation.

3 (a): Meaning of the expression "Backward Class of Citizens" in Article 16(4)

What does the expression "Backward Class of Citizens" in Article 16(4) signify and how should they be identified? This has been the single most difficult question tormenting this nation. The expression is not defined in the Constitution. The arguments before the Nine-Judge Constitution Bench mainly revolved round this question. Several shades of opinion were presented to the Court ranging from one extreme to the other. At one end of the spectrum stands Mr. N. A. Palkhiwala (supported by several other counsel) whose submissions may be briefly summarized as follows. A secular, unified and casteless society is a basic feature of the Constitution. Caste is a prohibited ground of distinction under the Constitution. It ought to be erased altogether from the Indian society. It can never be the basis for determining backward classes referred to in Article 16(4). The Report of the Mandal Commission, which is the basis of the impugned Memorandum, has treated the expression "backward classes" as synonymous with backward castes and has proceeded to identify backward classes solely and exclusively on the basis of caste, ignoring all other considerations, including poverty. It had indeed invented castes for non-Hindus where none exists.

The Report had divided the nation into two sections, backward and forward placing 52% of the population in the former section. Acceptance of the Report would spell

disaster to the unity and integrity of the nation. If half of the posts are reserved for backward classes, it would seriously jeopardize the efficiency of the administration, education system, and all other services resulting in the backwardness of the entire nation. Merit will disappear by defying backwardness. Article 16(4) is broader than Article 15(4). The expression "Backward Classes of Citizens" in Article 16(4) is not limited to "socially and educationally backward classes" in Article 15(4). The impugned Memorandums, based on the said Report must necessarily fall to the ground along with the Report. In fact the main thrust of Mr. Palkhiwala's argument is against the Mandal Commission.

Mr. K.K. Venugopal, appearing for the petitioner, adopted a slightly different approach while reiterating that the expression "backward class of citizens" in Article 16(4) cannot be construed as backward castes. According to him, backwardness may be social and educational and may also be economic. The authority appointed to identify backward classes must first settle the criteria or indicators for determining backward classes and then it must apply the said criteria to each and every group in the country. In the course of such identification, it may well happen that certain castes answer and satisfy the criteria of backwardness and may as a whole qualify for being termed as a backward class. He relied upon the provision in clause (2) of Article 38 and Article 46 to say that the objective is to minimize the inequalities in income not only among individuals but also among groups of persons and to help the weaker sections of the society. The economic criterion is an implicit one and must be applied in determining backward classes and also for excluding those sections or identical groups who may for the sake of convenience be referred to as the "creamy layer". Since castes do not exist among Muslims, Christians and Sikhs, caste can never be the basis of identification. The counsel also pointed out the alleged basic errors in the approach adopted by and conclusions arrived at by the Mandal Commission.

Ms. Shyamala Pappu also took the stand that caste can never be the basis for identification. According to her, the survey to identify backward classes from individual to individual; it cannot be caste-wise. To the same effect are the submissions of Mr. P.P. Rao, appearing for the Supreme Court Bar Association. According to him, the only basis for identifying backward classes should be occupation-cum-means test as was done in the State of Karnataka at a particular stage which is dealt with and approved by the Apex Court in *Chitralekhas vs State of Mysore* (AIR 1964 SC 1823).

At the other end of the spectrum stands Mr. Ram Jethmalani, counsel appearing for the State of Bihar supported by several other counsel. According to him, backward castes in Article 16(4) means only the members of Shudra Caste which is located between the three upper castes (Brahmins, Kshatriyas and Vyshyas) and the outcastes (Panchamas), referred to as Scheduled Castes. He contends that Article 16(4) was conceived only for these "middle castes" i.e., castes categorized as Shudras in the caste system and for none else. These backward castes have centuries of discrimination and disadvantage, leading to their backwardness. The expression "backward classes" does not refer to any current characteristic of a backward caste except paucity or inadequacies of representation in the apparatus of the Government. Poverty is not a necessary criterion of backwardness: it is in fact irrelevant. The provision for reservation is really a program of historical compensation. It is neither a measure of economic reform nor a poverty alleviation program. The counsel further submitted that it is for the state to determine who are the backward classes; it is not a matter for the Court. The decision of the Government is not judicially reviewable. Even if reviewable, the scope of judicial review is extremely limited to the only question whether the exercise of power is a fraud on the Constitution. The counsel also referred to certain American decisions about the programs of affirmative action to support his view.

Dr. Rajiv Dhavan, counsel appearing for Sri Narayana Dharma Panripalana Yogam (an association of Ezhavas in Kerala) submitted that Articles 16(4) and 15(4) occupy different fields and serve different purposes. Whereas Article 15(4) contemplates positive action programs, Article 16(4) enables the State to undertake schemes of positive discrimination. For this reason, the class of intended beneficiaries under both the classes is different. The social and educational backwardness which is the basis of identifying backwardness under Article 15(4) is only partly true in the case of "backward class of citizens" in Article 16(4). The expression "backward class of citizens" occurring in Article 16(4) must be understood in the light of the purpose of the said clause namely empowerment of those groups and classes which have been kept out of the administration and which have suffered historical disability. Since the Scheduled Castes and Scheduled Tribes were also intended to be beneficiaries of Article 16(4) there is no reason why caste cannot be an exclusive criteria for determining

beneficiaries under the same Article. Moreover, Article 16(4) speaks of group protection and not individual protection.

Mr. R. K. Garg, appearing for the Communist Party of India (CPI) as an intervener, submitted that caste plus poverty plus location plus residence should be the basis of identification and not mere caste. He opined that a national consensus is essential to introduce reservations for "other backward classes" under Article 16(4).

Mr. Siva Subramanian, appearing for the State of Tamil Nadu, supported the Mandal Commission Report in its entirety. According to him, backward classes must be identified only on the basis of caste. Economic criteria may be employed as one of the indicators but once a backward class is identified as such, there is no question of excluding any one from that class on the basis of income or means or any other economic criteria. He referred to the history of reservations in the province of Madras prior to Independence and how it has been working there successfully and peacefully over the last several years. Mr. P. S. Poti, appearing for the State of Kerala, supported the identification of backward classes solely and exclusively on the basis of caste. He submitted that the caste system is "scientifically" organized and practiced in Kerala and, therefore, furnishes a perfectly "scientific" basis for identification of backward classes.

Mr. Ram Awadesh Singh, M.P., President of Lok Pal and President of All India Federation of Backward Classes, Scheduled Castes, Scheduled Tribes and Religious Minorities, submitted that caste should be the sole criteria for determining backwardness. He referred to centuries of injustice meted out by upper castes to Shudras and Panchamas and submitted that these castes must now be given a share in the governance of the country which alone will assure their dignity besides instilling in them a sense of confidence.

Mr. K. Parasaran, counsel appearing for the Union of India made the following submissions:

- (i) The reservation provided for by clause (4) of Article 16 is not in favour of backward citizens, but in favour of backward class of citizens and not citizens who can be classified as backward. The homogeneous groups based on religion,

race, caste, place of birth, etc., can form the class of citizens and if that class is backward there can be a reservation in favour of that class:

- (ii) Caste is a relevant consideration. It can even be the dominant consideration. Indeed, most of the lists prepared by the States are prepared with reference to and on the basis of castes. They have been upheld by the judiciary;
- (iii) Article 16(2) prohibits discrimination only on any or all of the grounds mentioned therein. A provision for protective discrimination on any of the said grounds coupled with other relevant grounds would not fall within the prohibition of clause (2), even if the backward classes are identified with reference to castes;
- (iv) The criteria of backwardness evolved by Mandal Commission is perfectly proper and unobjectionable. Even if there are instances of under-inclusion or over-inclusion, such errors do not vitiate the entire exercise. And whether a particular caste or class is backward or not and whether it is adequately represented in the services of the State or not are questions of fact and are within the domain of the executive decision.

The Apex Court observes that the judgments, given by it in several cases since Independence,²⁶ emphasize the integral connection between caste, occupation, poverty and social backwardness. They recognize that in the Indian context, lower castes are and ought to be treated as backward classes. *Rajendran* and *Vasant Kumar* (opinions of Chinnappa Reddy and Venkatramaiah, J. J) constitute important milestones on the road to recognition of the relevance and significance of caste in the context of Articles 16(4) and 15(4). -

"Caste" and "Class": At this stage, the Premier Court examines, at some length, how the words "caste" and "class" were understood in different Provinces in pre-Constitution India. The Court first refers to various Rules in force in several parts of India. Where these expressions were used and notices how these expressions were defined and understood. In the Madras Provincial and Subordinate Service Rules, 1942,²⁷ the expression "backward classes" was defined (The Province of Madras at that time covered not only the present State of Tamil Nadu but also a major portion of the **present** State of Andhra Pradesh and parts of present States of Kerala and Karnataka). The definition read: "3(A) 'Backward Class' means the communities mentioned in Schedule III of this

part" which bore the heading "backward classes". It was a collection of castes and tribes under the sub-heading "race, tribe or caste". The Schedule included not only the backward castes and tribes in Hindu religion but also certain sections of Muslims in the nature of castes. For example, item (23) in the Schedule referred to "Dudekula".²⁸ The Chapter III—*History of Backward Classes Movement in Tamil Nadu*—of the Report of the Tamil Nadu Second Backward Classes Commission (1985) also refers to the formation of (in 1934) The Madras Provincial Backward Classes League, an association representing the various backward Hindu communities and its demand for separate representation for them in services.

The former State of Mysore was one of the earliest States where certain provisions were made in favour of Backward Classes. The opinion of E. S. Venkatramaiah, J in *Vasant Kumar* (AIR 1985 SC 1495 pp. 442-43) traces briefly the history of reservations in the State from 1918-21 up to the reorganization of States. The Judge points out how the expression "backward classes" and "backward communities" were used interchangeably. As far back as 1921, preferential treatment was provided in favour of "backward communities" in Government Services.

In Bombay Province, the Finance Department Resolution (1925) defined "Backward Classes" as all except Brahmins, Prabhus, Marwaris, Parsis, Baniyas and Christians. Certain reservations in Government Service were provided for these classes. In 1930, the State Committee noticed the overlapping meanings attached to the expressions "depressed classes" and "backward classes" and recommended that "Depressed Classes" should be used in the sense of untouchables. They proposed that the wider group should be called "Backward Classes" which should be sub-divided into Depressed Classes (i.e., untouchables); Aborigines and Hill Tribes; and Other Backward Classes (including wandering tribes). They opined that the groups then called Backward Classes should be renamed "intermediate classes".

In the former princely State of Travancore, the expression used was "Communities", as would be evident from the Proceedings of the Government contained in an Order of 1935. The expression "communities" was used taking in Muslims and certain sections of Christians as well; it was not understood as confined to castes in Hindu social system alone. The order reads: "The Government have decided that all

communities whose population is approximately 2% of the total population of the State or about one lakh be recognized as separate communities for the purpose of recruitment to the public service. The only exception from the above rule will be the Brahmin community". On the above basis, the classification of communities was as follows:

A.HINDU: Brahmin, Nayar, Other Caste Hindus. Kurmula Nudar. Ezlmva, Cheramar (Pulaya) and Other Hindu; B.MUSLIM; C.CHRISTIAN: Jacobite. Marthomite, Syrian Catholic, Latin Catholic, South India United Church and Other Christians.

In the then United Provinces, the term "Backward Classes" was understood as covering both untouchable classes as well other "Hindu Backward" classes. Marc Galanter says: "The United Provinces Hindu Backward Classes League (founded in 1929) submitted a memorandum which suggested that the term "Depressed" earned a connotation of untouchability. The League suggested the term "Hindu Backward". The list of 115 castes submitted included all candidates from the untouchable category as well as a stratum above. All of the listed communities belong to non-Dwijias or degenerate or Shudra classes of the Hindus. They were described as low socially educationally and economically and were said to number over 60% of the population"

Besides, the expression "depressed and other backward classes" occurs in the Objectives Resolution of the Constituent assembly moved by Jawaharlal Nehru on December 13, 1946.

All the above materials do go to show that in pre-Independence India, the expressions "class" and "caste" were used interchangeably and that caste was understood as an enclosed class.

At the time the First Amendment to the Constitution was being enacted Dr. Ambedkar, piloting the Bill as the Minister of Law, said that backward classes "are nothing else but a collection of certain castes" Moreover, there are very good reasons why the Constitution could not have used the expression "castes" or "caste" in Article 16(4). The Constitution was meant for the entire country and for all time to come Non-Hindu religions like Islam, Christianity and Sikhism did not recognize caste as such though as pointed out herein above, castes did exist even among these religions to a varying degree. Further, a Constitution is supposed to be a permanent document expected

to last several centuries. It must surely have been envisaged that in future many classes may spring up answering the test of backwardness, requiring the protection of Article 16(4). It, therefore, follows that from the use of the word "class" in Article 16(4), it cannot be concluded either that "class" is antithetical to "caste" or that a caste cannot be a class or that a caste as such can never be taken as a backward class of citizens. The word "class" in Article 16(4), in our opinion, is used in the sense of social class and not in the sense it is understood in Marxist terminology.

In *Rajendran* (AIR 1968 SC 1012), *Triloknath-II* (AIR 1969 SC 1), *Balram* (AIR 1972 SC 1375) and *Periakrupan* (AIR 1976 SC 2303), this reality was recognized and given effect to, notwithstanding the fact that they had to respect and operate within the rather qualified formulation of *Balaji*.

The above material makes it amply clear that a caste is nothing but a social class—a socially homogeneous class. It is also an occupational grouping, with the difference that its membership is hereditary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. Endogamy is its main characteristic. Its social standing depends upon the nature of the occupation followed by it. Lower the occupation, lower the social standing of the class in the graded hierarchy. In rural India, occupation-caste nexus is true even today. For the purposes of marriage, death and all other social functions, it is this social class, i.e., the caste, that is relevant. It is a matter of common knowledge that an overwhelming majority of doctors, engineers and other highly qualified people who go abroad for higher studies or employment, return to India and marry a girl from their own caste.

Urbanization has to some extent broken this caste-occupation nexus, but not wholly. There may be exceptions here and there, but we are concerned with generality of the scene and not with exceptions or aberrations. "Caste-occupation-poverty" cycle is thus an ever present reality. In rural India it is strikingly apparent; in urban centers, there may be some dilution. But since rural India and rural population is still the overwhelmingly predominant fact of life in India, the reality remains. All the decisions since *Balaji* speak of this "caste-occupation-poverty" nexus. The language and emphasis may vary but the theme remains the same. Any program towards the betterment of these sections/classes of society and any program designed to eradicate this evil must recognize this ground

reality and attune its program accordingly. Merely burying our heads in the sand, ostrich like, would not help. The U.S. Supreme Court has said repeatedly, if race is the basis of discrimination, past and present, race must also form the basis of redressal programs. Without a doubt, an extensive restructuring of socio-economic system is the answer. That is indeed the goal, as would be evident from the Preamble and Part IV (Directive Principles). But we are concerned here with a limited aspect of equality emphasized in Article 16(4)—equality of opportunity in public employment and a special provision in favour of backward class of citizens to enable them to achieve it.

(b) Identification of "backward class of citizens"

At the outset, the Apex Court says that its answers to the above issue will necessarily deal with generalities of the situation and not with problems or issues of a peripheral nature which are peculiar to a particular State, district or region.

Regarding the identification, the fact remains that one has to begin somewhere—with some group, class or section. There is no recognized method. There is no law or statutory instrument prescribing methodology. The ultimate idea is to survey the entire populace. If so, one can well begin with castes, which represent explicit identifiable social classes/groupings, more particularly when Article 16(4) seeks to ameliorate social backwardness. What is unconstitutional with it, more so when caste, occupation, poverty and social backwardness are so closely intertwined in our society? Individual survey is out of question, since Article 16(4) speaks of class protection and not individual protection. This does not mean that one can wind up the process of identification with the castes. Besides castes (whether found among Hindus or others) there may be other communities, groups, classes and denominations which may qualify as backward class of citizens. For example, in a particular State, Muslim community as a whole may be found socially backward (As a matter of fact, they are so treated in the States of Karnataka and Kerala by their respective Governments)

Any authority entrusted with the task of identifying backward classes may well start with the castes. It can take caste A, apply the criteria of backwardness evolved by it to that caste and determine whether it qualifies as a backward class. If it does qualify, what emerges is a backward class for the purpose of clause (4) of Article 16

The concept of "caste" in this behalf is not confined to castes among Hindus. It extends to castes, wherever they obtain as a fact, irrespective of religious sanction for such practice.²⁹ The effort should be to consider all the available groups, sections and classes of society in whichever order one proceeds. We may say, at this stage, that we broadly commend the approach and methodology adopted by Justice O. Chinnappa Reddy.

Indeed, there is no such theory as a standard or model procedure/approach. It is for the authority (appointed to identify) to adopt such approach and procedure as it thinks appropriate, as long as the approach adopted by it is fair and adequate, the Court has no say in that matter. If a Commission/authority begins its process of identification with castes (among Hindus) and occupational groups among others, it cannot by that reason alone be said to be constitutionally or legally bad. There is no rule of law that a test to be applied for identifying backward classes should be only one/or uniform. In a vast country like India, it is not simply practicable. Reservation is not being made under clause (4) in favour of a "caste" but a "backward class". Once a caste satisfies the criteria of backwardness, it becomes a backward class for the purposes of Article 16(4). Then, it must be further found that the backward class is not adequately represented in the services of the State. In such a situation, the bar of clause (2) of Article 16 has no application whatsoever. As for the argument about the secular nature of the Constitution, the Judges observe that the classification is not on the basis of the caste but on the ground that caste is found to be a backward class not adequately represented in the services of the State.

Whether the backwardness in Article 16(4) should be both social and educational Since the decision in *Balaji*, it has been assumed that the backward class of citizens contemplated by Article 16(4) is the same as the socially and educationally backward classes, Scheduled Castes and Scheduled Tribes mentioned in Article 15(4). Though Article 15(4) came into existence later in 1951 and Article 16(4) does not contain the qualifying words "socially and educationally" preceding the words "backward class of citizens" the same meaning came to be attached to them. In the opinion of the Supreme Court, however, the said assumption has no basis. Clause (4) of Article 16 does

not contain the qualifying words "socially and educationally" as does the clause (4) of Article 15. It may be remembered that Article 340 (which has remained unamended) does employ the expression "socially and educationally backward classes" and yet that expression does not find place in Article 16(4). The reason is obvious: "backward class of citizens" in Article 16(4) takes Scheduled Castes, Scheduled Tribes and all other backward classes of citizens including the socially and educationally backward classes. Consequently, the SEBCs referred to in Article 340 is only one of the categories for whom Article 16(4) was enacted; Article 16(4) applies to a much larger class than the one contemplated by Article 340. It would, thus, be not correct to say that "backward class of citizens" in Article 16(4) are the same as the socially and educationally backward classes in Article 15(4).

Further, if one keeps in mind the context in which Article 16(4) was enacted, it would be clear that the accent was upon social backwardness. It goes without saying in the Indian context, social backwardness leads to educational backwardness and both of them together lead to poverty—which in turn breeds and perpetuates the social and educational backwardness. They feed upon each other constituting a vicious circle. It is a well known fact that till Independence, the administrative apparatus was almost exclusively dominated by members of the upper castes. It was this imbalance which was sought to be redressed by providing for reservations in favour of such backward classes. In this sense, Dr. Rajiv Dhavan may be right when he says that the object of Article 16(4) was "empowerment" of the backward classes. The idea was to enable them to share the State power. The Judges are, accordingly, of the opinion that the backwardness contemplated by Article 16(4) is mainly social backwardness. The Mandal Commission was concerned only with the socially and educationally backward classes contemplated by the Article 340. Even so, it is evident that social backwardness has been given precedence over others by the Commission: 12 out of 22 total points. Social backwardness, it may be reiterated, leads to educational and economic backwardness. No objection can be taken to the validity and relevance of the criteria adopted by the Mandal Commission.³⁰

"Means Test" and "Creamy Layer": "Means Test" in this discussion signifies imposition of an income limit for the purpose of excluding persons (from the backward class) whose income is above the said limit. This submission is very often referred to as

"the creamy layer" argument. Petitioners submit that some members of the designated backward classes are highly advanced socially, economically and educationally; and that they are lapping up all the benefits of reservations meant for that class. These persons are by no means backward and with them a class cannot be treated as backward. It is pointed out that since *Jayashree* (AIR 1976 SC 2381), almost every decision has accepted the validity of this submission.

