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# Present Scenario of other Backward Classes of Jammu and Kashmir through Reservation Policies and Challenges in Current Socio-Legal Milieu due to Jammu and Kashmir Reorganisation Act 2019: An Evolution of Other Backward Classes/Castes in India

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## ABSTRACT

*The present paper attempts to shed light on the policies taken by the Jammu and Kashmir government for the amelioration of other backward classes/castes from 2005 up to 2020. While the reservation system has received significant attention from policymakers because of the struggle and evolution that took place for the upliftment of other backward castes and the Indian population over the years, there is still a dearth of academic literature analyzing it. Fundamentally, very few studies have chosen to ask the question of the reservation system in Jammu and Kashmir and its impact on poverty reduction, education standards, what is the Legal status of other backward classes (OBC) in Jammu and Kashmir, and why there exist different laws for OBCs in Jammu and Kashmir. All these concepts need justification through the glasses of a legal apprentice.*

**Keywords:** *Backward Castes/Classes, Reservation, Policy, Commission, Constitutional Rights.*

## I. INTRODUCTION

The theme of reservation policy usually triggers controversies and evokes passionate reactions and debates amongst both adherents and detractors. Irrespective of the context in which it is invoked, the idea's philosophical content is essentially contestable and complex. The recent country-wide debate, discussion, and the Parliament's proceedings, when the 10 % Reservation Bill for EWS (economic weaker section) was introduced, have once again brought the concept of Reservation in Indian politics into the limelight. The issue of Reservation, however, is not an alien concept to India Society. It has been in operation before our Independence. After so many years of its implementation, the reservation policy has reached a stage where both its supporters and critics are unhappy about it. The former are unhappy because it has not created a noticeable impact on the social and economic conditions

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of the Scheduled Castes (S.C.s) and Scheduled Tribes (S.T.s), the majority of whom continue to be socially isolated, illiterate, and poor. Its critics complain that in matters of employment, promotions, and admissions, reservations have been stretched too far at the cost of merit and equity giving rise to frustration and alienation among the unreserved category. This policy's direct outcome was supposed to be a more equitable distribution of economic resources and a worthwhile sharing of power at different levels in the running of state affairs. But in reality, what has happened is that this policy has been exploited by various pressure groups and vested interests within and outside the beneficiary castes and tribes. This creates a serious problem for the other backward classes that came under the creamy layer of the Constitution of India. Moreover, with the scrapping of Article 370 of the Constitution of India, the status of other backward classes of Jammu and Kashmir is not clear whether it came under central laws or state laws.

#### **(A) Problem statement**

1. Lack of understanding of concepts of other backward classes/castes.
2. Lack of understanding relating to reservation Criteria in Jammu and Kashmir.
3. Constitutional validity of Jammu and Kashmir reservation Act 2004 with special reference to SRO 294 of Jammu and Kashmir reservation act 2004.
4. Impact on other backward castes after Implementation of Jammu and Kashmir Reorganisation Act 2019.

#### **(B) Aims and objectives of the Research**

1. The main goal of the research is to know about the conventions related to other backward classes (OBC) empowerment.
2. To study the legislation in other States relating to other backward classes in comparison with the Jammu and Kashmir.
3. To study and understand the difference of meaning between other backward classes (OBC) and other social classes (OSC).
4. To study the power of the state legislature in dealing with reservation policies for creating a reservation on area wise.
5. To study the impact on other backward castes (OBC) after scrapping of Article 370.

#### **(C) Purpose of the Research**

The purpose of this study is to know the evolution of caste reservation in India and make a '

recommendation for the welfare of the other backward classes and obtain a clear status of other backward classes in Jammu and Kashmir. The difference between the central reservation percentage and state reservation percentage is huge, and it needs a clear study to know about the reason behind such difference.

#### **(D) Research Gap**

After the scrapping of Article 370 of the Constitution of India, the current status is not clear whether the Central law applicable now or the previous laws of Reservation remain in force in for other backward class's people of Jammu and Kashmir. Therefore, the present study is an attempt to address the status of Other Backward Classes in Jammu and Kashmir. This research focuses on understanding the evolution of other backward classes' status and their constitutional rights in India.

#### **(E) Scope of the Study**

The present study helps find the difference between center and state reservation law.

It clears the constitutional status of other backward classes and a need to implement the central law of Reservation in Jammu and Kashmir for society's welfare.

#### **(F) Justification/ Relevance of the study**

After the scrapping of Article 370, the Jammu and Kashmir Reorganization Act 2019 is implemented for the welfare of the people of Jammu and Kashmir. However, the status of Reservation for other backward classes is not clear yet because the Government of Jammu and Kashmir still follows the previous law for reservation purposes and creates a situation that is against the Constitutional setup. This study helps make recommendations for the implementation of Constitutional provisions for the protection of Other Backward Classes.