On the other hand, the learned counsel for the States of Bihar, Tamil Nadu, Kerala and other counsel for respondents strongly oppose any such distinction. It is submitted that once a class is identified as a backward class after applying the relevant criteria, including the economic one, it is not permissible to apply the economic criteria once again and sub-divide a backward class into two sub-categories.³¹ Strong reliance is placed upon the observations of Chinnappa Reddy J., in *Vasant Kumar* which oppose the exclusion of creamy layer from the backward classes.

In the Premier Court's opinion, it is not a question of permissibility or desirability of such test but one of proper and more appropriate identification a class, a backward class. The very concept of class denotes a number of persons having certain common traits which distinguish them from the others. In a backward class under clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which, in this context, necessarily means economically and may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward. Difficulty, however, really lies in drawing the line: how and where to draw the line? The basis of exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement. Besides, there are several practical difficulties too in imposing an income ceiling. For example, annual income of Rs. 36,000 may not count for much in a city like Bombay, Delhi or Calcutta. Whereas it may be a handsome income in rural India anywhere. Further, income from agriculture may be difficult to assess and, therefore, in the case of agriculturists, the line may have to be drawn with reference to the extent of holding. While the income of a person can be taken as a measure of his social advancement, the limit

prescribed should not be such as to result in taking away with one hand what is given with the other. The income limit must be such as to mean and signify social advancement. At the same time, it must be recognized that there are certain positions, the occupants of which can be treated as socially advanced without any further inquiry. For example, if a member of a designated backward class becomes a member of IAS or IPS or any other All India Service, his status in society rises; he is no longer socially disadvantaged. His children get full opportunity to realize their potential. By giving them reservation, other disadvantaged members of that backward class may be deprived of that benefit.

The Jury observe that exclusion of such socially advanced members would make the "class" truly backward and would more appropriately serve the purpose and object of clause (4).³² Keeping the above considerations in mind, the Apex Court directs the Government of India to specify the basis of exclusion, whether on the basis of income, extent of holding or otherwise, of "creamy layer". This shall be done as early as possible, but not exceeding four months. On such specification, the persons falling within the net of exclusionary rule shall cease to be members of the Other Backward Classes (covered by the expression "backward class of citizens") for the purpose of Article 16(4). The impugned Office Memorandum dated 13 August, 1990 and 25 September 1991 shall be implemented subject only to such specification and exclusion.

Adequacy of Representation in the Services Under the State

Not only should a class be backward for meriting reservations, it should also be inadequately represented in the services under the State. The language of clause (4) makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This is evident from the words "in the opinion of the State". This opinion can be formed by the State on its own, i.e., on the basis of the material it possesses or it may gather such material through a Commission/Committee/person/authority. All that is required is, there must be some material upon which the opinion is formed. It does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within subjective satisfaction of the executive are well and extensively stated in *Braim Chemical vs. Company Law Board* (AIR 1967 SC 295).

4 (a): Whether backward classes can be identified exclusively with reference to economic criteria

It follows from the above discussion (Question No.3) that a backward class cannot be determined only and exclusively with reference to economic criterion. It may be a consideration or a basis in addition to social backwardness, but it can never be the sole criterion. This is the view uniformly taken by the Apex Court and it respectfully agrees with the same in this case also.

(b) Whether a backward class can be identified on the basis of occupation-cum-income without reference to caste

In *Chitralekha* (AIR 1964 SC 1823), the Supreme Court held that such an identification is permissible. The Court sees no reason to differ with the said view inasmuch as this is but another method to find socially backward classes. While answering Question 3(b), the Bench said that identification of backward classes can be done with reference to castes along with other occupational groups, communities and classes; the Court did not say that that is the only permissible method. There may be groups or classes in whose case caste may not be relevant at all. For example, agricultural labourers, rikshawpullers/drivers, street-hawkers, etc., may well qualify for being designated as Backward Classes.

5. Whether Backward Classes can be further or sub-classified

In *Balaji*, it was held "that the sub-classification made by the order between Backward Classes and more backward classes does not appear to be justified under Article 16(4)". The correctness of this holding is questioned before the Premier Court by the counsel for the respondents. It is submitted that in principle there is no justification for the said holding and even among backward classes there are some who are more backward than the others and the backwardness is not and cannot be uniform throughout the country, not even within a State. In support of this conception, the respondents rely upon the observation of Chinnappa Reddy, J. in *Vasant Kumar*, where the learned judge said: "we do not see why on principle there cannot be a classification into Backward Classes and more Backward Classes, if both classes are not merely a little behind, but far behind the most advanced

classes. In fact such a classification would be necessary to help the more Backward Classes; otherwise, the more advanced might walk away with all the seats".

The Judges are of the opinion that there is no constitutional or legal bar to a State categorizing the backward classes as backward and more backward. If a State makes such a categorization, it would not be invalid. Where to draw the line, how to effect the sub-classification is, however, a matter for the Commission and the State—and so long as it is reasonably done, the Court may not intervene. In this connection, the Court refers to the categorization (sub-classification) obtaining in Andhra Pradesh.³³ This categorization was justified in *Balram* (AIR 1972 SC 1375).

6. Extent of reservation and applicability of 50% rule

In *Balaji*, the Premier Court rejected the argument that in the absence of a limitation in Article 15(4), no limitation can be prescribed by the Court on the extent of reservation. It observed that provision under Article 15(4) being a "special provision" must be within reasonable limits and a special provision should be less than 50%.³⁴ In *Devadasan* (AIR 1964 SC 179) this rule of 50% was applied to a case arising under Article 16(4) and on that basis the carry forward rule was struck down. In *Thomas*, however, the correctness of this principle was seriously questioned.³⁵ Krishna Iyer, J. too specifically dealt with this aspect but from the principle of "proportionate equality" and "equality of results" espoused by the learned Judge, it is argued that he did not accept the 50% rule. Ray, C. J., did not dispute the correctness of the 50% rule but at the same time he pointed out that this percentage should be applied to the entire service as a whole.

After the decision in *Thomas*, controversy arose whether the 50% rule enunciated in *Balaji* stands overruled by *Thomas* or does it continue to be valid. In *Vasant Kumar* two learned Judges came to precisely opposite conclusions on this question. Chinnappa Reddy, J. held that *Thomas* has the effect of undoing the 50% rule in *Balaji* whereas Venkatramaiah, J., held that it does not. Reliance is also placed upon the speech of Dr. Ambedkar in the Constituent Assembly where he said that reservation must be confined to "a minority of seats".

The Apex Court, however, points out that the clause (4) speaks of adequate representation and not proportionate representation. Principle of proportionate

representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period.³⁶ However, the proportion of backward classes to the total population would certainly be relevant. And reservation under clause (4) shall not exceed 50% of the appointments or posts barring certain extraordinary situations inherent in the great diversity of this country and the people. Therefore, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservations in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%. Further, this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4).

The next aspect of this question is whether a year should be taken as the unit or the total strength of the cadre, for the purpose of applying 50% rule. In *Devadasan* (AIR 1964 SC 179), Madhulkar, J. speaking for the majority says: "In order to effectuate the guarantee (of equality of opportunity contained in Article 16[1]), each year of recruitment will have to be considered by itself and the reservation for the backward communities should not be so extensive as to create a monopoly or to disturb unduly the legitimate claims of other communities". On the other hand, in the approach adopted by Ray, C.J. in *Thomas*, he seems to apply the 50% rule to the entire service as such. In the opinion of the Jury, the approach adopted by Ray, C.J. would not be consistent with Article 16. True it is that the backward classes are not properly represented in the services under the State but it may not be possible to redress this imbalance in one go, i.e., in a year or two. The equality of opportunity guaranteed by clause (1) is not to each individual while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, the Judges hold that for the purpose of applying the rule of 50%, a year should be taken as the unit and not the entire strength of the cadre, service or the unit.³⁷

The next question to be addressed is whether clause (4) of Article 16 provides reservation only in the matter of initial appointments/direct recruitment or does it contemplate reservations in promotions as well? The petitioners' submission is that the reservation of appointments or posts contemplated by clause (4) is only at the stage of entry into State service, i.e., direct recruitment. Providing reservations thereafter in

promotions amounts to a double reservation and if such a provision is made at each successive stage of promotion, it would be a case of reservation being provided that many times. And providing reservations in promotions, the member of a reserved category is enabled to frong-leap over his compatriots, which is bound to generate acute heart-burning and may well lead to inefficiency in administration. It is also submitted that if Article 16(4) is construed as warranting reservation even in promotions, it would be contrary to the mandate of Article 335, i.e., maintenance of efficiency in administration.³⁸

The Apex Court had given its opinion on this matter despite the objection by Mr. Parasaran.³⁹ The Court finds it difficult to agree with the view in *Rangachari* that Article 16(4) contemplated or permits reservation in promotions as well. It opines that the question has to be answered on a combined reading of Article 16(4) and Article 335. It is true that *Rangachari* has been the law for more than 30 years and that attempts to reopen the issue were repelled in *Karmachari Sangh*. But the Apex Court is convinced that the majority opinion in *Rangachari* is not sustainable and ought to be departed from. But the present decision on this question shall operate only prospectively and shall not affect promotions already made. It would not be impossible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without comprising the efficiency of the administration. And while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs, in the matter of direct recruitment such a course would not be permissible in the matter of promotions.

8. Whether Reservations are Anti-meritarian

In *Balaji* and other cases, it was assumed that reservations are necessarily anti-meritarian". But this view was not accepted by Krishna Iyer, J. in *Thomas*. He said efficiency means, in terms of good Government, not marks in examination only, but responsive and responsible service to the people. A chaotic genius is a grave danger to public administration. A similar view was expressed by Chinnappa Reddy, J. in *Vasant Kumar*. He said, "The mere getting of high marks in an examination may not necessarily mark out a good administrator. An efficient administrator must be one who possess, among other qualities the capacity to understand with sympathy and, therefore, to tackle bravely the

problems of a large segment of population constituting weaker sections of the people, And who is better than the ones belonging to those very sections. We do not mean to say that efficiency in the civil service is unnecessary or that it is a myth. All that we mean to say is that one need not make a fastidious fetish of it".

It is submitted by the learned counsel for petitioner that reservation necessarily means appointment of less meritorious persons, which in turn leads to lowering of efficiency of administration. And reservation should be confined to a small minority of appointments/posts—in any event, to not more than 30%.

The respondents, on the other hand, contend that the marks obtained at the examination/test/interview at the stage of entry into service is not an indicator of the inherent merit of a candidate. On the account of the disadvantages suffered by them and the lack of opportunities, members of backward classes may not score equally with those of socially advanced classes at the inception but in course of time, they would. It would be fallacious to presume that nature has endowed intelligence only on the members of forward castes. It is to be found everywhere. It only requires an opportunity to prove itself

The Premier Court contends that the mandate of Article 335 is to take the claims of members of SCs/STs into consideration, consistent with the maintenance of efficiency of administration. Maybe, efficiency, competence and merit are not synonymous concepts; maybe it is wrong to treat merit as synonymous with efficiency in administration. Even so, the relevance and significance of merit at the stage of initial recruitment cannot be ignored. It cannot also be ignored that the very idea of reservation implies selection of a less meritorious person. At the same time, this much cost has to be paid if the Constitutional promise of social justice is to be redeemed. Given an opportunity, members of these classes are bound to overcome their initial disadvantages and would compete with—and may, in some cases, excel—members of open competition candidates. It may not, therefore, be said that reservations are anti-meritarian. But in the case of Article 16(4), Article 335 would be relevant and any order on the lines of the order of the Government of Madhya Pradesh (in *Nivedita Jain*) would not be permissible, being inconsistent with the efficiency of administration. While prescribing the lower minimum standard for reserved category the nature of duties attached to the post and the interest of the general public should also be kept in mind.

What is more, the impugned Memorandum dated 13 August, 1990 applies the rule of reservation to "civil posts and services under the Government of India" only, which means that the defense forces are excluded from the order. So the Premier Court is of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit alone counts. In such situations, it may not be advisable to provide for reservations. Some of them are: (1) Defense services including all technical posts but excluding civil posts. (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defense equipment. (3) Teaching posts of Professors and above, if any, (4) Posts in super-specialties in medicine, engineering and scientific and technical subjects. (5) Posts of pilots (and co-pilots) in Indian Airlines and Air India. The list is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the services and posts to which the rule of reservation shall not apply. The positions enumerated above call for highest level of intelligence, skill and excellence. Hence, they form a category apart. Reservations therein may not be consistent with "efficiency of administration" contemplated by Article 335.

9. Extent of judicial review vis-a-vis Backward Classes

The Premier Court observes, in response to the above issue, that there is no particular or special standard of judicial scrutiny in matters arising under Article 16(4) or Article 15(4). The extent and scope of judicial scrutiny depends upon the nature of the right affected, the character of the legal and constitutional provisions applicable and so on. The acts and orders of the State made under Article 16(4) do not enjoy any particular kind of immunity. At the same time, the judiciary would normally extend due deference to the judgment and discretion of the Executive—a co-equal wing—in these matters. The political executive, drawn as it is from the people and representing as it does the majority will of the people, is presumed to know the conditions and needs of the people and hence its judgment and discretion will be entitled to due weight.

10. Whether the distinction made in the second Memorandum between "poorer sections" of backward classes and others permissible

While dealing with Question No. 3(d), the Court held that the exclusion of "creamy layer" must be on the basis of social advancement and not on the basis of mere economic criteria. But income or the extent of property held by a person can be taken as a measure of social advancement. Under Question No. 5, the Judges held that it is not impermissible for the State to categorize backward classes into backward and more backward on the basis of their relative social backwardness. But the question now is whether clause (I) of the Office Memorandum dated 25 September, 1991 is sustainable in law. The clause provides for a preference in favour of "poorer sections" of the backward classes over other members of the backward classes. The expression "poorer sections" means those who are socially and economically more backward. Understood in this sense, the said classification cannot be termed as invalid. Regarding the term "preference" the Court observes that the expression means an equitable apportionment. Therefore, it shall be open to the Government to notify which classes, among the several designated OBCs, are more backward and the apportionment of reserved vacancies/posts among "backward" and "more backward". On such notification, the clause will become operational,

11. Permissibility of 10% reservation for "other economically backward sections" made by Office Memorandum dated 25 September 1991

The above clause provides for a 10% reservation for economically backward sections among the open competition (non-reserved) category. Addressing the question, the Apex Court observed: "The impugned Memorandum does not say whether this classification is made under clause (4) or clause (1) of Article 16. Evidently, this classification among a category outside clause (4) of Article 16 is not and cannot be related to clause (4) of Article 16. If at all, it is relatable to clause (1). Even so, we find it difficult to sustain. Reservation of 10% of the vacancies among open category candidates on the basis of income/property means exclusion of those above the demarcating line. Is this constitutionally permissible? We think not. It may not be permissible to debar a citizen from being considered for appointment to an office under the State solely on the basis of his income or property holding. Any such bar would be inconsistent with the guarantee of

equal opportunity, On this ground alone, the said clause in the Office Memorandum of 25 September, 1991 falls and is accordingly declared as such".

Desirability of a permanent statutory body

The Premier Court is of the considered view that there ought to be a permanent body, a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the list of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons thereafter. Even if any new class/group is proposed to be included among the OBCs, such matter must also be referred to the said body in the first instance and the action taken on the basis of its recommendation. The body must be composed of experts in the field, both official and non-official. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under clause (4) of Article 16 itself—or under Article 16(4) read with Article 340. Accordingly, the Court directs that such a body be constituted both at Central level and at the level of State within four months from the verdict. The bodies so created can also be consulted in the matter of periodic revision of lists of OBCs. As suggested by Chandrachud, C.J. in *Vasant Kumar*; there should be a periodic revision of these lists to exclude those who have ceased to be backward or for inclusion of new classes

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DRAWBACKS OF THE MANUAL COMMISSION REPORT 1

After answering all the relevant issues raised for its consideration, the Apex Court opines; "Is it necessary to send back the matter to the Five-Judge Bench to consider whether the investigation and survey done, and conclusions arrived at, by the Mandal Commission are contrary to law and if so, whether the impugned Office Memorandums, based on the above Commission, can be sustained? We think not". The Court was responding to the criticisms, levelled by some counsel against the validity of the Mandal commission Report, during the course of hearing.

The first and foremost criticism levelled against the approach and the methodology adopted by Mandal Commission is that it adopted caste alone as the basis of its survey. And on this count alone, the entire report is vitiated. Treating all the Hindus not belonging to three upper castes as socially and educationally backward, it is submitted, is faulty to the core. The criteria for identifying backward classes must be uniform for the entire population. This shows, says the counsel, the impropriety and permissibility of adopting the caste as the basis of identification. On the basis of the statements made in Chapter IV and V (of the Report), it is submitted that the Commission was obsessed with caste and was blind to all the determinants. According to the petitioners, the survey must be an exhaustive one like the one done by Venkataswamy Commission in Karnataka which also forms the basis of Justice Chinnappa Reddy Commission. Objection is also taken to the use of personal knowledge and reliance upon lists of backward classes prepared by State Governments. It is repeatedly argued that the survey done by the Commission is not scientific which led to the discovery of as many as 3,743 castes whereas according to Kaka Kalelkar Commission the number of SEBCs was only 2,733. It is contended that the Commission has practically divided the nation into a forward section and a backward section. And but for the decision in *Balaji*, it is submitted, the Commission would have certainly recommended reservation of 52% of the appointments/posts/The Commission was actuated by malice towards upper castes and has submitted an unbalanced, unjust and unconstitutional report, it is argued.

Respondent's counsel, on the other hand, refuted each and every contention of the petitioners. According to them, the criteria evolved, the methodology adopted, identification made and lists prepared are all perfectly valid and legal. The Union of India, while justifying the Report, had taken the stand that even if there are any errors or inadequacies in the work and Report of the Commission, it is no ground for throwing out the Report altogether, more particularly when the Government of India had taken the care by "marrying" the Mandal lists with the States' lists.

In response, the Premier Court posits that each and every defect, if any, in the working and Report of the Mandal Commission does not automatically vitiate the impugned Office Memorandums. It has to be shown that particular defect has crept into the OMs as well. The Commission's Report has not been accepted by the Government of

India in its fullness, nor has the Government accepted the list of OBCs prepared by it in its entirety. What is now at issue is not the validity of the Report but the validity of the impugned Office Memorandums issued on the basis of the Report. The first Memorandum expressly directs that only those classes will be treated as backward for the purposes of Article 16(4) which are common to both the Mandal list and the respective State lists. Therefore, what the OM of 13 August, 1990 does in effect is to enforce the respective State lists. Resultantly, the lists prepared by the Commission have no real significance at present. The State lists were prepared both for the purposes of Article 16(4) as well as Article 15(4). The particulars furnished by the Union of India do establish that these State lists have been prepared after due inquiry and investigation and have stood the test of time and judicial scrutiny. The information furnished by the Center details the basis of identification of OBCs in the States covered by the said O.M. (see Table in *Appendix No: III*)

The Apex Court further observes that the Government of India had adopted the State lists obtaining as on 13 August, 1990 for its own purposes but that does not mean that these lists are sacrosanct and unalterable. If the State Government effects any modifications, the same shall be intimated to the Government of India forthwith which shall make necessary changes in its own list relating to that State. Strictly speaking appointment of a Commission under Article 340 is not necessary to identify the OBCs Article 340 does not say so. The Government could have, even without appointing a Commission, specified the OBCs on the basis of such material as it may have had before it (e.g., lists prepared by various States) and then appointed a Commission to investigate their conditions. The criteria evolved by Mandal Commission for identifying the OBCs cannot be said to be irrelevant. Maybe there are certain errors. But in an exercise of such magnitude and complexity, such errors are not uncommon. There can never be a perfect report. So far (i.e., till 1990), no reservations could be made in favour of OBCs, for one or the other reason, in Central Services though such reservations are in force in many States.⁴¹

Moreover, the Court observes, the direction made herein for permanent Commissions to examine the complaints obviates the need for scrutiny by the Courts. Persons aggrieved can always approach them for appropriate redress. The Bench also

points out that identifying the impugned Office Memorandum with the Mandal Commission Report is basically erroneous. Mandal Commission Report may have led to the passing of the O.M. (dated 13 August, 1990); but the above O.M. does not incorporate the Mandal list of OBCs as such. It incorporates, in truth and effect, the State lists.

**Directives To The Government of India, State Governments
and Administrations of Union Territories**

The Apex Judicature, after addressing all the relevant issues on positive discrimination, with special reference to OBCs and Mandal Commission, gives the following directions:⁴²

1. The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of Other Backward Classes. The advice rendered by such body shall ordinarily be binding upon the Government.
2. Within four months from today (the day of the verdict) the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ("creamy layer") from the OBCs. The Implementation of the impugned O.M. (dated 13 August 1990) shall be subject to exclusion of such socially advanced persons. States shall also evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the OBCs.
3. It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in clause 2 above as well as the classification among backward classes and equitable distribution of the benefits of reservation among them that may be made in terms of and as contemplated by clause (1) of the Office Memorandum (dated 25 September, 1991). shall be preferred only before this Court. Similarly, any petition or proceeding questioning the validity, operation or implementation of the two impugned Office Memorandums, shall be filed or instituted only before this Court.

The Office Memorandum dated August 13, 1990 impugned in these writ petitions is accordingly held valid and enforceable subject to the exclusion of "creamy layer".

Clause (i) of the Office Memorandum dated September 25, 1991 requires—to uphold its validity—to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degrees of social backwardness and a rational and equitable distribution of the benefits of the reservations.

And Clause (ii) of the said Memorandum is held invalid and inoperative (see *Appendix: II*)

A CRITICAL APPRAISAL

The judiciary was expected, through the *Mandal Commission Case*, to decide on the very controversial and significant issues of reservation for the OBCs at a crucial juncture in the Indian history. The context can be perceived at two levels—the surface-level and an interplay of deeper processes. At the surface level, one has the heritage of the freedom struggle with its stated and unstated promises for various sections of population and the ethos of welfare state focusing on the principles of equity and social justice. At the deeper level of social reality, one sees the persistence of feudal and semi-feudal relations in different parts of the country, emergence of rich peasantry through land reforms, state-subsidized new technology and ancillary measures. Side by side with this there is pauperization of the under-classes. Most of the neo-peasants belong to middle strata in the caste system and many in the under-classes are members of the Scheduled Castes, Scheduled Tribes and minorities.

The dispossessed landlords and traditional elites (many of whom belonging to upper castes) have moved over to state services and the professions. Some of them have come up as regional level industrial and commercial entrepreneurs and contractors. Besides, by taking advantage of state-supported infrastructure and through pillage of resources from rural and tribal areas, monopolies have deeply entrenched themselves at the national level. This, coupled with growing militancy of the under classes, finds the rural and urban elites handicapped in establishing their hegemonic sway. In such a complex situation, capture of administrative and technical decision-

making powers, in addition to political power, is of crucial importance for all the competing interests.⁴³

Viewed from a different standpoint, the Zamindari Abolition followed by Green Revolution was a turning point in the caste rivalries inasmuch as the economic power in rural India passed into the hands of certain agriculturist castes who were educationally backward and consequently underrepresented in government services. This new rural elite has assumed the leadership of the backward classes and claims its share in political power. So the elite has a vested interest in caste based reservations. The label of social justice given to essentially the demand for caste-based reservations has given an ideological edge to the backward classes and their struggle for greater share in power and jobs. While the legitimacy of the demand, of the hitherto deprived for a better deal, cannot be denied altogether, this demand has to be processed in a rational and democratic manner.

It is significant that the demands made by Backward Classes (i.e., OBCs) have met with stiff resistance from the forward castes, which is best evidenced by the anti-Mandal agitation. By contrast, there has been no serious or organized opposition to the compensatory discrimination in favour of Scheduled Castes and Tribes. As against this, the problem of Backward Classes had its genesis nearly one hundred years back in the struggle by sons of the soil of the then Mysore State against the monopolization of government jobs by Tamil Brahmins. The composition of the agitating group kept on changing from time to time. This struggle in the post-Independence India cannot be termed as a well-defined movement. However, this struggle had spread over to all southern provinces and overtook the Hindi-speaking areas of the north only after Independence,

Whatever the "contradictions" or imperfections in it, the problem of Backward Classes cannot be argued out of existence. It is an inevitable outcome of the historical process.⁴⁴ Above all, it was the abrupt adoption of reservation policy in favour of OBCs that brought into the open the contradictions both in the state and civil society vis-a-vis Backward Classes and reservations. But the political institutions had failed to defuse the crisis; in fact the institutions themselves reflected the social conflict. As a result, the judiciary was called upon to resolve the conflict.

Presumably, the most important aspect of *Indra Sawhney* has been the emphasis on caste factor. Earlier Supreme Court decisions from *Balaji* to *Vasant Kumar* had taken

into account both economic and caste factors but there was some ambiguity in the judicial view regarding the question whether caste was a necessary rod or a unit of backwardness. The majority in *Indra Sawhney*, equated caste with class in the Indian context and held that economic factor cannot be the sole guide. The Court opined that Articles 15(4) and 16(4) were not for economic upliftment but to give a share in power to the hitherto deprived. Caste system has been the foundation of social organization in India for thousands of years. Moreover, caste-based reservations have been on the national agenda for the last one hundred years. Caste awareness has been aroused by its use in electoral politics. The caste factor has become so critical in the elections that no political party finds itself in a position to oppose caste-based reservations. With all the political parties in support of the caste reservation, a century-old history and mounting pressure of emergent intermediate castes, the Court cannot be expected to ignore the caste factor. In any case, in the present stage of development in India, the only identifiable unit available is caste. After all backwardness cannot be decided on the basis of individuals. All that the Court can possibly do is to gradually reduce the weightage given to caste and to attach greater weightage to economic factor. The Preamble of the Constitution lays down the goals of not only social justice but also economic justice.⁴⁵

How the Supreme Court has attempted an integration of divergent values can best be seen in its observations regarding Clauses (1) and (4) of Article 16. On the other hand the Court has emphasized that the power of clause (4) has to be exercised in a fair manner and within reasonable limits. In *Indra Sawhney*, the Court has drawn three reasonable limits relating to: quantum of reservation, carry forward rule and reservations in promotions. The Apex Court reiterated the 50% rule and further stated that relaxation in 50% rule can be made in extreme cases but with extraordinary caution and in a special case. Regarding the carry forward rule approved in earlier decisions, the Court clarified that year has to be the basis of reservation and not the strength of the backward classes in a cadre. The carry forward rule cannot be allowed to violate the 50% ceiling. The principle of social justice often comes into conflict with the principle of administrative efficiency. In this landmark judgment, the Court attached higher value to administrative efficiency while dealing with the question of reservations in promotions.⁴⁶

THE CREAMY LAYER

Experience with the policy of reservation had indicated that the advanced sections of the backward classes take away the benefits of reservations which are meant for the weaker sections.⁴⁷ To eliminate this possibility, some State Governments like Kerala introduced a means test thereby excluding persons from backward classes whose income was above a certain limit from availing themselves of the benefits of reservation. In *Jayashree*,⁴⁸ the Supreme Court upheld the validity of the means test. The members of the backward classes who are advanced socially, educationally and economically are referred to as "creamy layers". In the Mandal judgment, the majority opinion upheld the exclusion of creamy layers of backward classes.⁴⁹ But there is a divergence of opinion as to the basis on which such exclusion should be made. But some of the difficulties that one encounters in implementing the means test should be noted. Real incomes are often suppressed, certificates are often issued without verification and false certificates are frequently submitted. Pandian, J., in his opinion listed seven of them by way of illustration. Marc Galanter, in the context of application of economic tests for reservation, pointed out some of the problems that arose in the operation of such tests.⁵⁰

The Supreme Court has considerably toned down the rigors of Mandal scheme by trying to balance various competing interests. The most valuable contribution in this respect has been the doctrine of creamy layer. Actually, this doctrine is the culmination of the policy behind Karpoori Thakur Plan and was also advanced in the Report of Chinnappa Reddy Commission and in the dissenting note to the Mandal Report by Mr.L.K.Naik. This doctrine would vouchsafe social justice to the deserving persons and would also meet the major criticism against caste-based reservation that the benefits of reservation are cornered by the affluent in the backward classes. The only problem remains is that of faithful implementation of the doctrine.⁵¹ The creamy layer directive may in ultimate analysis prevent the "Mandalite" to plunge India into caste war". In his dissenting note, L.K. Naik, member of the Mandal Commission, had pointed out that the intermediate backward classes should be separated from the

depressed backward classes. Noted lawyer V.M.Tarkunde may not be wholly correct when he says that by the concept of creamy layer the charge of casteism "which has often been leveled against the reservation policy will lose much of the force." But there is force in his argument and it will lessen the social tension.

The Court has tried to save another social conflict between the creamy layer of the Backward Classes and the extremely backward among them. The extremely backward are exploited by the forward castes and the "better-off" backward castes. They do not get the benefits that are due to them because of the dominant sections. These dominant sections have improved their economic lots over the last few decades. "Some of them have even advanced politically on account of their numerical strength which has made them viable vote banks. Some have also advanced their lots socially and educationally. Consequently, a section of them no longer suffers from serious social stigmas. In fact, the 'dominant' among them have ensured their representation in political bodies".³²

In fact, the veteran socialist leader and the then chief minister of Bihar late Karpuri Thakur had practiced the concept of creamy layer in 1978 when he provided 12% out of 20% reservation (for backward castes) to extremely backward sections among them and had introduced an economic criteria for eligibility for reservation in jobs. Had it been implemented, the forward sections of society would not have raised much hue and cry and the extremely backward sections of the backward castes would not have begun to flex their political muscle by invoking their relative deputation in comparison to 'dominant backward castes. Thus, the creamy layer concept is right concept that the Court has developed."⁵³

The opponents of the creamy layer concept argue that the verdict does not take cognizance, for instance, of the *social* backwardness but economic backwardness of advancement. There is yet another legal lacuna. The Government has not asked the Court to adjudicate on the creamy layer question. There is no churning out of the creamy layer from the SCs and STs in matter of job reservations. Why should the OBCs be subjected to the discriminating provision? Then, what about the creamy layer in the higher castes? True, the top 10 to 15 percent have secured most of the jobs and cornered a bulk of the State subsidies, export incentives, industrial licenses and tax

holidays. Almost on every count, therefore, the legal position taken to defend the creamy layer issue is weak. There is no denying that the country has made progress on social and economic fronts, but it has hardly improved the lot of the non-creamy OBCs. Steeped in illiteracy, ignorance and poverty, they are in no position to fill up Class I or even lower jobs. And if their creamy brothers and sisters are also kept away from them, then the entire exercise of reservations will be reduced to a farce. The posts for OBCs will remain vacant. They will be deprived, much against the wishes of the framers of Constitution, of any share in the governance of the country. Thus, the backward class movement would, in the absence of its elite—creamy layer—suffer a serious setback. The high castes, powerful and privileged, will continue to rule the roost. Besides, the policy is unworkable and it would be impossible to implement it. Worse, the whole case of the creamy layer is riddled with flaws, legal as well as sociological. It is not for nothing, therefore, that Mr Laloo Prasad Yadav, the Bihar chief minister, had termed the Centre's decision to exclude the creamy layer as "a fraud on the Constitution and a conspiracy aimed at preventing the OBCs from taking their rightful place in government services."⁵⁴

Expert Committee on Creamy Layer

The Government of India, in deference to the directions of the Supreme Court in *Indra Sawhney*, appointed (on 22 February, 1993) a four-member *Expert Committee on Socially and Educationally Backward Classes*, with Justice R. N. Prasad as Chairman, to specify the basis, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ("Creamy Layer") from the SEBCs. The Committee defined the criteria for application of the rule of exclusion. It is of the view that the rise in social and educational status may result from different kinds of positions and placements in life. The Committee has, therefore, listed—in their Report submitted in March, 1993—the following categories which are to be treated as creamy layer and to which the rule of exclusion will apply:

I. Constitutional Posts: President, Vice-President, Judges of the Supreme Court and High Courts. Chairmen/Members of the Union Public Service Commission and State

Public Service Commissions, Chief Election Commissioner, Comptroller and Auditor General of India and persons holding Constitutional positions of like nature.

II. Service Category: A: *Group A/Class I Officers of the All-India Central and State Services (Direct Recruits)*; and employment in any international organization like the UN, IMF, World Bank, etc. B: *Group B/Class II—Centred Services and State Services (Direct Recruits)*; C: *Employment in Public Sector Undertakings, etc.*. The criteria enumerated above will also apply *mutatis mutandis* to officers holding equivalent posts in banks, insurance organizations, universities, etc., and private employment.

III. Armed Forces Including Para Military Forces (excluding civil posts). The exclusion rule will apply to the level of Colonel and above in the Army, Navy, Air Force and the Para Military Forces.

IV. Professional Class and Those Engaged in Trade, Business and Industry: This will include persons not in employment either private or Government but those who are engaged in professions as a doctor, lawyer, chartered accountant, income tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artist, sports person, media professional, or any vocations of like status

V. Property Owners: A: *Agricultural Landholdings* If a person belongs to a family which owns only irrigated land, and the extent of such land is equal to or more than 65% of the statutory ceiling area, then the disentitlement will occur B *Plantations*. The plantations like coffee, tea, rubber, etc., which are not regarded as agricultural holding will come under this category. Because the criteria of income wealth will be applied to them. C: *Vacant Land/Buildings in Urban Areas* To identify those who come under this category the criterion of income/wealth under item No VI will apply

VI. Income/Wealth Test: Persons having gross annual income of Rs 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. The Committee considers a period of three consecutive years to be a reasonable period for this purpose (see *Appendix: IV for detailed Report*).⁵⁵

NATURE AND SIGNIFICANCE OF THE MOMENTOUS VERDICT

The significance of the Supreme Court Special Bench judgment is that the litigants had forced the Apex Court to stop talking in many voices over the controversial and complex issue and the Court in turn forced the Center to stop equivocating and passing the buck either to the States, as it has done all along, or to the Court. The judgment must be viewed in its true perspective. The task of making an essentially unjust, caste-ridden society less unjust is daunting indeed. The majority as well as separate but concurring judgments take this fully into account and have very ably analyzed the ground realities. But the judgment should not be termed as revolutionary. Reservations have existed all along at the State level. Their extension to Central Services as far as OBCs are concerned is merely an extension of an idea. The Nine-Judge Bench has cleared the confusion caused by the judgments of the Court in the last four decades. The issues framed by the Bench amply indicate the nature of the rulings. Of the eleven issues, only those relating to the notifications issued by the V.P.Singh government and the Narasimha Rao government were new. The rest dealt with issues that the Court had grappled in the past and had given varying judgments. And what is noteworthy is that even issues on which the Court had been consistent, the Special Bench has now found unacceptable.

Even though the judgment cannot be credited with any revolutionary approach, it must be complimented for clarity of legal thought and lucidity of expression. Read collectively, the judgments do indicate a firm commitment to the ideals and goals of the Constitution and a sensitivity about the country's problems. Approval in principle of the concept of backward and more backward is rational and so is the exclusion of the creamy layer. However, the consequences in the immediate future are not going to be happy. It is only the vocal and influential sections of the backwards who have benefited from the Constitutional guarantees especially because of the criminal neglect of education by the Centre and the States. The poor remain both poor and uneducated. Even now the reserved jobs for the Scheduled Castes and Tribes are not fully filled. Would the lot of the OBCs be any better, especially after excluding the creamy layer? The Special Bench has made it abundantly clear that even to fight casteism caste has to be used as an instrument. Had not the US been fighting racism by adopting affirmative action for

blacks? And has not the US Supreme Court sanctioned it? It must be clearly understood that the entry of the backwards into Central Services is nothing but a symbolic gesture towards giving the backwards a share of state power. The real solution lies in a crash education course for the backwards and in bettering their economic lot. A place in the Central Services for the chosen few is only a palliative.⁵⁶

Critics of the verdict say that future historians will regard 1992 as one of the saddest years in the history of our jurisprudence. In this year the Supreme Court ensured a fresh lease of life to the "canker of casteism" for a long and indefinite future. The majority judgments held that reservations in Government service on the basis of caste are permissible under Article 16(4). The minority judgments of Justices Thommen, Kuldeep Singh and R M Sahai state the correct law. They rule that "casteism" can never be the basis of reservations for employment. It is submitted that the majority judgments in the Mandal case are erroneous and need not be overruled in the public interest and in the long-term interests of the backward classes themselves. The judgment fractures the nation and disregards the basic structure of the Constitution. The decision would revitalize casteism, cleave the nation into two—forward and backward—and open up new vistas for internecine conflicts and make backwardness a vested interest. It will undo whatever has been achieved since Independence towards creating a unified, integrated nation. The majority view will result in the sub-standard replacing the standard and the reins of power passing from meritocracy to mediocrity. Caste will be given precedence over merit and caliber. Article 16(4) has been virtually rewritten by substituting "caste" for "class".

A backward class may be given the benefit of Articles 15(4) and 16(4), but class must consist of a homogeneous group. Excluding the creamy layer would not get rid of the vice that the only link or thread binding the benefited class together is caste. A classification may be justified on the ground that it is a backward "class", but never on the ground that it is a backward "caste" or "a section of the backward caste". This principle was precisely enunciated by the Constitution Bench in *Trilok Nath* (1969 1 SCR 103), *Pradip Tandan* (1975 2 SCR 761), *Jayashree* (1977 1 SCR 194) and *Akhil Bharatiya Soshit* (1981 2 SCR 185). These judgments were cited and referred to in the majority judgment without disapproval, but they were inexplicably overlooked. Reading

Article 16(4) and Article 335 together, it is evident that when efficiency of administration cannot be sacrificed, even in favour of the Scheduled Castes and Tribes. much less can it be sacrificed to favour the Other Backward Classes. The choice before the Government is clear. It can opt for populism, carry on with the policy of reservations and convert this poor country into a paradise for lawyers. Or, it can give up the thoughtless policy of caste reservations. "Mr. V. P Singh said that, after the Supreme Court judgment in the Mandal Case, he could die in peace. But unfortunately his policy has ensured that the nation will not live in peace".⁵⁷

A rational and pragmatic approach to reservation would be to keep its size say within 30% of the vacancies. This should be inclusive of SCs and STs for whom reservation at the existing level 22.5% is justified and may continue. The OBCs have to be accommodated within the balance 7.5%. That would meet the Constitutional requirements of keeping reservation for a minority of seats. It will also not unduly dilute administrative standards. The primacy of the provision of equality of opportunity will also not be unduly disturbed.⁵⁸ The Supreme Court has made a laudable attempt to strike a just balance between the interests of SEBCs and persons belonging to the general category. It is wrong to regard the final outcome as amounting to the success of one political party or the defeat of another. What the Supreme Court has done is to interpret Article 16(4) of the Constitution so as to secure justice to all the different classes of our heterogeneous population. The judgment has no direct application to the restitutions for SCs and STs. But the exclusion of the "creamy layer" and the elimination of reservations in promotions is bound to have an impact on the reservation policy in regard to the SCs and STs.⁵⁹

Contextualising the landmark verdict of the Apex Court, B. M. Bhatia observes that the judgment has put the entire political class of the country in a quandary. It was the National Front government of Mr. V. P. Singh that started the "political game" by reserving 27% government jobs for the OBCs. It set in motion a chain of events that ultimately brought down Mr. Singh's government. The decision was seen by most political parties, at that time, as politically motivated. By giving reservation to the OBCs, Mr. Singh weaned away from the support base of Mr. Devi Lal precisely that section of the rural population—the emerging middle castes in the peasantry in North India,

particularly in U.P., Bihar and Haryana—which would have sided with the Haryana leader, The OBCs form a vast chunk of rural votes whom neither the BJP nor the Congress could ignore. Both these parties, therefore, came out with open declaration that they were not opposed to reservations.

There is a wide gulf between the social order that the people of India were promised by the Congress leaders led by Gandhiji and the one that has actually been established since Independence. Freedom from the British was expected to be followed by ending of poverty and the oppression of the weaker (read lower castes in the Indian context) sections of the society by the stronger (upper castes) sections on the one hand and dawn of a new era of social justice and equality on the other. But the benefits of the industrial and commercial development have practically been appropriated by about 20% of the population at the top. The English-educated middle class which had come to control and operate the levers of state power has emerged as the ruling class of the country. It is the interests of this class, it now appears, that the Indian State has served to promote ever since Independence. Similarly, democracy failed in its object of giving power to the people. The reason was that after the 1967 election, which shook the citadel of Congress power to its roots, staying in power became the chief concern of the ruling political party. The new forces that gathered strength have to be accommodated in the power structure of the country. These forces are represented by the likes of Mr. Mulayam Singh Yadav, Mr. Laloo Prasad Yadav, Mr. Ram Vilas Paswan, and Mr. Sharad Yadav. They all belong to Janata Dal. But the Congress Party and the BJP have also their shares of backward castes. It will not be possible for such legislators to get re-elected in future unless they demonstrably prove their commitment to the cause of their constituents. This means that even the old party loyalties are going to be shaken and new alignments are to take place. This was demonstrated at the time Mandal Commission recommendations were first implemented. And divisions on caste lines are bound to happen in different political parties. This is true of, to a lesser extent, the CPI and the CPI(M) also. The fact of the matter is that caste is a reality of Indian society and no political party can wish it away in electoral terms.