#### **(G) Preliminary literature review**

The literature review is done to identify the proper research gap. Through the literature review, the researcher has attempted to study the various concepts and terminology of the research work carried out in the present study. The various literature related to the area of study have been reviewed to gain knowledge on the related aspects of the research problem so that the research study goes in the right direction.

1. Verma, P.S. (2010) explained the status of Dalits of Jammu and Kashmir and Rekha Choudhary, Identity Politics in Jammu and Kashmir. The study gives a detailed analysis of problems of Dalits in Jammu and Kashmir for acquiring minimum standards of life for the living.

2. Kaul, Santosh. (1990) in his work titled "Freedom Struggle in Jammu and Kashmir" highlighted the role of residents of Jammu And Kashmir for obtaining equal rights as mentioned under Indian Laws and their fight for achieving liberty for the welfare of the society.
3. Kelkar, S.V. (1979) explained the history of Castes in India and the role of various commissions for the implementation of Reservation in India.
4. Sooden. Surjit, Singh. (1999) explained the Condition of Residents of Jammu under the Reign of Maharaja Hari Singh and the impact of Dogra rulers on the socio-cultural development of the Jammu and Kashmir region.
5. Wankhede G.G. (1993) explained that lack of education resulted in the low occupational and social mobility of Scheduled Caste and Tribes which kept them away from business activities.
6. Barman, A. L. (2014) found that the socio-economic status of S.C. people was low because of financial problems.
7. Kumar, S. (2014) seen pointed towards financial problems of entrepreneurs such as inadequacy and irregularity of bank loans; high-interest rates; high losses, and use of borrowed funds for unproductive purposes.
8. Azam (2015) observed that S.C./STs have been beneficiaries of affirmative action policy under which a quota of seats in higher education and government jobs has been reserved for them.
9. Paramasivan, C. and Selvan, P.M. (2013) pointed out that Dalit entrepreneurship has emerged due to the changing attitude of Dalits and government policies encouraging entrepreneurship.
10. Thorat, S. and Senapati, C. (2007) pointed that the exclusionary character of Indian society and exclusion linked deprivation of a vast section of the population, there has been a need for a general reorganization of the affirmative action policy for discriminated groups.
11. Lokhande, M. A. (2006) discussed that the equity base of SC/ST entrepreneurs, was very weak and they had to rely on borrowed funds. Sanction and disbursement of loans usually took a long time. It also highlighted the difficulties of Dalit entrepreneurs.
12. Reddy, (2003) examined that the SC/ST entrepreneurs are not able to provide security for getting among backward class people. They had been the victims of neglect and exploitation for thousands of years which made them the poorest, oppressed, and deprived, education is

crucial for positive change and has a direct linkage to the development of entrepreneurship and occupational.

13. Singh, S. (1987) revealed that the changes in the socio-economic conditions of the scheduled tribes in the field of social structure, occupation, economic condition, political participation and affiliation, education, health, housing were noticeable.

14. Makwana, M. H. and Prajapati, P. (2015) analyzed that the social and economical inequalities existed even after 66 years of Independence between different social groups, particularly in urban areas.

15. Gupta, C. B. and Srinivasan, N. P. (2013) pointed out that the caste system in India led to rigid traditions and customs, and economic activity was rigidly stratified by the caste system. Therefore, a few ethnic communities engaged in trade and industry for centuries in India.

16. Srivastava, S. (2007) India was a country with a highly rigid caste-based hierarchal structure, with ascending order of privileges and a descending order of disabilities, which operated for about 3000 years. There was an overwhelming majority in the nation that was still backward socially, economically, educationally, and politically. Their Victims of entrenched backwardness comprise the presently scheduled Caste (S.C.), Scheduled Tribes (S.T.), and other backward classes (OBC).

17. Bhanushali, S.G. (1987) pointed out that the Hindus comprising Jingar, Kasar, Kumbhar, Otari, Saraswat, Shimpi, Sonar, and Sutar proved to be the weakest in the production area. But in other areas, they are attempting to balance themselves by being second in entrepreneurs' promotion and manpower management and third in organizational changes, financial, and marketing. It can well be noted that the Christian minority communities exhibited a superior entrepreneurial setting than the majority communities. The largest community, viz. Marathas remained almost at the bottom.

18. Lokhande, M.A. (2016) concluded that for the marginalized group entrepreneurs belonging to various castes, a significant association was found between caste categories and entrepreneurial skill development. The marital status of entrepreneurs was significantly associated with entrepreneurial skill development. This supports the proposition that married persons are enough matured, more accountable, experienced, and skilled. The study inferred that the educational level of the marginalized group entrepreneurs and entrepreneurial skill development had a good association. As well there was found a strong association between occupational background, entrepreneurship training, and entrepreneurship development.

19. Freire, Paulo (1975) *Pedagogy of Oppressed*: The book is a deviation from the contemporary literature on educational philosophy and methodology. Paulo Freire, the author, is a widely known revolutionary educationist. This book is addressed to the 'educators' of the oppressed world, whose responsibility is to liquidate the 'new culture of silence' in which the oppressed remain submerged. This book is the result of study and reflection. It presents a new unit of theory and practice. Those who participate in the new educational experience get what Paulo Freire, calls a 'critical awareness of reality'. The methodology the author developed was widely used in the literacy campaigns in Brazil, and because of its critical content, the ruling class in Brazil jailed the author. In course of time, his educational work came to be recognized as a new factor in social change and development. He presents his thesis in four chapters. The first chapter deals with the inherent contradiction between the oppressors and oppressed. Here he has emphasized the process of dehumanization. It is the direct result of injustice, exploitation, oppression, and the violence of the oppressors. The second chapter is exclusively devoted to the banking concept of education. Here the teacher acts as a depositor of knowledge and the students as depositories. Students receive deposits, memorize, and repeat. They are expected to receive only. This phenomenon leads to less development of critical thinking in students. In the third chapter, he analysis the theory of cultural activities, and finally, in the fourth chapter, he winds up with the analysis by presenting a theory of dialogical action.

20. Sekhon, Joti, *Modern India*. In this book, Sekhon describes India in its modern State and how the history of the country has shaped it into what it is today. She provides insight on the history of the country, its religions, its social stratification system, its economic status and role in the global economy, gender relations, its political institutes, and social changes that have taken place in India. The book will aid me in retrieving information on India's history, its complex caste system, and how religion, economic, and politics play a role in shaping the stratification system of India.

21. Ghurye, G. S. *Caste, and Race in India*, 1969. This book gives a very thorough description of the characteristics of the caste system and the nature of caste-groups, as well as a historical walkthrough of how the caste system came about. Ghurye goes into the relationship between race and Caste, the origins of the system, and even focus on Caste, sub-caste, and kin. This book will aid me in receiving a thorough background of the system and will also give me insight into the caste system during the British and how politics plays a huge role in the shaping of Caste.

22. The Jammu And Kashmir State Commission For Backward Classes ACT, 1997 (Act No. XII of 1997) [Received the assent of the Governor on 30th May 1997 and published in the Government Gazette dated 22nd June 1997]. An Act to provide for the Constitution of a State Commission for Backward Classes other than the Scheduled Castes and the Scheduled Tribes, and for matters connected therewith or incidental thereto.

### **(H) Importance of research**

1. **Social welfare:** social welfare can be achieved through socio-legal research.
2. **Comparative study:** it helps in research to find out what the law is in other States.
3. **Law reform:** research is a tool for any project of Law reform.

### **(I) Research methodology**

For a systematic study application of appropriate research methods, tools, and the adoption of a scientific bent of mind are sine-qua-non. The study follows the doctrinal research method together with the adoption of comparative approaches in the compilation, organization, interpretation, and systematization of the primary and secondary source material. Primary sources like Indian statutes, rules, and regulations are the basis of the study. As a secondary tool for study, books of eminent authors, articles in research journals, newspaper reports have been scanned and analyzed. Review and analysis of legal literature available in India and other countries have been made and referred to extensively. Several online databases and internet search engines have been used to keep the study updated. Empirical research is based on experimentation and observation, which is impossible in Jammu and Kashmir Reorganization Act 2019. The study is non-empirical and is not based on extensive field surveys. Much of the findings and conclusions are based on qualitative analysis mainly because, being a new phenomenon, hard data is not so readily available or measurable. Hence, this topic needs to be researched upon. Finally, some conclusions and concrete suggestions will be forwarded to improve the status of Other Backward Classes in Jammu and Kashmir.

## **II. STATUS OF OBC IN JAMMU AND KASHMIR**

In this paper, the researcher highlights the Jammu and Kashmir Government's measures for the betterment of the Other Backward Castes in the State. It was the first time in the 1931 census when Other Backward castes were treated as untouchables in the State. The persons related to the community of Other Backward Caste had the reasonability to provide the upper Caste's work like manual labor (Kelkar 1979). It is reported from the study (Sooden 1999)