No perceptive observer of Indian political scene in the last 40 years can miss the point that caste and communal considerations have been a weighty factor in the choice of

candidates for various constituencies, at least in the rural areas, with the Congress and for that matter with every political party. What V. P. Singh did by implementing the Mandal Report was to bring the caste factor into the open and make it explicit instead of it being practiced surreptitiously. The English-educated urban middle class elite has failed to assimilate within its fold the educated rural elite. Till recently, a Charan Singh or his son Ajit Singh, a Devi Lal, a Karpoori Thakur, a Ram Naresh Yadav and others like them could not find an enduring place in the mainstream of the ruling elite. But thanks to Mandal, things have begun to change. Just consider how political parties vied with each other in electing a backward class person to the high office of the Vice President of the country.⁶⁰ All this is a result of the "Mandalisation" of politics brought about by V. P. Singh's action....The agitation this time (following the Apex. Court's verdict in Mandal Case) is a pale shadow of the earlier one. Why this difference? The answer is two-fold: no political party is backing the students this time; and the national media, instead of conducting a blitzkrieg against the reservation decision as in 1990, has this time done a volte-face by hailing the Supreme Court judgment.⁶¹

More to the point, the political opportunism of all political parties, irrespective of their ideological commitments, was evident when they vied with one another to welcome the verdict. And herein lies the real threat to the Other Backward Classes movement for achieving the goal of social justice. Unfortunately, the Mandal Report has been reduced to a single point program of job reservation for the SEBCs. In fact reservation of jobs for the backwards was only one of the four major policy prescriptions recommended by the Commission and it was certainly not the most important recipe. The Commission gives more importance to educational programmes and financial package for the OBCs. And the most important recommendation of the Commission pertains to structural changes, i.e., "radical land reforms".

Contrary to the popular impression, the Mandal Commission is not a narrow casteist document. And it will be a national tragedy if the euphoria generated by the Supreme Court's favourable verdict leads to the impression that the battle for social justice has been finally won. The Mandal Report in its totality provides a blueprint for a just and egalitarian society. In this connection it may be useful to examine the process by which several progressive intellectuals came to view this "baneful institution" as a tool to

mobilize the depressed classes for purposeful social action. People of my persuasion were taught that "class" was the mighty historical force which will bring about the proletarian revolution and establish a socially just order. But even before the collapse of the USSR, it had become amply clear that class was not such an omnipotent force for revolutionary action, and much "narrower identities" of language, religion, ethnicity, caste, etc., had far greater pull for the people. It was in this climate of disillusionment that Lohia's presumption of the mobilizing potential of caste acquired special attraction for the social activists. Caste came to be perceived as the Indian *avatar* of class, and even the communists reluctantly started to subscribe to this view.⁶²

It is in this critical context that the landmark verdict assumes great significance. The Supreme Court judgment has cleared many cobwebs and doubts which persisted with political parties, the entrenched vocal groups and the intelligentsia despite the many earlier pronouncements. This is the first time since 1972 that such a big Bench consisting of nine Supreme Court Judges headed by the Chief Justice was created to hear a Constitutional issue. The present judgement is the outcome of over 110 writ petitions filed by a cross section of people. The verdict has put its seal of affirmation on the four decades long practice of reservation prevailing in the Congress-ruled southern States and has cleared the way for its implementation in the Central Services.

Reservation of posts is one of the many measures necessary to offset the cumulative consequences of caste discrimination. One consequence of this pernicious system is the monopolization of state power by the upper castes. The purpose of reservation is to redress this historical imbalance. It is a remedial measure, not a punitive one directed against the higher castes. As rightly pointed out by Justice Savant, "where a majority of the population is denied its share in actual power, there exists no real democracy. The judgement cannot satisfy all. It is not and cannot be a panacea for the evils of caste and class discrimination".⁶⁴ The majority decision of the Apex Court is likely to be more or less the last word in this century on a sensitive social issue which began to engage the attention, energy and passions of the public many decades ago. The judgement effectively strengthens the progressive commitment made in the Constitution to the idea of compensatory discrimination as an instrumentality of social justice and social change. However, compensatory discrimination will continue to be a contentious issue.

"But with the Supreme Court judgement, the political and constitutional legitimacy to which the anti-Mandal movement lay perverted claim, and the social and philosophical arguments unleashed to promote reservation-phobia in India's profoundly iniquitous and oppressive social order, have collapsed".⁶⁵

Mandal case was *sui generis*. No such case had ever come before the Supreme Court. No other governmental decision had even remotely approached this case in the range of its sweep and the breadth of its impact on Indian society

In a sense we are all Mandaites now; in another sense nobody is a Mandalite any more. By their complex 900-page judgement, the learned Judges of the Supreme Court have made both jubilation and remorse irrelevant. On the face of it, the votaries of the Mandal report have won. In reality, however, the Supreme Court has ordered the "slow poisoning" of Mandal. However, the Supreme Court, the final, "unbiased repository" of wisdom and sagacity, has spoken with finality. In doing so, the Court has produced a complicated piece of social engineering that should, in fact, not cause any jubilation in the Mandalites ranks, although it has understandably depressed the votaries of merit too. Evidently, the upper-caste dominated Supreme Court Bench did not want to be accused of bias; it was particularly careful not to appear anti-backward. So it asphyxiated Mandal in Mandal's name. It retained the framework of Mandal and upheld the reservations for SEBCs. But it has made such a fundamental alteration in the Mandal formula that the spirit of Mandal has been suffocated, leaving only its letter behind.

And the institution of caste has not received a new fillip, even it has not been dealt a mortal blow. The process of class formation within castes will gain momentum. Having failed to arrest the steady incursion of caste into the mass psyche, the Supreme Court has built dykes and erected sluice gates to control casteism, so that its tidal wave does not engulf us totally.⁶⁶ Mr. K.K. Venugopal observes that, "the fact that forwards masquerading as backwards will not be entitled to reservations if the most positive aspect of the judgement, the concept of 'creamy layer' is implemented properly. It is true that Mandal had been upheld, but it is only for a temporary period. The Mandal Report will stand substituted when the proper Central and State Commissions are established and fresh identification of backward classes is made. In any case, such identifications will also be subject to challenge. He further says, "The Supreme Court has struck a balance between

the meritorious and those who have been historically wronged. If the judgement has also rejected the validity of the Mandal model, I would have gone so far as to call it an act of judicial statesmanship. But it has stopped short of being that".⁶⁷

Mr. Ram Jethmalani, defending the Supreme Court's verdict and countering the criticism against it, argues that the erstwhile underprivileged would now become the privileged. A judgement that so accurately articulates the constitutional purpose and makes its achievement a possibility cannot be faulted on this score. He quotes, in support of his argument, Justice Marshall of the USA about blacks in the country: "In the light of the sorry history of discrimination and its devastating impact on the lives of the Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society".

The Constitution makers saw the appalling cleavage between those who have monopolized political and administrative power and national resources and others who were cruelly kept out of both. This vast gulf had to be bridged. Reservations became one of the measures contemplated, sanctioned and ordained by the Constitution. To treat unequals equally is a guarantee of the perpetuation and accentuation of inequality. Unequals must be unequally treated to produce equality which is the proclaimed goal of the Constitution. Only then the backward classes will have a fair share in the administrative structure of the country and acquire the dignity and confidence which are the essence of humanhood. For too long, the downtrodden classes have been denied their due. They are tired of being governed. They are impatient to govern themselves. This urge is legitimate being sanctioned by the Constitution. The urge must be satisfied before it becomes a "class war". Even Dr. Ambedkar himself was ultimately defeated by the high caste forces. He died disillusioned and beaten. His last protest took the form of giving up Hinduism and asking his followers to turn to Buddha and embrace Buddhism. Paradoxically, those who feel endangered today will also be the long term beneficiaries. In the meantime, the Court's verdict must be gracefully accepted. That is the only way to protect the Constitution and the integrity of the nation.⁶⁸

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The Supreme Court was confronted with a highly complex and controversial issue in the form of job reservation policy in favour of the SEBCs. The Apex Court itself admits this when it says: "The questions arising herein (in *Mandal Commission Case*) are not only of great moment and consequence, they are also extremely delicate and sensitive. They represent complex problems of Indian society, wrapped and presented to us as Constitutional and legal questions. On some of these questions, the decisions of this Court have not been uniform. They speak with more than one voice. Several opposing points of view have been pressed upon us with equal force and passion and quite often with great emotion. We cannot, however, agree with all of them. We have to find answers which according to us are the right ones, constitutionally and legally". Referring to the "politically" controversial nature of the question, the Apex Court observes: *We are dealing with complex social constitutional and legal questions upon which there has been a sharp division of opinion in the society, which could have been settled more satisfactorily through political processes. But that was not to be. The issues have been relegated to the judiciary—which shows both the disinclination of the executive to grapple with these sensitive issues as also the confidence reposed in this organ of the State* (emphasis added).

Regarding the role and legitimacy of the judiciary in such circumstances the Premier Court quotes Sir Anthony Mason, Chief Justice of Australia, who once said: "Society exhibits more signs of conflicts and disagreements today than it did before... Governments have always had the option of leaving questions to be determined by the Courts according to law... There are other reasons, of course, that cause Governments to leave decisions to be made by Courts. They are of expedient political character. The community may also be divided on a particular issue that a Government feels that the safe course for it to pursue is to leave the issue to be resolved by the Courts, thereby diminishing the risk it will alienate significant sections of the community".

Regarding the legitimacy of the Court to decide such critical issues, the learned Justice says: "My own feeling is that the people accept the Courts as the appropriate means of resolving the disputes when Governments decide not to attempt to solve the disputes by

the political process". (*Judging the World: Law and Politics in the World's Leading Courts*, p.343).

The Apex Court, at the outset of its landmark verdict, further observes, "we hope and trust that our people too are mature enough to appreciate our endeavor in the same spirit. They may well remember *that the law is not an abstract concept removed from the society it serves, and that judges, as safeguards of the Constitution, must constantly strive to narrow the gap between the ideal of equal justice and the reality of social inequality* (emphasis added).⁶⁹ The overall approach of the Supreme Court has been to give a "social justice" orientation to the reservation scheme. The attempt of the Court has been that the benefit of reservation reaches the really needy; the scheme is not misused as an instrument of caste preferences. In this context, the observation of the Supreme Court is significant that the list of backward classes prepared by the Mandal Commission is not final. With the passage of time another list can be prepared by the Government better reflecting the social mobility which may have taken place in these classes in the meantime.⁷⁰ There is a wealth of case law, sometimes concordant and at other times discordant, making up what may be called "reservation jurisprudence". While we are governed by the Constitution, the Constitution is what the Judges say it is. So more than the Mandal nostrum, what concerns the common people is what is projected through the judicial prism on the reservation screen. The Supreme Court is final, not infallible, and a social instrument which enjoys high authority but has an accountability to pronounce without insufferable delay, with luminous lucidity and pragmatic direction. The inscrutable face of the sphinx and the personalized loquacity of separate pedantry are unbecoming of Indian law lords whose composite constituency consists of the bureaucracy, motley politicians and a vast inarticulate, harrowing humanity and a crowd of elitist, hostile and confused youth. Viewed from these angles, the Mandal judgement is a marathon performance which sets at rest many issues and serves the nation.

Although inevitably prolific, beating the patience of busy professionals and riddled with history, precedents, mystiques and enigmas, it is still a sound ruling. The popularity of opinions, each demolishing the other, diversity and dissent which are exhibitions of judicial excellence and forensic passion, makes the Court an esoteric and awesome instrument whose multiple opinions create, despite the principle of binding majority

opinion, opportunities for radicals and reactionaries to cite one Judge or the other in support of militancy and extremism, moderation and middle-of-the road course. Everyone wins, in this sense, but "Operation Mandal also wins. What the people need is a conclusive re-statement of the thorny jurisprudence of reservations with understandable simplicity, compatible with common sense and social justice and practical in its administrative applications,

By this token, the majority view had tranquilized a disturbed nation and is the law of the land for the present concurrence. This observation is no pejorative reflection on the other dissenting opinions. Justice Pandian has excelled himself in his impassioned presentation, obviously on the side of the backward segment of Indian humanity. Sawant J, it is difficult to say is right or wrong. He is in broad sympathy with the spirit of the Mandal provisions. I do not contend that Justices Thornmen, Kuldeep Singh and Sahai pronounced totally untenable propositions, unsocial elitist assertions or constitutionally violent departures. Excellence and merit have their proponents. The social philosophy and a view of the mores of the community shapes his conclusions which satisfies his social perceptions. Justices Thommen and Kuldeep Singh have given us the benefit of great ideas in delectable diction but they are in a minority and perhaps, rightly so, under the current conditions of backwardness plaguing the vast masses. A dissent is not a vain and ineffectual performance, but an appeal to the future, to the unfolding wisdom of later decades. That is the solace of a dissenting Judge. Jurisprudence, in its reservation dimension, will long depend on these judgements and that is why jurists and social activists should study the hundreds of pages of judicial labours at the highest level to learn, not merely the majority viewpoint but also the conflicting alternatives. *Indra Sawhney vs. Union of India* is now the law of the land and hopefully will continue to govern our governments and the destiny of the backward sections in their journey towards socio-economic circumstances.⁷¹

Even so, it should be emphasized here that there is no unanimity in the judiciary on the question of affirmative action in favour of Other Backward Classes. Like all other institutions, the judiciary is also divided over the impugned policy. In effect, the national turmoil over Mandal Commission had demonstrated that even the judiciary—generally supposed to be independent and immune from political pulls and pressures—is not free

from social schisms over caste and reservation. In all, six opinions were delivered by the Nine-Judge Constitution Bench in the landmark *Mandal Case*. Three Justices (R.M. Sahai, T.K.Thommen and Kuldeep Singh) delivered separate dissenting judgments. The majority verdict was handed down by Justice B.P. Jeevan Reddy (on behalf of: M.H.Kania, C.J., M.N. Venkatachalaiah, A.M.Ahmedi and himself). The other two concurring but separate opinions were given by Justices S.R.Pandian and P.B. Sawant.

The Apex Court, in its momentous verdict, reexamines—apart from addressing the Constitutional validity of the Office Memorandums in question—all the relevant judicial pronouncements relating to compensatory discrimination delivered since Independence. Because, as the judiciary itself admits that, "several judgments of the Court have not spoken in the same voice on this issue and a final look should settle the law in an authoritative way". So the most comprehensive verdict of the Apex Court on preferential treatment (in *Mandal Case*) was delivered with a high degree of lucidity and finality.

Judiciary Steps In: As set out earlier, the partial implementation of Mandal Commission recommendations through an Office Memorandum sparked off widespread protest, self-immolations and damage to public and private property. Several writ petitions were filed questioning the said O.M. The Apex Court actively reacted to the Mandal controversy on 21 September, 1990 through its order and refused to interfere on the ground that "the decision to implement the Mandal Report was a political one and ordinarily the Court would not interfere with such a decision". The Court also made an appeal to the nation that the matter was being adjudicated upon and everybody's rights would be worked out. As the situation not having improved, a petition on behalf of the Supreme Court Bar Association was moved and the Court stayed (on 1 October, 1990) the operation of the O.M. till final adjudication.

It should be stressed here that it was the Supreme Court's intervention in the form of a stay order that defused and calmed down the nearly two-month-old post-Mandal national turmoil. Moreover, the judiciary—though divided like the other institutions—played a decisive and unique part during the "institutional crisis" over Mandal Commission. The controversial nature of OBC reservations was also reflected in the fact

that the judiciary had not endorsed, in toto, the partial implementation of Mandal Report. In effect, the Court virtually reformulated the preferential policy.

Above all, the judiciary categorically recognized the reality of caste-based inequalities and deprivations and caste as a basis of compensatory discrimination. The verdict reiterated: "A caste is nothing but a social class". And the majority judgment emphasizes that sharing of state power is the basis of reservation in appointments under Article 16(4). It says: "The objective behind Article 16(4) is empowerment of the deprived backward communities". However, the judiciary attempted to strike a delicate balance between positive discrimination and principles of equality and efficiency: The concept of creamy layer; reiteration of 50% ceiling, though made flexible; declaring reservations in promotions unconstitutional; and exclusion of certain vital positions from the purview of affirmative action—reflect the balancing exercise of the judiciary.

In the final analysis, the judiciary succeeded in legitimizing the controversial policy when the other institutions had failed to do so by operating at cross purposes. Confronted with a highly thorny domain of positive discrimination, the judiciary exhibited its sensitivity to the unfolding social reality by recognizing the rights of Backward Classes in sharing state power. But it succeeded in this endeavor by incorporating, in its judgment, the competing and conflicting interests of backward castes and forward castes. Nevertheless, under those historic circumstances, it was this judicious trade-off that proved crucial to the effectiveness and legitimacy of the judiciary. Thus, the judiciary, through its balancing exercise, succeeded—by dispelling the national turbulence—in putting a stop to the manifestations of the underlying contradictions.

NOTES

- ¹. *Report of the Backward Classes Commission* (Chairman: B.P. Mandal), Vol.1. Government of India, 1980, p.30. (Hereafter: *Mandal Commission Report*).
- ². The other trend-setting verdicts of the Apex Court are: *R. Chitralkha Vs. State of Mysore* AIR 1964 SC 1823; *D.G. Vishwanath Vs. Government of Mysore* AIR 1964 Mys 132; *P. Rajendra Vs. State of Madras* AIR 1968 SC 1012; *Periyakurupam Vs. State of Tamil Nadu* AIR 1971 SC 2303; *S.V. Balram Vs. State of A.P.* AIR 1972 SC 1375; *Triloknath Vs. State of J & K.* AIR 1969 SC; and *Laila Chacko Vs. State of Kerala* AIR 1967 Ker 124.
- ³. *Indra Sawhney vs. Union Of India*, AIR, 1993, Supreme Court 477. The case is popularly known as *Mandal Commission Case*. (Hereafter: *IS vs. UOI*).
 . Study prepared by the Indian Law Institute for the Mandal Commission, *Mandal Commission Report*, Vol.III, p.1
- ⁵. The 83 vacancies were distributed in the following manner: Harijans: 19, Muslims: 5. Christians: 6, Backward Hindus: 10, Non-Brahmin (Hindus): 32 and Brahmins: 11.
- ⁶. *IS vs. UOI*, p.522.
- ⁷. *Ibid.*, p. 523.
- ⁸. *Ibid.* It is worthy of notice that the Parliament, which enacted the First Amendment to the Constitution, was in fact the very same Constituent Assembly which had framed the Constitution.
- ⁹. In 1961, the Supreme Court decided the *General Manager, Southern Railway Vs Rangachari* (AIR 1962 SC 36). But it related to reservations in favour of the SCs and STs in the matter of promotions in the railways.
- ¹⁰. *IS vs. UOI*, p.524.
- ¹¹. Justice Subba Rao, J. in his dissenting opinion, however, upheld the said rule. He observed that 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 and is not a matter for this Court to prescribe. It may be noted here that a "carry forward" rule may be in a form different from the one considered in *Devadasan*. The Rule may provide that the vacancies reserved for SCs or STs shall not be filled up by general (open competition) candidates in case of non-availability of SC/ST candidates and that such vacancies shall be carried forward.
- ¹². *IS vs. UOI*, p.525.
- ¹³. *Ibid.*
- ¹⁴. *Ibid.* p.526.
- ¹⁵. *Ibid.*
- ¹⁶. This statement was made without referring to the dicta in *Rajendran* (AIR 1968 SC 1012), a decision of a larger Bench. Though *Balaji* (AIR 1963 SC 649) was referred to it, it did not support the above statement. *Balaji* indeed said that: "though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf".
- ¹⁷. *IS vs. UOI*, p.529.
- ¹⁸. *Ibid.*
- ¹⁹. See Appendix No: II
- ²⁰. See Appendix No: II

²¹ *IS vs. UOI*, p.521.

²². The other five Judges are: M.H. Kania, C.J., MN. Venkatachalaiah, S.Ratneval Pandian, A.M.Ahmedi and P.V. Savant.

²³. The three Judges who gave the minority view are: Dr. T.K.Thommen, Kuldeep Singh and R.M. Sahai, JJ.

²⁴ *IS vs. UOI*, p.529.

²⁵. The same format is followed here in discussing the Apex Court's pronouncements on all relevant issues of the policy.

²⁶. Particularly in cases: *Venkataraman* (AIR 1951 SC 229), *Champakam* (AIR 1951 SC 226), *Balaji* (AIR 1963 SC 649), *Janati Prasad Parimoo* (AIR 1973 SC 930), *P.Rajendran* (AIR 1968 SC 1012), *Periakaruppan* (AIR 1973 SC 2303), *Balaram* (AIR 1972 SC 1375), *Vasant Kumar* (AIR 1985 SC 1495), and *K.S. Jayashree* (AIR 1976 SC 2381). The above cases are discussed in the beginning of this Chapter.

²⁷. Framed by the Governor of Madras under Section 241 (2)(b) read with Sections 255 and 275 of the Government of India Act, 1935.

²⁸. The community, as is well known, is a socially disadvantaged section of Muslims—in effect, a caste—pursuing the occupation of ginning and cleaning of cotton and preparing pillows and mattresses.

²⁹. For example, it may take up the Muslim community (after excluding those sections, castes, and groups, if any, who have already been considered) and find out whether it can be characterized as a backward class in that State or region, as the case may be. The approach may differ from State to State or even from region to region within a State. Similarly, Christians may also be considered.

³⁰. For a detailed discussion, see Chapter on Mandal Commission.

³¹. Counsel for Tamil Nadu submitted further that at one stage (in July 1979) the state of Tamil Nadu did indeed prescribe such an income limit but had to delete in view of the practical difficulties encountered and the representations received.

³². In this connection, the Supreme Court says that the above decision is confined to the Other Backward Classes only and has no relevance in the case of Scheduled Castes and Scheduled Tribes.

³³. The Backward Classes, i.e., the OBCs of Andhra Pradesh, have been divided into four categories: Group A comprises aboriginal tribes, etc.; Group B consists of professional groups like toddy tappers, weavers, carpenters, ironsmiths, goldsmiths, kamsalis, etc.; Group C contains Scheduled Caste converts to Christianity and their progeny; and Group D comprises all other Classes /Communities/Groups which are not included in Groups A, B and C. The 25% vacancies reserved for backward classes are sub-divided between them in proportion to their respective population.

³⁴. The relevant holding of the judgment says: "When Article 15(4) refers to the special provision for the advancement of certain classes or Scheduled Castes and Tribes, it must not be ignored that the provision which is authorized to be made is a special provision and not exhaustive in character. If a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4).... A. special provision contemplated by Article 15(4), like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. The interests of the weaker sections of society which are a first charge on the State and the

Centre have to be adjusted with the interest of the community as a whole. Speaking generally and in a broad way a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case".

³⁵. In this case, Justice Fazal Ali observes: "Reservation should be within the permissible limits and should not violate Article 16(1) indirectly. At the same time, clause (4) of Article 16 does not fix any limit on the power of the Government to make reservation. As to what would be a suitable reservation within permissible limits will depend on the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. The 50% limit is a rule of caution and does not exhaust all categories. For instance, if a State has a large number of backward classes of citizens which constitute 80% of the population and the Government, in order to give them proper representation, reserves 80% of the jobs for them, can it be said that the percentage of reservation is bad and violate the permissible limits of clause (4) of Article 16. The answer must necessarily be in the negative. The dominant object of this provision is to take steps to make inadequate representation adequate".

³⁶. These Articles speak of reservation of seats in the Lok Sabha and the State Legislatures in favour of Scheduled Tribes and Scheduled Castes in proportion to their population.

³⁷. As for the practice of carrying forward the unfilled vacancies (reserved for SCs and STs) into the subsequent years, the Jury hold that the 50% ceiling would apply to the "carry forward" rule also. Accordingly, the Court overruled the decision in *Sivadasan* (AIR 1964 SC 179) which says that the 50% rule in a year need not be implemented in the case of "carry forward" even if the number of vacancies exceeds the 50% limit.

³⁸. Mr. K. parasaran, learned counsel appearing for the Union of India raised objection to this question saying that the matter does not arise at present as the impugned Memorandums do not provide for reservation in promotions and confine only to direct recruitment. He submitted that the Supreme Court has always given its opinion in a number of decisions namely, *Rangachari* (AIR 1962 SC 36), *Hiralal* (AIR 1971 SC 1777) and *Karmachari Sangh* (AIR 1981 SC 298). He opines that an applicant to a post is made either by direct recruitment or by promotion or transfer. If so, Article 16(4) does understandably take in and warrant making a provision for reservations in promotions as well. The counsel also refers to the reasoning in *Rangachari* and says that adequate representation means not merely quantitative representation but also qualitative representation, not only at the lowest level, but also at all levels of the administration.

³⁹. The court says that the reference to this larger Bench was made with a view to "finally settle the legal position relating to reservations" and to settle the law in an authoritative way.

⁴⁰. For example, in *Janaki Prasad Parimoo* (AIR 1973 SC 930) it was observed, "It is implicit in the idea of reservation that a less meritorious be preferred to another *who* is more meritorious". To the same effect is the opinion of Khanna, J., in *Thomas* (AIR 1964 SC 179), though it is a majority opinion. Even Subba Rao, who did not agree with this view did recognize some force in it in his dissenting opinion in *Devadasan*

⁴¹. Reservations in favour of OBCs are in force in the States of Kerala, Tamil Nadu, Andhra Pradesh, Karnataka, Maharashtra, Orissa, Bihar, Gujarat, Goa, Uttar Pradesh, Punjab, Haryana and Himachal Pradesh among others.

- ⁴². IS vs. UOI, pp.588-89,
- ⁴³. Roy Burman, B.K., "Mandal Commission: The Issues Involved", in Vinay Chandra Mishra (Ed). *Reservation Crisis in India: Legal and Sociological Study of Mandal Commission Report*, The Bar Council of India Trust, Delhi, 1991, pp.398-99.
- ⁴⁴. Jitendra Mishra, *Equality versus Justice: The Problem of Reservations for Backward Classes*, Deep & Deep Pubs, Delhi, 1996, pp.2-3.
- ⁴⁵. Ibid, pp.154-55.
- * Ibid, p. 156.
- ⁴⁷. Sivaramayya, B. *Inequalities and the Law*, Eastern Book Co.. Lucknow. 1984. p.56. quoted in Srinivas, M.N. (Ed). *Caste: Its Twentieth Century Avatar*, Penguin Books, Delhi. 1996, p.232.
- ⁴⁸. K. S. Jayashree vs. State of Kerala, 1977 (I) SCR 194.
- ⁴⁹. With the exception of Justice Pandian, all the other Judges took the view that creamy layers should be excluded.
- ⁵⁰. For example, if a family was joint, should the income of the joint family, or that of the coparcener, be taken into consideration? Difficulties with regard to assessment and verification arise where a retired person, or a person with limited means undertook part-time employment to augment his income.
- ⁵¹. Jitendra Mishra, op.cit., pp. 155-56.
- ⁵². Tarkunde, V.M., "A Judicious Verdict", *The Hindustan Times*, 28 November. 1992. Quoted in Jitendra Mishra, p.94.
- ⁵³. Pradeep Kumar, "Skimming Off the Creamy Layer", *The Times of India*, 10 November. 1993. Quoted in Jitendra Mishra, p.95.
- ⁵⁴. Jitendra Mishra, op.cit., p.95.
- ⁵⁵. *Report of the Expert Committee for Identification of Socially Advanced Persons Among the SEBCs*. Government of India (Ministry of Welfare) 1993. It should be noted here that so far the Governments (Central and State) have not excluded any person/section from the OBCs.
- ⁵⁶. Sahay, S. "Reservations: Moment of Truth", *The Hindustan Times*, 29 November, 1992
- ⁵⁷ Nani A. Palkhivala, "Mandal Perpetuates Casteism", *The Hindustan Times*. 30 November, 1992.
- ⁵⁸. Agarwal, U.C. "Reservation: A Rational Approach", *The Hindustan Times*. 9 November, 1992.
- ⁵⁹ Tarkunde, V.M, op.cit.
- ⁶⁰. The author refers to Mr. K. R. Narayanan, who is a Dalit.
- ⁶¹. B M. Bhatia, "Back to Mandal", *The Hindustan Times*, 3 December, 1992.
- ⁶². S.S. Gill, "Mandal: Issues Ignored", *The Hindustan Times*, 24 December 1990, The author was the Secretary to the Mandal Commission.
- ⁶³. B R Bhagat, "Reservation: Cobwebs Cleared", *The Hindustan Times*. 18 December, 1992.
- ⁶⁴ Soli J Sorabjee, "Mandal Judgement: Triumph of Social Justice", *The Times of India*. 25 November, 1992.
- ⁶⁵. S. Ram, "SC Verdict: The Final Word on Mandal", *The Observer of Business and Politics*, November 24. 1992.

⁶⁶. Chandan Mitra, "Mandal is Dead: Long Live Mandal". *The Hindustan Times*. November 23, 1992.

⁶⁷. "Court Strikes a Balance", interview with K.K. Venugopal. who appeared in the Mandal Case, *The Hindustan Times*, November 23, 1992.

⁶⁸. Ram Jethmalani, "Supreme Court Vindicates Mandal", *The Observer of Business and Politics*, December 2 & 3, 1992.

⁶⁹. *IS vs. UOI*, p.525.

⁷⁰. Jitendra Mishra, op.cit. p. 157.

⁷¹. Krishna Iyer, V.R., in his review of the Apex Court's verdict in Mandal Commission Case, *The Hindu*, 22 June ,1993.

CHAPTER VIII

CONCLUSION

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This study has sought to address the dynamics of the interaction between the state and society with the help of the historic institutional matrix that unfolded in the wake of the partial acceptance of the principal recommendations of the Mandal Commission. The institutional conflict is also used as a frame of reference to analyze the dynamics of policy making in the area of compensatory discrimination. For in developing countries in particular, the state-society interactions are mutually transforming. In other words, the present study attempted to analyze six interrelated state-society dimensions in an effort to grasp the contradictions that were brought to the fore by the Mandal Report: the capacities of the state to legitimize its domination and to pursue its socio-economic agendas, particularly when the state is confronted with antagonistic reaction from the dominant social groups; whether the state has relative autonomy in such circumstances; the roles of various social forces in politics; the circumstances that could produce or prevent the interplay between state and society; the conditions in which the state adopts a redistributive-cum-accommodative policy like affirmative action; and why reservation policy causes institutional conflict.

The state and society operate and express themselves through institutions. In a way, society "behaves" through its institutions. A systematic study of different fundamental institutions of both state and society—in an interactive context—provides the key to the comprehension of the fundamental issues of public policy, state and society. Because the authoritative allocation of values is influenced by both political and social institutions. That is to say, public policy is an outcome of the interaction between the state and civil society. The policy output is generally a result of either institutional consensus or conflict. But it is the conflict between institutions that reflects the underlying contradictions. An examination of both inter and intra-institutional conflict serves as a useful analytical tool to address all the relevant issues of public policy making. It is in this context that the highly contentious policy of reservations assumes great significance.

The policy of positive discrimination—the focal point of this study—is unique in many ways. The policy is arguably the most controversial of all public policies. The

reservation policy tends to divide not only the fundamental social institution of caste, but also gave rise to conflict between other vital institutions of society and state in India. The affirmative action assumes added significance in view of the fact that all important institutions of the state and civil society do not generally play an active and direct role in other policy areas which are largely non-controversial; and hence they do not bring out the contradictions clearly. Moreover, the reservation policy, particularly in favour of the Other Backward Classes (OBCs), also unleashes violent resistance from the non-beneficiaries, that is the upper castes, generally in the form of agitations which often lead to death and destruction. Highly emotional exchange of arguments between the beneficiaries and non-beneficiaries is only to be expected. The issue of reservations can be emotive to such an extent that scores of agitating students committed self-immolations during the anti-Mandal turmoil. The anti-reservation backlash had even assumed the potential to bring down the democratically-elected governments. Therefore, the positive^{*} discrimination—a redistributive policy though incremental in nature—tends to bring the state and civil society into a conflict, thus bringing to the fore the basic and hidden contradictions. So the policy serves as a very important frame of reference to examine the larger and fundamental issues of society, state and public policy.

The unparalleled developments, unleashed by the unanticipated acceptance of the recommendations of the Mandal Commission, provided a unique historic opportunity to investigate the fundamental dynamics of state, society and public policy, especially in the domain of compensatory discrimination. Therefore, the primary focus of this study is on the central issues of state, society and public policy. The job reservation policy in favour of the OBCs is the focal point of the analysis. Because the policy set off the historic interface between the state and civil society which had brought to the fore the hidden contradictions both in the state and society. The policy also exposed both intra and inter-institutional conflict. This study examined the following institutions: CASTE GROUPS, PRINT MEDIUM, INTEREST GROUPS, POLITICAL PARTIES, EXECUTIVE, LEGISLATURE, and JUDICIARY.

The institutional engagement engendered by the reactivation of the Mandal Report provided a very useful context to investigate: the inter and intra-institutional conflict and the causes and consequences of state-society interaction; role of the state—vis-a-vis the

society—in adopting and enforcing a redistributive policy particularly when the state encounters massive resistance from the civil society; the circumstances that enhance or erode the state's legitimacy and autonomy in enforcing a public policy—especially an accommodative one like job reservations—and resolving the social conflict; and what changes does the policy in question undergo due to the above factors.

The protective discrimination has emerged as the most controversial public policy of Independent India. In fact, the very First Amendment to the Constitution was effected in 1951 to facilitate reservations for the Backward Classes. A broad national consensus seems to exist as far as the reservation policy for the Scheduled Castes and Scheduled Tribes is concerned. And the policy has become almost non-controversial since the introduction of reservations for the SEBCs. Consequently, the reservational scheme in favour of the OBCs has emerged as the most controversial component of affirmative action. The Governments, both at the Center and in States, have been implementing various reservational programs for the welfare of the Backward Classes. But the reservational policies for the intermediate castes have always caused violent backlash from the upper castes. During the early 1950s, there was a strong but silent resistance in some quarters to the legislative provisions regarding caste. But it did not manifest itself in any ugly form. But the resistance gradually assumed the form of agitations. And the earlier anti-reservation agitations and the resultant disorder had confined only to the respective States where the policy was introduced or modified.

The agitations assumed all-India proportions in the wake of the centralization of reservations through the Mandal Commission. Moreover, reservation policy had become a truly national issue in 1990 with the acceptance of Mandal Commission Report. In that watershed year, the Union government announced the partial acceptance of Mandal Commission recommendations providing job reservations in the Central government sector for the SEBCs. The developments that followed the historic decision are unprecedented in the annals of post-Independence India.

REVIVAL OF MANDAL REPORT: THE INSTITUTIONAL CHAIN REACTION

The National Front-led minority Central government announced, on 7 August, 1990, its decision (based on the Mandal Commission) to reserve 27% of civil posts for the SEBCs. In a quick follow up action, the Union Government issued an Office Memorandum (on 13 August, 1990) giving effect to its decision. The momentous policy announcement triggered a massive anti-reservation agitation on an unprecedented scale. The agitation, spearheaded and dominated by students, was quick and spontaneous. Capital Delhi was the epicenter of the anti-Mandal agitation and it remained so till the end of the stir. The agitation had rapidly engulfed the north India and later spread to the south as well. The violent resistance to OBC reservations culminated in the unprecedented phenomena of self-immolations. And the nation got polarized into pro and anti-reservation camps.

It was the violent anti-Mandal agitation that set off the institutional domino effect, drawing other vital institutions into the vortex. The opposition to affirmative action took on national character only in the wake of the centralization of the OBC reservations. The redistributive policy of compensatory discrimination causes controversy and confrontation because it leads to a restructuring of the social relations. Therefore, the policy gives rise to a conflict between the groups favoured and those adversely affected. In India, preferential treatment encounters opposition mainly from the upper castes who feel threatened by the loss of opportunities and the erosion of their traditional position of dominance. The magnitude of resentment and the intensity of backlash against preferential policies in India is highest in the world. And, as discussed, the anti-reservation agitations in India are essentially urban phenomena.

The anti-Mandal agitation reflects the resistance by the privileged upper castes to the claims of the ascendant OBCs on the state resources. Inadequate mobilization of the SEBCs; equally inadequate education (and preparation) of the upper castes about social justice through affirmative action; and the growing competition for the dwindling public sector jobs made the anti-OBC agitation more violent and one-sided. The movement also symbolizes the extra-institutional struggle of the dominant castes in defense of the status

quo and hence against reform and redistribution. The nation witnessed, during the Mandal crisis, a "class" conflict which was a manifestation of the aggregation of castes. Thus, the country got polarized into two blocs: the backward "class" (the underprivileged) and the forward "class" (the privileged). The nature of caste got transformed under the impact of democratic and competitive politics. The indigenous institution of caste, due to its "politicization", is playing a modern role by taking on a new form for new organizational purposes. In the new setting—as far as the underprivileged are concerned—there are class-like formations like Dalits and (Other) Backward Classes. In a predominantly rural and socially diverse society, "class" finds its basis in the transformation of caste, the basic social unit of India.

The emergence of class configuration out of dispersed and fragmented caste identities has taken a large diversity of forms. The work of the Mandal Commission was built upon the diverse Backward Classes movements in different regions of the country. Crucial to understanding its main message is the "class consciousness" associated with a trans-caste mobilization based on a numerical majority of the population. And yet it is a class configuration that builds upon, rather than destroys, primary (caste) identities. Thus, the constitution of Mandal Commission in 1979 epitomizes the recognition of the ascendancy of the intermediate castes in north India. And the partial acceptance of the Commission's propositions posed a major challenge at the national level to the upper caste dominance, especially over the highly coveted Central civil services. Upper caste dominated institutions like political parties, interest groups, the press and the higher caste intellectuals and journalists made common cause with the agitating students to oppose the policy, either overtly or covertly.

The national turmoil over OBC reservations provided a rare opportunity to gauge the nature of the print medium, i.e., its interests and social priorities. The press—the most powerful of mass media—was highly critical of the compensatory discrimination in favour of the OBCs. In effect, the national English language press operated as a propaganda vehicle for the anti-quota movement. The three largest circulated English dailies sensationalized the agitation by giving it excessive coverage in terms of the space allotted for reports, visuals and editorials. The tone and content of some of the over reactive editorials were highly inflammatory. The press declared that the policy had unleashed a

"civil war" and it would disintegrate the nation. During the thick of the agitation, a section of the press even advocated that the decision to implement the Mandal Report should be stayed by the Apex Court which was considering several writ petitions filed against the new reservation policy.

The national press stressed that the policy would cause social tensions, destroy merit and efficiency in administration and encourage casteism. A section of the print medium even pronounced that the agitation was in the national interest and it should be intensified. The English press, in general, exploited the self-immolations by glorifying them through excessive and prominent coverage. It also painted a gloomy picture of the consequences of the implementation of the Mandal Report, especially the problem of unemployment. So the national press' reaction to Mandal Commission exposed its "class" character and its interests and priorities. However, the press was also "divided" over the quota policy. A small section of the English press showed relative moderation though highly critical of the policy like the press in general.

For the first time in the post-Independence era, all national political parties had to respond and make their ideological positions clear on the controversial affirmative action for the SEBCs. The policy, for the first time, brought to the surface both inter-party and intra-party doctrinal divisions on the crucial question of caste and reservation. The stands taken by the parties on the Mandal Commission were equivocal and conflicting and they even contradicted their earlier positions on the issue. The divisions were evident even within the ruling National Front coalition which adopted the policy and had pledged to implement the recommendations of Mandal Commission in its common pre-election manifesto.

A study of the pre-general election (1989) manifestos of national parties shows that only the National Front and the BJP had mentioned the Mandal Commission. While the National Front pledged to implement the *recommendations* of Mandal Commission, the BJP promised to implement *reservations* for the OBCs as recommended by the Mandal panel. Interestingly, the national Communist Parties—CPI and CPI(M)—had mentioned neither the Mandal Commission nor the OBCs.

Both Congress (I) and BJP, like other national parties, supported the OBC reservations in principle. But they emphasized the importance of "economic criteria" and

advocated additional reservations for the economically poor of the upper castes and other communities. Their identical positions on the policy reflected their largely upper caste leadership and the crucial upper caste constituency; and their attempts to broaden their social base by supporting the policy.

The Congress Party had always depended on the core support base of Scheduled Castes, Scheduled Tribes, upper castes and minorities. So the SEBCs had not constituted a "votebank" for the Party. Therefore, the two successive Congress governments (1980-1989) were not under pressure to implement the Mandal Report as the Party was able to come to power without mobilizing or addressing the special interests of the ascendant OBCs. Similarly, the BJP's mostly upper caste leadership had tried to mobilize the Hindus through its *Hindutwa* ideology. The mention of SEBCs in its manifesto reflects the Party's recognition of the electoral significance of the OBCs as the main plank of BJP's electoral strategy has been the emphasis on Hindu unity.

The Janata Dal—the largest and core constituent of the National Front—comprised largely the same political forces that amalgamated in 1977 to form the Janata Party. The Janata Party (1977-1980) came to power by consolidating its core support base of the ascendant north Indian *Shudra* category—Jats and OBCs—and a large section of Muslims. So it was the Janata government which appointed (in 1979) the Mandal panel to strengthen its support base. The Janata Dal, a party with a core OBC support base, had included the Mandal Commission in its manifesto. But the timing of the partial acceptance of the Mandal Report clearly indicated the power struggle within the Janata Dal and its strategy, especially on the part of V.P.Singh, to undercut the *Hindutwa* ideology of the BJP which was trying to unite Hindus through Ramjanambhoomi issue.

Contradictions even within the parliamentary Left, CP1 and CPI(M), came to the surface during the national controversy over the Mandal Commission. Both the Parties extended their support, in principle—under electoral compulsions—to the reservation policy. But both the Parties had mentioned neither Mandal Commission nor the SEBCs in their manifestos. Presumably, the Left had been in favour of class-based mobilization. But still the Left parties subscribed to the quota policy for the OBCs which was essentially based on caste. Moreover, the CPI(M) leadership in West Bengal claimed that there were no OBCs in the State. The above position led to deep ideological fissures within the Left

Front in the State with the OBC members revolting against the domination of the upper castes over the party. What is more, Namboodiripad, then general secretary of the CPI(M), even suggested reservation for the poor of the upper castes. The postures taken by the Communist Parties suggest that they had not made any serious attempts to mobilize or articulate the special interests of the OBCs. They seemed to have taken their support for granted.

The stands taken by the national parties, across the ideological continuum, on the policy fall into a pattern and they are broadly the same despite their professed ideological leanings—right, left or center. All parties extended their general support to the OBC reservations but suggested certain modifications, particularly the importance of economic factors. Consequently, the ideological distinctions of the parliamentary parties got blurred to a large extent regarding the question of caste and redistribution. To that extent, the parties seemed to be "deideologized". And the controversy also demonstrated that the national parties are ideologically reactive rather than proactive to the question of caste and compensatory discrimination.

For the first time in the history of public policies in India, the Marxist-Leninist groups—which profess revolutionary ideology and aim at class mobilization against the present "bourgeois democracy"—were also drawn into the vortex of controversy over the Mandal Report. The IFF (Indian People's Front)—a federation of several M-L formations—organized a massive rally in Delhi in support of the new reservation policy. The Federation resolved to fight caste domination and communal hatred while waging class battles. And interestingly, the People's War Group—the most widespread naxalite group—had come overground and held *bandhs* in support of the Mandal Commission. The unusual reaction of the radical Left reflects its recognition of the importance of caste factor in Indian society. The radical Left's support to a policy—adopted by a centrist parliamentary party—indicates the limitations of their politics in mobilizing the backward castes and classes for a revolutionary transformation.

The political parties and groups—which articulate and represent the interests of different social forces in the state—had played a very marginal role in resolving the reservational crisis. As a result, in a series of unprecedented developments, a plethora of interest groups reacted actively to the introduction of job reservations for the OBCs.

Presumably, the anti-reservation interest groups were the first to enter the fray over the Mandal Commission. They criticized and opposed the reservations on several grounds. Some important interest groups which fall under the anti-reservation category are: Federation of Indian Chambers of Commerce and Industry, Associated Chambers of Commerce and Industry of India, Bharatiya Kisan Union, Lawyers' Forum and some Teachers* Associations. Among the few interest groups which defended the reservations for the SEBCs are: Presidium of the National Union of Backward Classes, Scheduled Castes, Scheduled Tribes and Minorities, Council of Indian Trade Unions and Dalit Sahitya Academy.

An examination of the stands adopted by different interest groups shows that the groups were divided largely on caste lines. The upper caste-dominated organizations like FICCI, ASSOCHAM, BKU, Lawyers' Forum and sections of the University faculty opposed the affirmative action for the SEBCs while the Backward Caste-based groups, viz., National Union of BCs and Minorities, CITU and Dalit Sahitya Academy supported it. But some Non-Governmental Organizations that responded to the national debate suggested quotas on economic basis for the general category while supporting the newly introduced policy for the OBCs. This reflects the socially mixed nature of their organizations and objectives. Therefore, the Mandal controversy uncovered the caste—and by implication "class"—basis of interest groups.

The national turmoil over Mandal Commission for the first time spotlighted the role of the Executive in the realm of protective discrimination. The Executive Orders, issued to enforce the job reservations, were challenged by several petitioners. The anti-Mandal stir was so furious—which went out of control due to protest suicides—that the Supreme Court was constrained to stay the implementation of the policy. The Executive branch of the state, though constitutionally empowered to formulate and implement a program of affirmative action, could not push ahead with such policy. The anti-Mandal movement exposed the limitations of the Executive in implementing the re-distributive policy which disturbs the status quo loaded largely in favour of the higher castes.

The legitimacy of the Executive was further eroded by: the minority status of the government; the power struggle within the ruling Janata Dal; and fairly unilateral nature of the policy. Consequently, the ruling National Front itself got deeply divided over the issue

And the Executive could neither defuse the disturbances nor enforce its policy. Though it made delayed attempts to mobilize the Backward Classes to counter the anti-reservation agitation, they could not make the intended impact. As an ultimate outcome, the government collapsed after the BJP withdrew its support to it.

The Legislature is generally considered as the most important branch of the Government. But in effect, the powers of the Parliament are increasingly being eroded by the Executive. Even in the realm of preferential treatment, the Executive has primacy over the Legislature which has largely been reduced to a mere deliberating body. Initially, the Parliament had been bypassed by the Executive, though the House was in session. The Executive merely "announced" in the Parliament its decision to implement the Mandal Report; and it promptly issued Orders giving effect to the decision. The Executive neither initiated a debate in the Legislature nor tried to enact a legislation on the policy.

However, the national turbulence over the OBC reservations and the resultant institutional fissures compelled both Executive and Legislature to address the issue by initiating a discussion in the House. The Legislature had just three debates over the Mandal Commission as against the total number of days on which sittings were held was 109. Though the Ninth *Lok Sabha* was highly representative in terms of the parties it represented, most of the members participated were from national parties. Moreover, the debate was dominated by a couple of prominent members. The content and tone of the debate indicates that the divided Parliament largely reflected the controversy over the policy which was raging outside. The emotional debate was also characterized by personal invective.

The divisions in the House were clearly along the party lines. The ruling party members justified the policy—and the manner in which it was being implemented—and declined to effect modifications to it. All the participating members from the Opposition felt that the policy should have been discussed by the parties to reach a consensus. The House did not make any serious efforts either to defuse the agitation or to build a consensus over the policy. Therefore, the Legislature could not influence the reservation policy in any way. Instead the sharp divisions in the Parliament only added to the institutional conflict. Resultantly, the Legislature proved to be powerless and ineffective in the sphere of protective discrimination. So the divided and ineffective *Lok Sabha* had to

be dissolved just 15 months after its constitution. Similarly, the Executive, though vested with constitutional powers, could not push through the OBC reservations in the face of massive backlash from the upper castes. As an ultimate outcome of the post-Mandal crisis, the National Front government collapsed—after the BJP withdrew its support—after having been in power for just about 12 months.

The reservation policy for the OBCs brought out into the open the contradictions both in the state and civil society. All the above state institutions, i.e., political parties, executive and legislature, instead of defusing the crisis and enforcing the policy, had further aggravated the situation. As a result, the judiciary was called upon to resolve the conflict. The judiciary intervened in the unprecedented controversy by staying the operation of the Executive Order issued to enforce the reservation policy. The Court's intervention defused the explosive situation. The judiciary was confronted with a highly complex social, constitutional and legal question in the form of job reservation policy for the OBCs. The most important aspect of the historic verdict of the Supreme Court is the emphasis on the caste factor. It equated caste with class in the Indian context and held that the economic factor cannot be the sole guide in the sphere of protective discrimination

The Supreme Court had considerably toned down the rigors of Mandal scheme by trying to balance various competing interests. The most striking outcome in this respect has been the doctrine of creamy layer. The overall approach of the Court was to give a "social justice" orientation to the reservational scheme. However, there is no unanimity in the judiciary on the question of affirmative action in favour of the SEBCs. The national turmoil over the Mandal Commission demonstrated that even the judiciary—generally supposed to be independent and immune from political pulls and pressures—is not free from social schisms over caste and reservation. Three Justices of the Nine-Judge Constitution Bench delivered separate dissenting judgments. But the majority verdict was delivered with considerable lucidity and finality which clearly showed that the judiciary was walking a difficult tightrope.

The judiciary, though divided, played a decisive part during the institutional crisis. The Court categorically recognized the reality of caste-based inequalities and caste as a basis of compensatory discrimination. It also emphasized that sharing of state power is the basis of reservation in appointments under Article 16(4). Nevertheless, the Court struck a

delicate balance between positive discrimination and principles of equality and efficiency by reconciling the conflicting interests of backward castes and forward castes. It is essentially this balancing act which proved crucial to the legitimacy and effectiveness of the judiciary.

The preceding discussion has set forth how the Mandal Commission had set off the institutional conflict which reflected the underlying contradictions. The following section, therefore, • deals with the nature and the implications of the contradictions from the standpoint of the framework and purpose of this study.

INTERFACE BETWEEN INSTITUTIONS AND MANDAL COMMISSION: DORMANT CONTRADICTIONS TO THE FORE

The centralization of the reservation policy—four decades after Independence—in favour of the OBCs via Mandal Commission unleashed the underlying contradictions in both the state and civil society. Immediately after the Independence, the general climate at the national level was against the caste-based programs of positive discrimination. In fact, a majority of the members of the Kalelkar Commission (including the Chairman) disowned the Report. Consequently, the Center decided not to draw up an all-India list of Backward Classes and favoured the application of "economic tests" to determine backwardness—though the Constitution makes pointed reference to *social* and *educational* backwardness,

Resultantly, the feeble attempts at centralization of the policy were given up. Because in the realm of civil society, the Backward Classes had not emerged as a political force at the national level The All India Backward Classes Federation had just come into being in 1950. And by 1954, several organizations were working in many States for the welfare of Backward Classes. Letting the matter rest suited the upper caste dominated elected and non-elected Central institutions. But the Indian state's ambivalent attitude towards historically disadvantaged groups defined in terms of caste had served to create arenas of social conflict in different regional political economies. While the successive Congress Central governments sat on the fence, many States adopted reservations in response to organized demands, particularly by the "dominant" backward castes. The Process was more marked in southern States where anti-Brahmin movements were strong.

in many northern States, by contrast, society was permeated by caste-based ideologies of domination and control.

Besides, slow but steady changes occurred which were heralded by major elections. Thus 1962 revealed that new social formations had emerged as a result of shifts and mobility in the caste basis of politics. Both the rise of the Swatantra Party—socially drawing on rural awakening, particularly of lower-middle caste peasant groups—and the considerably increased sway of the socialists, who had lately acquired a rural base among the Backward Classes, posed a new challenge to Congress hegemony. The year 1967 revealed something more basic—a combination of social conflicts within the traditional caste hierarchy and widespread public discontent with the Congress itself.

It was only after 30 years of Independence that the Second Backward Classes Commission was constituted, but in a different socio-economic and political context. The period witnessed the decline of the Congress—the umbrella party which secured support from all castes and communities—as a credible instrument of social change. The lag between the two Commissions also saw the emergence of intermediate castes in north India which posed major challenge to the Congress at the national level. The Congress lost power at the Center for the first time in 1977.

The post-Independence agrarian policies, particularly the land reforms and the abolition of *zamindari* system, empowered the backward castes to a noticeable degree. The reforms created a substantial class of medium-sized owner-cultivators many of whom belonged to the backward classes. Consequently, the center of power started shifting from the landlords (mainly upper castes) to the market-oriented independent cultivators. The principal beneficiaries were the erstwhile tenants among Jats, Yadavs, Kurmis and Koeris, i.e., the upper *Shudra* castes. The displacement of large landowners by middle farmers may be described as one of the most significant developments of the post-Independence period. The middle farmers today constitute a powerful group in the countryside economically as well as politically and they have emerged as the principal spokesmen of agrarian interests. Politically, the rise of the middle farmer was the single most important cause of the decline of the Congress in north India. The middle peasant challenge emerged clearly for the first time in 1967 when the Congress Party lost power in all north Indian States and the representatives of middle peasants took over as chief ministers.

Since the 1960s, the backward castes, particularly the upper sections, have been key players in the politics of northern India. Despite some attempts to accommodate these castes in the Congress, they have been steadfast in their search for an independent political identity. In contrast to the south, the sharper lines of division between upper and intermediate castes in the north led to violent agitations and clashes against all attempts to implement reservation policies for the backward castes. This was especially true for Bihar and U.P. where the Congress relied on the support of the upper and the lower castes to parry the rising challenge of the backward wastes. Playing the two ends, of the social spectrum against the middle had worked reasonably well for the Congress until 1977 when the Janata Party, drawing support from agriculturally dominant backward castes in northern India, trumped the premier national party at the hustings. The formation of a new Backward Classes Commission in 1979 indicated the growing ability of the middling agricultural castes in north India's regional political economy to directly influence the center stage of politics.

The earlier attempts to centralize the reservation policy for the OBCs, mainly through the two Backward Classes Commissions, had succeeded only in identifying the category. The constitution of Mandal Commission symbolizes the recognition of the ascendant OBCs—comprising essentially the *Shudras* of north India—on the part of the Janata Party. But the OBCs did not make sustained or organized demands for the implementation of the Mandal Report during the post-submission interlude of one decade. The Congress governments, and other parties in general, did not address the special problems and interests of the rising SEBCs. The victory of Janata Dal at the Center in 1989 and in several States in 1989 and 1990 heralded the emergence of intermediate castes as a political force to be reckoned with at the national level (particularly in north India) and indicated further disintegration in the north of long established patterns of vertical mobilization and emergence of horizontal cooperation of the disadvantaged.

National Front government's "unilateral" attempt, through Mandal Commission, to accommodate the OBCs in the governance led to an institutional crisis which centered around the violent anti-Mandal agitation. As a result, the legitimacy of the state got **severely** eroded as it failed to enforce the policy. Because, among other factors, there was no consensus among the elite or the "ruling class" about the policy. This conflict was

reflected in all the institutions. Though the OBCs constituted about a half of the total population, they could not take the form of a countervailing force against the dominant upper castes, as evidenced by the anti-Mandal movement. The state, instead of resolving the social conflicts, itself reflected the social contradictions. This clearly indicated a close relationship between the state and society and the vulnerability of the state to social forces. The state's autonomy and legitimacy was, to a considerable extent, conditioned by the social forces.

The highly divided executive branch of the state, though vested with constitutional powers, had failed to enforce the policy in the face of the violent opposition by the dominant castes in society, with active support from the English language press and highly vocal and influential interest groups like FICCI, ASSOCHAM and BKU. And the Parliament, the representative legislative body of the nation, was forced to discuss the controversial policy. But the debate in the House merely reflected the institutional conflict in the state and civil society. The political parties—which act as a political medium between the state and civil society—proved to be ideologically reactive and failed to settle the deep discord between the institutions in general and between the state and civil in particular.

But significantly, the judiciary, though divided like the other institutions, played a critical and most decisive role during the unprecedented institutional confrontation. The judiciary had not only extinguished the anti-Mandal turbulence but also legitimized arguably the most controversial public policy of Independent India. Nevertheless, it must be emphasized here that the effectiveness of the judiciary hinged on its delicate balancing act. It struck a balance between the conflicting interests of the backward castes and the upper castes. The historic interface between the Mandal Commission and the institutions showed that the state has very little autonomy and maneuverability in enforcing a redistributive policy in the face of opposition from—and lack of consensus among—the dominant sections of society. The state, particularly its judicial organ, assumes certain amount of legitimacy and autonomy by accommodating the interests of the dominant sections.

This study shows that there is a close relation between state's response and developments in society. But the accommodative capacities of the state are conditioned

and constrained by the social forces. The backlash from the dominant sections was so great that even the state institutions were also divided over the reservation policy. This shows that the political institutions are not representative of the Backward Classes. Hence the lack of consensus and schisms among the political institutions, including in the Janata Dal whose core support base consists of the intermediate castes. Though the OBCs constitute about 50% of the total population they are unrepresented or underrepresented in state institutions, i.e., executive, legislature, judiciary and political parties. Moreover, although the intermediate castes had emerged as a major force to be reckoned with, particularly in north India—as evidenced by the 1989 general elections—they could not make organized and sustained efforts for a share in the power structure.

Significantly, the state resorted to the reservation policy due to the internal power struggle instead of preparing the ground to mobilize and accommodate the ascendant OBCs with greater legitimacy. In the domain of civil society, the result of the growing interface between caste and politics based on modern institutions has been a secularization of caste as a political formation and a heightening of "caste consciousness", Marx distinguished between the proletariat as a "class in itself, an economically defined category without any self-awareness, and a "class for itself, a proletariat comprising class conscious workers ready to fight their class enemies. While the upper castes have been for a long time aware of their interests and battling for them, growing politicization is now converting the lower castes from "castes in themselves" to "castes for themselves" ready to fight for their interests and such adversaries as they may perceive to stand in their way.¹ The Backward Classes "movement" in north India, unlike its long, broad-based and effective south Indian counterpart, is belated (essentially a post-Independence phenomenon) and not as broad-based and is yet to reach its apotheosis.

The centralization of the OBC reservations had also brought into sharp relief, at the national level, the caste conflicts in different States, particularly in the Hindi heartland. And the state's accommodative and redistributive (or "developmental") capacities were seriously challenged by the anti-Mandal agitation and the resultant institutional crisis. The preferential treatment for the SEBCs had become the most controversial of all public policies and caused unprecedented institutional divisions because:

The policy was centralized very late, i.e., four decades after the Independence. Whereas most of the States, especially the southern ones, have been implementing various reservational schemes for OBCs since Independence. The job reservation policy based on the Mandal Report posed a major challenge to the monopoly of upper castes over Central Government jobs in particular and their traditional privileges in society in general. The immediate cause of the policy announcement was the power struggle within the ruling Janata Dal; Inadequate mobilization of the emerging Backward Classes; Unlike the Scheduled Castes and Tribes, the middle category of OBCs is arguably least homogeneous. And there is no consensus among the elites about the OBCs; The caste structure of north India corresponds closely to the traditional *varna* system. So the domination of the upper castes over the Backward Classes is still strong. Moreover, the anti-upper caste polarization—like the anti-Brahmin movements of peninsular India— has not taken place in north India. Therefore, the anti-Mandal agitation was more widespread and violent in northern India.

The study of the institutional conflict, involving a dynamic state-society interaction, shows that the state ("political" institutions) and society (social institutions) condition each other. The functioning of liberal democracy has eroded the patterns of traditional domination in the social structure. The "vertical mobilization" is on the wane and the process of "horizontal mobilization" of the underprivileged is gathering momentum. New ^{*} groups, like the intermediate castes, started entering the political arena. But such mobilization has not been accompanied by a systematic reorganization and accommodation. Political parties—as a vital means of accommodation—have failed in this important function. This explains the contradictions in the political parties which were exposed by the acceptance of Mandal Report. Moreover, though the SEBCs make up about a half of the total population, they could not act as a countervailing force, either in the state or society. However, due to the operation of democratic, rather electoral, politics, the state had to accommodate the emerging OBCs. Hence the divisions and conflicts in the state institutions.

The mandate given to the National Front government was one of clear change of direction in both polity and economy. But the mandate was still to be carried out by a system that was a carry over from the past and controlled by the same interests that had

been in charge of the Indian state for so long. It was a change of *regime*, but not a change of the *system*. Hence the nation witnessed unprecedented contradictions and resistances during the Mandal controversy. And it was the attempt of the non-Congress National Front regime to coopt the OBCs via Mandal Commission that brought to the surface the dormant contradictions.

The state could restore its legitimacy only by balancing the interests of OBCs and the privileged higher castes. The landmark ruling of the Apex Court reflects this delicate balancing exercise. Therefore, the institutional crisis demonstrated that the state cannot enforce a redistributive-cum-cooptive policy by totally ignoring the interests of the dominant sections. And the long-drawn anti-Mandal agitation also proved that the conflict-resolving abilities of the state get considerably eroded when a policy is strongly opposed by the dominant social forces.

This study shows that the normal political (and "development") "process had failed to empower the rising middle castes, especially at the national level. But the internal power struggle and the compulsions of "democratic" politics, compelled the state to accommodate the intermediate castes—numerically large and rising but not dominant—through Mandal Commission. Therefore, the state institutions, though dominated by the higher castes, could not oppose the OBC reservations categorically. But this attempt by the state to accommodate the SEBCs was fiercely resisted by the dominant social segments (i.e., upper castes) who were supported actively by the higher caste dominated institutions like the national press and interest groups. *This conflict constitutes the fundamental contradiction brought to the surface by the Mandal Report which caused the institutional conflict and crisis*

Confronted with such a crisis, the state (its judicial organ in this case) tried to defuse the conflict by balancing the interests of backward castes and forward castes. The judicial exercise—thai reflects this tightrope walking—succeeded in putting an end to the manifestations of the contradictions but not in resolving the contradictions *per se*. As a result of this balancing act, the policy in question got diluted considerably. The examination of the reservational controversy also indicates that the state (political institutions) are lagging behind the social and economic changes. When this happens—as reflected in the Mandal crisis—politics tends to get out of the institutional framework.

Significantly, the implementation of the Mandal Report had set in motion the process of "Mandalisation" of Indian polity and society. The process has changed the Indian political configuration considerably in the nineties. Due to the compulsions of the electoral process, the governments, Central and State, had started accommodating the SEBCs in large numbers. The Hindi heartland States have adopted several OBC-targeted policies. And political parties of all persuasions have been Mandalising themselves by giving more representation to the middle castes to expand their support base. Several States (especially in the north) have either introduced reservations for the OBCs for the first time or enhanced the quantum of quotas for them since the Supreme Court upheld the reservation policy in 1992. In Karnataka and Tamil Nadu, the quantum of reservations for the Backward Classes has exceeded 60% despite the Supreme Court's ceiling of 50%. "Social justice" and "empowerment" have become the watchwords of Indian politics in the nineties. A detailed discussion of Mandalisation is beyond the scope of this study. However, the above mentioned facets set out the process in outline.

The affirmative action has undergone certain important changes since the Mandal controversy. In 1991, the Congress regime, which succeeded the short-lived National Front coalition, had embarked upon a full-scale process of globalization and privatization which had started reducing the role of the public sector and the employment opportunities in it. Interestingly, the Congress government totally supported the controversial reservation policy adopted by the V.P.Singh government. Moreover, in the same year, the Congress dispensation also introduced 10% reservation for the economically poor among the upper castes.² Nevertheless, reservation policy will continue to be controversial despite the privatization and the moves towards market economy.

The foci of the policy would shift and new areas of controversy would emerge. It has to be noted that the public sector is the only source of employment for the Backward Classes³—who constitute about 75% of the Indian population—as the private sector is virtually closed to them. There has been a growing competition, even conflict, among the Backward Classes for the coveted but dwindling government jobs. Therefore, the OBCs have already started demanding political reservations; and there have been occasional demands from the Backward Classes for quotas in the private sector also. Such demands are likely to be intensified in view of the declining role of the state in employment

generation in the public sector. The intra-Dalit conflict in south India over positive discrimination indicates the emergence of new controversial dimensions of the policy. Therefore, the compensatory discrimination will continue to be a very useful frame of reference to comprehend the dynamics of socio-economic and political changes—and the response and role of the state—at different levels. A deeper and more comprehensive study of these aspects of policy process would indicate the overall direction of change and the dynamics; of democratization and transformation of Indian polity and society.

NOTES

¹. Hiranmay Karlekar. *In the Mirror of Mandal: Social Justice, Caste, Class and the Individual*, Ajanta Publications, Delhi, 1992, p. 160.

². The Government Order, giving effect to the policy, was declared unconstitutional by the Supreme Court.

³. The generic concept of Backward Classes includes the Scheduled Castes, Scheduled Tribes and the Other Backward Classes.

Appendix: I

RECOMMENDATIONS OF THE MANDAL COMMISSION

It may appear that the upliftment of Other Backward Classes is part of the larger national problem of the removal of mass poverty. This is only partially correct. The deprivation of OBCs is a very special case of the larger national issue; here the basic question is that of social and educational backwardness and poverty is only a direct consequence of these two crippling caste-based handicaps. As these handicaps are embedded in our social structure, their removal will require far-reaching structural changes. No less important will be changes in the perception of the problems of OBCs by the ruling classes of the country.

RESERVATIONS

One such change in the attitude of the ruling elite pertains to the provision of reservation in Government service and educational institutions for the candidates of Other Backward Classes. It is generally argued that looking to the large population of OBCs (52%), recruitment of a few thousand OBCs every year against reserved vacancies is not going to produce any perceptible impact on their general condition. On the other hand, the induction of a large proportion of employees against reserved vacancies will considerably impair the quality and efficiency of the Government services. It is also stated that the benefits of such reservations will be skimmed off by those sections of OBCs which are already well off and the really backward sections will be left high and dry. Another argument advanced against this approach is that the policy of large scale reservations will cause great heart burning to those meritorious candidates whose entry into services will be barred as a result thereof.

All the above arguments are based on fairly sound reasoning. But these are also arguments advanced by the ruling elite which is keen on preserving its privileges. Therefore, like all such reasoning, it is based on partisan approach. By the same token, while illuminating some immediate areas of concern it tends to ignore much larger issues of national importance,

It is not all our contention that by offering a few thousand jobs to OBC candidates we shall be able to make 52% of the Indian population as forward. But we must recognize that an essential part of the battle against social backwardness is to be fought in the minds of the backward people. In India, Government service has always been looked upon as a symbol of prestige and power. By increasing the representation of OBCs in Government services, we give them an immediate feeling of participation in the governance of this country, when a backward class candidate becomes a collector or a Superintendent of Police, the material benefits accruing from his position are limited to the member of his family only. But the psychological spin off of this phenomenon is tremendous; the entire community of that backward class candidate feels socially elevated. Even when no tangible benefits flow to the community at large, the feeling that now it has its "ownman" in the "corridors of power" acts as a morale booster.

In a democratic set up, every individual and community has a legitimate right and aspiration to participate in ruling this country. Any situation which results in a near-denial of this right to nearly 52% of the country's population needs to be urgently rectified.

Apprehensions regarding drop in the quality of Government services owing to large scale induction of SC, ST, and OBC candidates against reserved posts may be justified up to a point. But it is possible to maintain that all candidates selected on merit turn out to be honest, efficient, and

working and dedicated? At present, top echelons of all the Government services are manned predominantly by open competition candidates and if the performance of our bureaucracy is any indication, it has not exactly covered itself with glory. Of course, this does not imply that candidates selected against reserved posts will do better. Chances are that owing to their social and on the other hand, they will have the great advantage of possessing first hand knowledge of the sufferings and problems of the backward sections of society. This is not a small asset for field workers and policy makers even at the highest at the highest level.

It is no doubt true that the major benefits of reservation and other welfare measures for Other Backward Classes will be cornered by the more advanced sections of the backward communities. But is not this a universal phenomenon? All reformist remedies have to contend with a slow recovery along with hierarchical gradient; there are no quantum jumps in social reform. Moreover, human nature being what it is, a 'new class' ultimately does emerge even in classless societies. The chief merit of reservation is not that it will introduce egalitarianism amongst OBCs when the rest of the Indian Society is seized by all sorts of inequalities. But reservation will certainly erode the hold of higher castes on the services and enable OBCs in general to have a sense of participation in running the affairs of their country.

It is certainly true that reservation for OBCs will cause a lot of heart burning to others. But should the mere fact of this heart burning be allowed to operate as a moral veto against social reform. A lot of heart burning was caused to the British when they left India. It burns the hearts of all the whites when the black protest against apartheid in South Africa. When the higher castes constituting less than 20% of the country's population subjected the rest to all manner of social justice, it must have caused a lot of heart burning to the lower castes. But now that the lower castes are asking for a modest share of the national cake of power and prestige, a chorus of alarm is being raised on the plea that this will cause heart burning to the ruling elite. Of all the spacious arguments advanced against reservations for backward classes, there is none which beats this one about "heart burning" in sheer sophistry.

In fact the Hindu society has always operated a very rigorous scheme of reservation, which was internalized through caste system. Eklavya lost his thumb and Shambhuk his neck for their breach of caste rules of reservation. The present furore against reservation for OBCs is not aimed at the principle itself, but against the new class of beneficiaries, as they are now clamoring for a share of the opportunities which were all along monopolized by the higher castes.

Quantum and Scheme of Reservations

Scheduled Castes and scheduled Tribes constitute 22.5% of the country's population. Accordingly, a pro-rata reservation of 22.5% has been made for them in all services and public sector undertakings under the Central Government. In the States also, reservation for SCs and STs is directly proportional to their population in each State.

As stated in the last Chapter (para 12.22), the population of OBCs, both Hindu and non-Hindu, is around 52% of the total population of India. Accordingly, 52% of all posts under the Central Government should be reserved for them. But this provision may go against the law laid down in a number of Supreme Court judgements wherein it has been held that the total quantum of reservation under Articles 15(4) and 16(4) of the Constitution should be below 50%. In view of this, the proposed reservation for OBCs would have to be pegged at a figure which when added to 22.5% for SCs and STs, remains below 50%. In view of this legal constraint, the Commission is obliged to recommend a reservation of 27% only, even though their population is almost twice this figure

States which have already introduced reservations for OBCs exceeding 27% will remain unaffected by this recommendation. 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 21%.
- (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 dereserved thereafter.
- (4). Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner.
- (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.

The above scheme of reservation in its toto should also be made applicable to all recruitment to public sector undertakings both under the Central and State governments, as also to nationalized banks. All private sector banks which have received financial assistance from the Government in one form or the other should also be obliged to recruit personnel on the aforesaid basis.

All universities and affiliated colleges should also be covered by the above scheme of reservation. To give proper effect to these recommendations, it is imperative that adequate statutory provisions are made by the Government to amend the existing enactments, rules, procedures, etc to the extent they are not in consonance with the same.

Educational Concessions

Our educational system is elitist in character, results in a high degree of wastage and is least suited to the requirements of an over-populated and developing country. It is a legacy of the British rule which was severely criticized during the Independence struggle and yet, it has not undergone any structural changes. Though it is least suited to the needs of backward classes, yet, they are forced to run the rat-race with others as no options are available to them. As "educational reform" was not within the terms of reference of this Commission, we are also forced to tread the beaten and suggest only the palliative measure within the existing framework.

Various State governments are giving a number of educational concessions to Other Backward Class students like the 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.

It is well known that most backward class children are irregular and indifferent students and their drop-out rate is very high. There are two main reasons for this. First, these children are brought up in the climate of extreme social and cultural deprivation and, consequently, a proper motivation for schooling is generally lacking. Secondly, most of these children come from very poor homes and their parents are forced to press them into doing small chores from a very young age.

Upgrading the cultural environment is a very slow process. Transferring these children to an artificially upgraded environment is beyond the present resources of the country. In view of this it is recommended that this problem may be tackled on a limited and selective basis on two fronts.

First, an intensive and time-bound program for adult education should be launched in selected pockets with high concentration of OBC population. This is a basic motivational approach, as only properly motivated parents will take serious interest in educating their children. Secondly, residential schools should be set up in these areas for backward class students to provide a climate specially conducive to serious studies. All facilities in these schools including board and lodging will have to be provided free of cost to attract students from poor and backward homes, separate government hostels for OBC students with the above facilities will be another step in the right direction.

A beginning on both these fronts will have to be made on a limited scale and selective basis. But the scope of these activities should be expanded as fast as the resources permit. Adult education program and residential schools started on a selective basis will operate as growing-points of consciousness for the entire community and their multiplier effect is bound to be substantial. Whereas several states have extended a number of ad hoc concessions to backward class students, few serious attempts have been made to integrate these facilities into a comprehensive scheme for a qualitative upgradation of educational environment available to OBC students.

After all, education is the best catalyst of change and educating the backward classes is the surest way to improve their self-image and raise their social status. As OBCs cannot afford the high wastage rates of our educational system, it is very important that their education is highly biased in favor of vocational training. After all reservations in services will absorb only a small percentage of the educated backward classes and the rest should be suitably equipped with vocational skills to enable them to get a return on having invested several years in education.

It is also obvious that even if all the above facilities are given to OBC students, they will not be able to compete on an equal footing with others in securing admission to technical and professional institutions. In view of this it is recommended that seats should be reserved for OBC students in all scientific, technical and professional institutions run by the central as well as the state Governments. This reservation will fall under Article 15(4) of the Constitution and the quantum of reservation should be the same as in the government services, i.e., 27%. Those States which have already reserved more than 27% seats for OBC students will remain unaffected by this recommendation.

While implementing the provision for reservation it should also be ensured that the Candidates who are admitted against the reserved quota are enabled to derive full benefit of higher studies. It has been generally noticed that these OBC students coming from an impoverished cultural background, are not able to keep abreast with other students. It is, therefore, very essential that special coaching facilities are arranged for all such students in our technical and professional institutions. The concerned authorities should clearly appreciate that their job is not finished once candidates against reserved quota have been admitted to various institutions. In fact the real task starts only after that unless adequate follow-up action is taken to give special coaching assistance to these students, not only these young people will feel frustrated and humiliated but the country will also be landed with ill-equipped and sub-standard engineers and other professionals.

Financial Assistance

Vocational communities following hereditary occupations have suffered heavily as result of industrialization. Mechanical production and introduction of synthetic materials has robbed the

village potter, oil-crusher, black smith, carpenter, etc. of their traditional means of livelihood and the pauperization of these classes is a well known phenomenon in the countryside.

It has, therefore, become very necessary that suitable institutional finance and technical assistance is made available to such members of village vocational communities who want to set up small scale industries on their own. Similar assistance should be provided to those promising OBC candidates who have obtained special vocational training.

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 state Governments like Karnataka and Andhra Pradesh have already set up separate financial corporations, etc. for OBCs.

Cooperative societies of occupational groups will also help a lot. But due care should be taken that all the office-bearers and members of such societies belong to the concerned hereditary occupational groups and outsiders are not allowed to exploit them by infiltrating into such cooperatives.

The share of OBCs in the industrial and business life of the country is negligible and this partly explains their extremely low income levels. As a part of its overall strategy to uplift the backward classes, it is imperative that all State Governments are suitably advised and encouraged to create a separate network of financial and technical institutions to foster business and industrial enterprise among OBCs.

Structural Changes

Reservations in government employment institutions, as also all possible financial assistance will remain mere palliatives unless the problem of backwardness is tackled at its root. Bulk of the small land-holders, tenants, agricultural labor, impoverished village artisans, unskilled workers, etc. belong to Scheduled Castes, Scheduled Tribes and Other Backward Classes. "Apart from social traditions, the dominance by the top peasantry is exercised through recourse to informal bondage which arises mainly through money-lending, leasing out of small bits of land and providing house sites and dwelling space to poor peasants. As most of the functionaries of government are drawn from the top peasantry remain firm. This also tilts socio-political balance in favor of the top peasantry and helps it in having its dominance over others". (Pradhan M Prasad. "Rising Middle Peasantry in North India", *Economic and Political Weekly*. Annual Number, 1980)

The net outcome of the above situation is that notwithstanding their numerical preponderance, backward classes continue to remain in mental and material bondage of the higher castes and rich peasantry. Consequently, despite constituting nearly 3/4 of the country's population Scheduled Castes, Scheduled Tribes, and Other Backward Classes have been able to acquire a very limited political clout, even though adult franchise was introduced more than three decades back. Through their literal monopoly of means of production the higher castes are able to manipulate and coerce the backward classes into acting against their own interests. In view of this, until the stranglehold of the existing production relations is broken through radical land reforms, the object dependence of under-privileged classes on the dominant higher castes will continue indefinite. In fact there is already a sizeable volume of legislation on the statute books to abolish zamindari, place ceilings on the landholdings and distribute land to the landless. But in actual practice, its implementation has been halting, half-hearted and superficial. The States like Karnataka, Kerala

and West Bengal which have gone about the job more earnestly have not only succeeded in materially helping the backward classes, but also reaped rich political dividends into the bargain.

It is the Commission's firm conviction that a radical transformation of the existing production relations is the most important single step that can be taken for the welfare and upliftment of all backward classes. Even if this is not possible in the industrial sector for various reasons, in the agricultural sector a change of this nature is both feasible and overdue.

The Commission, therefore, strongly recommends that all the State governments should be directed to enact and implement progressive land legislation so as to effect basic structural changes in the existing production relations in the countryside.

At present, surplus land is being allotted to SCs and STs. A part of the surplus land becoming available in future as a result of the operation of land ceiling laws, etc, should also be allotted to the OBC landless labor.

Miscellaneous

- (1) . Certain sections of some occupational communities like fishermen, Banjaras, Bansforas. Khatwes. etc, still suffer from the stigma of untouchability in some parts of the country, They have been listed as OBCs by the Commission, but their inclusion in the lists of Scheduled Castes, Scheduled Tribes may be considered by the Government.
- (2) Backward Classes Development Corporation should be set up both at the Central and State levels to implement various socio-educational and economic measures for their advancement.
- (3). A separate Ministry/Department for OBCs at the Center and the States should be created to safeguard their interests.
- (4) With a view to giving better representation to certain very backward sections of OBCs like the *Gaddis* in Himacal Pradesh, Neo-Buddhists in Maharashtra, Fishermen in the coastal areas. Gujjars in J&K, it is recommended that areas of their concentration may be carved out into separate constituencies at the time of delimitation.

Central Assistance

At present, no Central Assistance is available to any State government for implementing any welfare measures for Other Backward Classes. The 18 States and Union Territories which have undertaken such measures have to provide funds from their own resources. During the commission's tour, practically every State Government pointed out that unless the Center is prepared to liberally finance all special schemes for the upliftment of OBCs, it will be beyond the available resources of the States to undertake any worthwhile program for the benefit of Other Backward Classes

The Commission fully shares the views of the State governments in this matter and strongly recommends that all development programs specially designed for Other Backward classes should be financed by the Central Government in the same manner and to the same extent as done in the case of Scheduled Castes and Schedules Tribes.

Regarding the period of operation of the Commission's recommendations, the entire scheme should be reviewed after twenty years. We have advisedly suggested this span of one generation, as the raising of social consciousness is a generational progress. Any review at a shorter interval would be rather arbitrary and will not give a fair indication of the impact our recommendations on the prevailing status and life-styles of OBCs.

Appendix: II

"No. 36012/31/90-Estt. (SCT)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Dept. of Personnel & Training)
OFFICE MEMORANDUM
New Delhi, the 13th August, 1990

Subject: *Recommendation of the Second Backward Classes Commission (Mandal Report) —Reservation of Socially and Educationally Backward Classes in Services under the Government of India.*

In a multiple undulating society like ours, early achievement of the objective of social justice as enshrined in the Constitution is a must. The second Backward Classes Commission called the Mandal Commission was established by the then Government with this purpose in view. which submitted its report to the Government of India on 31.12.1980.

2. Government have carefully considered the report and the recommendations of the Commission in the present context responding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their Public Undertakings. Accordingly orders are issued as follows:

- (i) 27 percent of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC.
- (ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately
- (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27 percent
- (iv) The SEBC would comprise in the first phase the castes and communities which are common to both, the list in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately
- (v) The aforesaid reservation shall take effect from 7. 8.1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.

Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and Ministry of Finance respectively.

Sd-
(Smt Krishna Singh)
Joint Secretary to the Govt of India"

CONTD ->

AMENDED MEMORANDUM:

"No. 36012/31790-Estt. (SCT)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Dept. Of Personnel & Training)

OFFICE MEMORANDUM
New Delhi, the 25th September, 1991

Subject: *Recommendation of the Second Backward Classes Commission (Mandal Report) -Reservation of Socially and Educationally Backward Classes in Services under the Government of India.*

The undersigned is directed to invite the attention to O.M. of even number dated the 13th August 1990, on the above sections of the SEBCs to receive the benefits of reservation on a preferential basis and to provide reservation for other economically backward sections of the people not covered by any of the existing schemes of reservation, Government have decided to amend the said Memorandum with immediate effect as follows:

2.
 - (i) Within the 27 percent of the vacancies in civil posts and services under the Government of India reserved for SEBCs, preference shall be given to candidates belonging to the poorer sections of the SEBCs. In case sufficient number of such candidates are not available, unfilled vacancies shall be filled by the other SEBC candidates.
 - (ii) 10 percent of the vacancies in civil posts and services under the Government of India shall be reserved for other economically backward sections of the people who are not covered by any of the existing schemes of reservation.
 - (iii) The criteria for determining the poorer sections of the SEBCs or the other economically backward sections of the people who are not covered by any of the existing schemes of reservations are being issued separately.

3 The O.M of even number dated the 13th August 1990, shall be deemed to have been amended to the extent specified above.

Sd/-
(A.K. Harit)
Dy. Secretary of the Govt. of India

Appendix: III

**Basis of Identification of SEBCs/OBCs in the States Covered by
O.M. of August 13,1990.**

S.No.	Name of the States	Whether State's list is based on Report of Commission/Committee	Status
1.	2.	3.	4.
1.	Andhra Pradesh	Reports of the Commission headed by Shri K.M. Anantharaman and Shri. Muralidhara Rao (June 1970 and August 1982 respectively.	State's G.O. based on the report of the Anantharaman Commission was upheld by the Supreme Court in <i>Balram Case</i> . The modified list of OBCs based on the report of Muralidhara Rao Commission was upheld by the A.P. High Court but the increased quantum of reservation from 25% to 44% was struck down (Judgement of 5.9.1986)
2	Bihar	Commission set up in 1971 under the Chairmanship of Shri Mungeri Lal.	Not challenged
³	Gujarat	Commission headed by Shri. A.R. Bakshi, Retd. High Court Judge (Report of February 1976).	
4,	Goa	No ommission/Comminee State Government have notified 4 communities as OBC on their own	The list was challenged in the High Court in 1986 for quashing the G O and instead declare all the 19 communities recommended by the Mandal Commission as OBCs The High Court rejected the petitioner's claim on March 10, 1988. The matter is now before the Supreme Court through SLP No 9813 of 1988
5.	Han ana	Committees of 1951 and 1965, (In 1990 Gumam Singh Commission was also set up and its report accepted by State Government).	

6.	Himachal Pradesh	Based on the list of OBCs declared by the erstwhile State of Punjab for the areas merged in the State of Himachal Pradesh in November 1966. The list is now extended to the entire State.	Not challenged.
7.	Karnataka	Commission headed by Shri L.G. Havanuri (Report of Nov. 1975)	The Karnataka High Court struck down the inclusion of certain communities in the list of SEBCs. The matter was then taken to the Supreme Court in <i>Vasanth Kumar Case</i> , (High Court judgment was prior to Mandal Report).
8.	Kerala	(i) Commission headed by Shri G. Kumara Pillai set up in 1964. (ii) Commission headed by Shri N.P. Damodaran set up in 1967.	The Kerala Government vide communication dt. 8.2.1991 has intimated that the list of OBCs has not been challenged.
9.	Madhya Pradesh	Mahajan Commission (report of Dec. 1983) (When Mandal was working, no State list)	List stayed by M.P, High Court.
10	Maharashtra	Committee headed by Shri B.D. Deshmukh (Report on January 1964)	Not Challenged.
11	Punjab	Committee Set up in 1951 at 1965. The latter Committee was headed by Shri Brish Bhan	Not Challenged
12	Tamil Nadu	(i) Commission headed by Shri A.N. Sattanathan set up in 1969. (ii) Commission headed by Shri J.A.Ambasankar (report of February 1985).	The revised list prepared by the Ambasankar Commission has been challenged in the Supreme Court vide W.P. No. 1 of 1987 which is pending. Status report not received from State Government.
13	Uttar Pradesh	Commission headed by Shri Chhedi Lal Sathi (Report of 1977)	Status report not received from State Government.

Appendix: IV

Report of the Expert Committee on Creamy Layer

No.1201 I/16/93-BCC(C) Government of India
Ministry of Welfare

Resolution

The Supreme Court, in its Majority Judgement in Writ Petition (Civil) No.930 of 1990, Indra Sawhney and others etc. Vs. Union of India and Others etc., delivered on 16th November, 1992 has, inter alia, directed that "within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes' and further that the implementation of the impugned O.M. dated 13th August, 1990 shall be subject to exclusion of such socially advanced persons".

Having regard to the fact that a lot of specialized inputs would be needed to determine the bases viz. socio-economic criteria for identification of the 'creamy layer', it has been decided to set up an Expert Committee consisting of:

1. Justice Ram Nandan Prasad (Retd.) High Court Patna	Chairman
2. Shri M.L. Sahare (Social Scientist) Former Chairman, U.P.S.C.	Member
3. Shri P.S. Krishnan, Former Secretary' (Welfare) Govt. of India	Member
4. Shri. R.J.Majithia, former Chairman Revenue Board, Government of Rajasthan	Member- Secretary

to make recommendations to the Government of India, in regard to the said socio-economic criteria. The committee will also give recommendations on such other matters relating to the implementation of the judgement of the Supreme Court, as the Government of India may consider necessary.

The Headquarters of the Committee will be located at Delhi.

The committee will devise its own procedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the Committee. It is hoped that the State-governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Committee.

The committee shall submit its Report on the socio-economic criteria for exclusion of the 'creamy layer' from Other Backward Classes latest by 10th March, 1993.

Sd-
(M S Pandit)
Jt-Secy. (M & B C)

Report of the Expert Committee for specifying the criteria for identification of socially advanced persons among the socially and educationally backward classes.

The 9-Member Constitution Bench of the Supreme Court delivered its historic judgment in the Reservation case relating to SEBCs (Indra Sawhney and Others vs. the Union of India and others) on 16th November, 1992.

The Supreme Court while upholding my majority the basic principle of reservation for the SEBCs have at the same time, directed that the socially advanced persons of the SEBCs category ought not to be given the benefit of reservation. In order to carry out this directive and specifying and determining as to who from amongst the SEBCs would be liable to be excluded from the benefit of reservation, the Government has appointed the Expert Committee on 22nd February, 1993.

The Supreme Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their social and educational backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although in actual life it mostly happens that economic backwardness is a natural consequence of the social and educational backwardness. It logically follows, therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basics again would be the social and educational factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgement, it has been observed that only when a person's social and educational advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "creamy layer" category. Hence while determining the criteria of exclusion we have kept in mind the guiding principle laid down by the Hon'ble Court. However, if economic betterment flows from social and educational advancement, then this also has to be taken note of.

Before specification of the actual determinants is taken up, it will be useful, may necessary, to indicate and explain what exactly the term "Creamy Layer" or the Rule of Exclusion in actual application would imply. When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade profession of high status, as categorized by us below, he, at that stage is normally no longer in need of reservation for himself. For example, if a person gets appointed as a Class I Officer either on open competition basis or reservation basis, the question of excluding him on the ground that he forms part of the "Creamy Layer" does not at all arise. But since he himself has come into the socially advanced category he will be in a position to provide the means, the equipment and the opportunities which are necessary for the uplift of his offspring. In the present social set-up, when the joint family system, particularly among the upper strata of society, has been breaking up, we are regarding the family to constitute husband, wife and children and on that basis applying the exclusion principle. In other words, even if a person, say Mr. "X", has become a Class I Officer, this will not deprive his brother and sister of the benefit of reservation on the basis that Mr. "X" has become a Class I Officer. The question as to whether the brother or sister or Mr. "X" will or will not get the benefit of reservation shall depend upon the status of their parents.

Now we proceed to indicate and define the criteria for application of the Rule of Exclusion. The rise in social and educational status may result from different kinds of positions and placements in life and we shall deal with them one by one as noted below. To the categories listed below, the Rule of Exclusion will apply unless exceptions are specifically indicated.

1.CONSTITUTIONAL POSTS

President, Vice-president, Judges of the Supreme Court and High Courts, Chairman. Members of the Union Public Service Commission and State Public Service Commissions, Chief Election Commissioner, Comptroller and Auditor General of India and persons holding Constitutional positions of like nature.

The Constitutional posts of Governor, Minister, and Membership of Legislatures, are, in the very nature of things, temporary and often transitory. Further, in most cases such persons would be cohered in one or the other categories, which have been enumerated in this report. Hence such persons have not been separately categorized.

II. SERVICE CATEGORY

A. Group A / Class I Officers of the All-India, Central and State Services (Direct Recruits)

If either of the spouses is a Class 1 Officer rule of exclusion will apply. Where both spouses are Class I Officers and one of them dies the situation remains unchanged and the rule of exclusion will apply. However, if both of them die then obviously, the offspring are not only left to suffer mental agony and hardships in different ways but they are also denied the benefits and status resulting from the posts of their parents, and due to this disadvantage thrust upon them, the children shall not be denied the benefits of reservation, i.e., the rule of exclusion will not apply to them. It may be noted that if permanent incapacitation occurs which results in putting an officer out of service, then it shall be treated as equivalent to death so far as the application of rule of exclusion to the offspring is concerned. Hereafter, wherever death has been mentioned it shall include permanent incapacitation of the only spouse who is in this category of service, or of both spouses who are in this category of service, an exception has to be recorded. If before the unfortunate event of death of either of or both such spouses occurs, either of the spouses has had the benefit of employment in any international organization like the UN, IMF, World bank etc., for a period of not less than five years then exclusion from the benefit of reservation will continue to apply to the offspring.

It sometimes may happen that a lady who has got married to a Class I Officer may herself like to apply for a job. If she belongs to SEBC category, she will not be disentitled by the rule of exclusion. The reason for saying so is that originally having been a member of SEBC, she carries with her the attributes of backwardness even after she is married to a Class 1 Officer and though she may economically be in a better position, the initial attributes of social backwardness continue to linger on and will not get shaken off during the short period (in view of the age limit) which will be available to her for getting into any service employment. Therefore, we consider that such a person, more so because she is a lady (which in our society may be generally regarded as a weaker class) should not be denied the benefit of reservation. Therefore, to such a lady rule of exclusion will not apply.

B. Group B / Class 11 - Central Services and State Services (Direct Recruitment)

If both spouses are Class II Officers then rule of exclusion will apply to their offspring. If only one of the spouses is a Class II officer it will not apply, but if a male officer from Class II category gets into Class I category at the age of forty or earlier, then the rule of exclusion will apply to his offspring. Where both spouses are Class 11 Officers and one of them dies, it is better to let the children have the benefit of reservation which means rule of exclusion will not apply, however, if either of the spouses has had the benefit of employment in an international organization, as indicated above, for a period of not less than five years, then even in the event of death the application of the rule of exclusion will not be taken away. But if by great misfortune both the spouses die, then the rule of exclusion will not apply to the offspring even if one of the spouses has had the benefit of employment in an international organization.

Where the husband is a Class 1 Officer (Direct Recruit or pre-forty promoted) and the wife is a Class II Officer and the husband dies, the rule of exclusion will not apply. Also when the wife is a Class 1 Officer (i.e. Direct Recruit or pre-forty promoted) and the husband is a Class 11 Officer and the wife dies the rule of exclusion will not apply but if the husband dies the rule of exclusion will apply on the principle that one of the parents, namely, the mother continues, to be a Class I Officer.

C. Employment in Public Sector Undertaking etc.

The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply, *mutatis mutandis*, to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance

organizations, universities, etc., and also to equivalent or comparable posts and positions under private employment.

The evaluation of the posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of persons under this category, it is made clear that so long as the evaluation process is not completed and made operative, the income/wealth test under Item VI will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation, and if any exclusion is to be made it shall be on the basis of the criterion under Item VI.

III. ARMED FORCES INCLUDING PARA MILITARY FORCES

(this will not include persons holding civil posts)

The exclusion rule will apply at the level of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces. If the wife of an Armed Forces Officer is herself in the Armed Forces (i.e., the category under consideration) the rule of the exclusion will apply only when she herself has reached the rank of Colonel; the service ranks below Colonel of husband and wife shall not be clubbed together. Even if the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion, unless she falls in the service category under Item No. II in which case the criteria and conditions enumerated therein will apply to her independently. In making these recommendations, we have borne in mind the peculiar nature of the service and hardships faced by the members of the Armed Forces and the Para Military Forces. It has also to be remembered that there is no reservation in recruitment to the Armed Forces, which means that a person at the stage of recruitment in these services is denied the benefit of reservation even though he may otherwise be entitled to it.

IV. PROFESSIONAL CLASS AND THOSE ENGAGED IN TRADE, BUSINESS AND INDUSTRY.

This will include persons not in service employment either Government or private, but those who are engaged in professions as a doctor, lawyer, chartered account, income-tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sport professional, media professional, or any other vocations of like status. All these persons for the purpose of determining whether they will fall in the disqualification category or not will be governed by the income/wealth criterion as noted in Item No. VI. Likewise, persons engaged in trade, business and industry will be governed by the income/wealth criterion.

In a situation where the husband is in some profession and the wife is in a Class II or lower grade employment, the income/wealth test will apply only on the basis of the husband's income; in other words, the wife's employment will not be taken into account. If the wife is in any profession and the husband is in employment in a Class II or a lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the husband's income will not be clubbed with it. The rationale is to avoid discouragement of women entering service or professions in a gender-discriminating society such as ours.

V. PROPERTY OWNERS: A *Agricultural Land Holdings*

It may not only be difficult but hazardous to prescribe any criteria on the basis of income from agricultural land holdings. So we proceed to indicate the criteria on the basis of the extent of land holding.

If a person belongs to a family (father, mother and minor children) which owns only irrigated land, and the extent of irrigated land is equal to or more than 65 percent of the statutory ceiling area, then the disqualification will occur. It generally happens that a person holds different

types of irrigated land. In such a situation, the different types of lands should, on the basis of the conversion formula existing, be brought into a single type of irrigated land as a common denominator and on the basis of such denominator, the above cut-off point of 65 percent will have to be determined.

The rule of exclusion will not disentitle persons belonging to families owning only un-irrigated land irrespective of the area of such land. This is on account of the constraints imposed on and implicit in un-irrigated cultivation.

In the case of members of a family owning both irrigated and un-irrigated land, the exclusion rule will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) is 40 per cent or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the un-irrigated portion). If this precondition of not less than 40 per cent exists, then only the area of un-irrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area so computed from unirrigated land shall be added to the actual area of irrigated land, and if after such clubbing together the total area in terms of irrigated land is 65 percent or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur.

On the basis of data supplied to us, we find that there is no Ceiling Law in the States of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh and Goa and in the Union Territories of Andaman Nicobar Islands, Lakshadweep, Daman Diu. Apparently this is on account of the peculiar situation prevailing in these areas including topography, climatic conditions, etc. Under the circumstances the exclusion rule on the basis of land holding will not be applicable here. However, if at a future date Ceiling Law is enacted for any of such States or Union Territories, it would then have to be considered and determined if the rule of exclusion on the basis of land holding criterion will be made applicable or not and if so, in what manner.

B. Plantations

The plantations like coffee, tea, rubber, etc., which are not regarded as agricultural holdings will come under this category. Since they are not regarded as agricultural holding, they are not covered by ceiling laws. Therefore, the criterion at "A" above cannot apply to them and there is no alternative but to apply the criterion of income wealth under Item No VI

From the data supplied to us, it appears that mango, citrus, apple plantations, etc. are regarded as agricultural holdings and they will be covered by the criterion at "A" above

C. Vacant land and/or buildings in urban areas or urban agglomeration

To identify those who come under this category the criterion of income wealth under item No. VI will apply. When we refer to a building it is made clear that the building may be used for residential, industrial or commercial purposes and the like, or two or more such purpose

VI. INCOME/WEALTH TEST

This criterion is on the basis of income or wealth. We are conscious of the fact that in the majority judgement and the judgements of Pandian and Sawant, it has been emphasized that when placing a person in the excluded category, it should be unmistakably evident that social backwardness has come to an end. Their Lordships have emphasized that unless there is social advancement to such a degree as to bring a member of the SEBC more or less at par with the members of the forward classes, he should not be denied the benefit of reservation.

Since the people of this country are engaged in innumerable types of vocations and callings, it is simply not possible to assess the degree of social backwardness or advancement by specifying each one of such vocations for callings and under these circumstances, we have to take recourse to the only discernible criterion available, namely, the criterion of income or wealth. As such, this category may be said to be the residuary category. However, while prescribing the limit for this category, it has been kept in view that improvement in economic condition is so marked as

to necessarily imply social advancement. Thus, here the rise in social status is presumption based indicating that it has followed necessarily from the economic betterment. This aspect of treating social advancement on the basis of presumption has been kept in mind in prescribing the limit of gross income.

Hence, persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. We consider a period of three consecutive years to be a reasonable period for the purpose of the application of the criteria under consideration.

In addition to the above, we have to say that the income/wealth test governs categories IV, VB and VC as stated earlier. For the remaining categories, namely, I, II, III and VA, specific criteria have been laid down; however, if in these categories, any person, who is not disentitled to the benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income - without clubbing his income from salaries or agricultural land - or his wealth is in excess of cut-off point prescribed under the income/wealth criteria.

Since the rupee value is bound to undergo change the income criterion in terms of the rupee as stated above will accordingly stand modified with change in the value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less.

Persons working as artisans or engaged in the hereditary occupations, callings etc., like potters, washermen, barbers, etc., are exempted from application of the rule of exclusion.

The Supreme Court Judgement indicated that classifying the socially and educationally backward classes into two or more categories (backward, more backward, most backward and if necessary, further sub-categorization) is not only desirable but perhaps actually necessary. As and when such categorization is done we feel that for those who fall in the two lowest strata at the bottom, i.e., the state having the maximum backwardness, the application of the rule of exclusion may be kept in abeyance on the reasoning that the process of "Creamy Layer" formation will take more time in their case. While doing so the Government may examine its legal permissibility in terms of the Supreme Court Judgement,

We are aware of the strain imposed on candidates who seek certificates of caste, etc. The strain for them and the existing administrative machinery will be all the more where certification is required not only of caste but that the candidate is or is not affected by any of the criteria of exclusion. In order that SEBC candidates are not put to any harassment in this regard, we recommend that Government may make smooth and satisfactory arrangements for the issue of such certificates without delay and without any difficulty. Government have created a single window system for entrepreneurs applying for certificates and facilities for setting up new industries. Similarly, an appropriate single window system needs to be created at State/District level and necessary guidelines to be issued to see that correct certificates are issued promptly, and without harassment to the applicants

We are also aware of the fact that in some cases false certificates of caste are issued to candidates who do not belong to the reserved categories. In order to prevent this and to ensure that certificates of caste as well as exclusion/non-exclusion criteria are factually correct, innovative arrangements such as transparency through steps like publication in the village/mohalla/panchayat raj offices, etc , may be considered.

CONCLUSION

In specifying the determinants and prescribing the different formulations therein, we have adopted pragmatic approach and we have considered it prudent as well as desirable to err on the right side. In other words, where it appeared while defining the criteria that a more strict

formulation would have the possible effect of excluding more than it ought to, we have chosen not to adopt such a course. And for this approach of ours we find support from observations in different judgements of the Special Bench as well as from other sources.

Reservation has been adopted as a remedy for curing the historical discrimination and its continuing ill-effects in public employment. That being the object in view, the denial of reservation to any member of a socially and educationally backward class is, and has to be, treated as an exception. In identifying such an exception, i.e., applying the rule of exclusion, it has to be ensured that the ill-effects have been fully and finally eliminated and no gray zone is discernible. The nature of such an exercise itself makes the rule of caution inherent.

In the above context would it not be proper, nay desirable to let there be a acceleration and let some distance be covered before we apply the brakes?

What the Supreme Court has directed is identification of the "creamy later". This obviously means that we have not to take note of sprinklings of cream or the mere appearance of cream at the surface. Only when the "creamy layer" is substantial and stable, formed after crossing the Rubicon and social backwardness, then and then alone can it be made the basis for disentitlement. In such a situation, can it be said that adopting a rule of caution and erring on the right side is not justified? Apprehension has been expressed, and rightly, that applying the rule of exclusion on the ground of social advancement may be counter-productive, in as much as by excluding those who have become capable effacing the fierce competition for appointment in the service what will remain are those of the socially backward who are simply not equipped and ready to face the competition and this will have the effect of many of the reserved seats being left vacant. The well-known writer and columnist, Mr. S. Sahay is one among many who have expressed such an apprehension. This is what he has to say:

"... Approval in principle of the concept of backward and more backward is rational and so is the exclusion of the creamy layer. However, the consequences in the immediate future of the exclusion of the creamy layer, even though desirable and necessary, are not going to be happy... The poor remain both poor and uneducated. Count the cost of education today and realize for yourself whether the boy or girl from the chaupal has ever the chance of getting a higher appointment under the Central Government. Even now the reserved jobs for the Scheduled Castes and Tribes are not full> filled. Would the lot of the OBCs be any better, especially after excluding the cream\ layer?"

We can cite many more such quotations and also give more reasons in support of the approach which we have adopted, but in our opinion what we have said above is sufficient to highlight the point under consideration.

It is not out of place to mention that formulation of the criteria for ascertainment of the socially advanced among the SEBC (Creamy Layer) in the manner it required to be done for practical application, is unique in the sense that to our knowledge, such an exercise has been taken up in this country for the first time. Though we find that in the Report of the Third Backward Classes Commission for Karnataka, 1990, there is mention at page 174 Vol 1, of categories among socially and educationally backward classes who should not be entitled to reservation, but we have undertaken an elaborate exercise to make the formulations as far-reaching and comprehensive as possible. Of course, it may be desirable, perhaps even necessary at a future date, to give a second look to the criteria evolved by us and make suitable changes on the basis of experience of implementation and other relevant factors.

Sd.
(Ram Nandan Prasad)
Chairman and
Members
10.3. 1993

(This is an abridged version of the Committee's Report)

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