that the persons of the high Caste mostly avoided contact with the lower castes and if any time they touch them, it was obligatory for them to take a bath to purify themselves. These lower caste people were not allowed in the temples and public places, which are used by the higher castes. Hence the overall condition of the other backward Castes community was pathetic in the post-independence period in the State of Jammu and Kashmir. In November 1931, a commission was constituted popularly known by the name of Glancy Commission as it was headed by a European member. The critical objective of this Commission was to study the problems relating to education, employment in the public service of the State; apart from this, the second task of the Commission was to look into the representation of the different classes of the state subjects in the different services of the State. The Commission gives several recommendations for the betterment of the subaltern groups of the State; nevertheless, the Untouchables of the State were wholly ignored by the Commission (Kaul 1990). In addition to this, the Franchise Committee report 1933 proposed the institution of Legislative Assembly in the State composed of 75 members. It is reported from the studies ( Kaul 1990) that this franchise committee report 1933 has also uncared for the untouchables of the State. The untouchables' struggle remained continued in the state upshot of which two seats were reserved in the Praja Sabha (former name of J&K Assembly) in 1934, and the two members of the Megh community of Scheduled Caste were elected. These lower caste communities' problem was such deep-rooted that the Reservation of two seats for them did not end their concerns. Therefore, they continued their struggle to achieve their rights in the State.

Since Independence, the State of Jammu and Kashmir has achieved significant growth and development in reducing poverty and improving crucial human development indicators such as levels of literacy, education, and health. However, there are indications that all communities and social groups have not equally shared the benefits of the growth process, among them, the OBCs, which Constituted the major chunk of the population, are seriously lagging in terms of most of the human development indicators, while the perception of deprivation is widespread among them, as there have been no systematic efforts to analyze their condition.

The Other Backward Classes in the State of Jammu and Kashmir constitute the secular social structure as they belong to all the main three religions viz Hindu, Sikh and Muslim having by and large the homogenous social, economic, and political characteristics living in all the three regions of the State. To date, no in-depth study concerning the socio-economic and educational development of these classes/castes have been done. Generally, it is revealed that they are lagging behind the other sections of the society in all spheres of development.

In the Constitution of India, Other Backward Classes are described as "socially and educationally backward classes," and Government is enjoined to ensure their Social and Educational Development. Under Article 340 of the Indian Constitution, the Government must promote the Welfare and Development of the Other Backward Classes (OBCs). Article 340(1) states that 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 to the Govt for the removal of such difficulties and to improve their condition. Article 340(2) states that a commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and make such recommendations as they think fit. Accordingly, some Commissions have been constituted by the Govt of India from time to time for the mentioned purpose, and on January 1, 1979, a commission popularly known as the Mandal Commission was constituted by the Government of India under the Chairmanship of B. P. Mandal who submitted a report in December 1980 which stated that the population of OBCs, including the State Jammu and Kashmir, was around 52 percent of the total population of the country. The Mandal Commission recommendations were implemented by the Govt of India in 1992, and 27 percent reservation was given to OBCs. Whereas the Government of Jammu and Kashmir has provided only 2% reservation on the recommendations of the Anand Commission to the 26 castes from among the OBCs on the nomenclature of Other Social Castes (OSCs).

The Govt of J&K has constituted two institutions on the nomenclature of Backward Classes one as Backward Classes Commission in the light of the Hon'ble Supreme Court Judgment, *Indra Sawhney v. Union of India* popularly mown as Mandal Commission case and the other as Jammu and Kashmir State Advisory Board for the welfare and development of other Backward Classes.

The majority of State Laws remain applicable after scrapping Article 370, including Jammu and Kashmir Reservation Act 2004. On 16-11-1992 was a historic day, when a Bench of nine judges of Supreme Court announced 27 percent reservation for backward of the country, who did not find palace in the scheduled castes category. It is slowly and gradually implemented in the whole of the country, including the Union Territories. But in Jammu and Kashmir, this judgment did not see the light of the day, and it was thrown in the basket. So this is the only State (now U.T.) in the country where this judgment met this sort of treatment. The main obstacle was section 370, which debarred all the central laws to be implemented in the State unless they are grilled in the J&K Assembly and passed through.

**(A) Reservation Percentage Before Article 370 Scrapping In Jammu And Kashmir.**

The Backward Class Commission of Jammu And Kashmir was set up in February 1969 under the Chairmanship of J.N. Wazir, and it submitted its Report in November 1969. Significant recommendations were:

- a) Reservation of 42 percent of vacancies in Government Services.
- b) Reservation of 42 percent seats in all technical and professional institutions.
- c) Award of scholarships to the students of other Backward Classes.

**(B) Nomenclature of Other Social Classes in Jammu and Kashmir**

Other Social Classes (OSC) nomenclature was given to social castes of the State as per SRO 294, dated 21.10.2005, Annexure -D, Under Privileged classes only 2 percent reservation is given to these people in entire J&K. No reservation at the district level. Whereas created categories such as RBA, ALOC, Pahari speaking people, Border Line People were given 20 percent reservation Plus 3 percent Pahari and 3 percent Border people. No specific criteria were applied to give the quantum of Reservation.

**(C) Reservation Percentage After Scrapping Of Article 370 In Jammu And Kashmir.**

Under the Jammu and Kashmir Reorganisation Act 2019, 106 Central Laws are going to be extended to the Union Territory of Jammu & Kashmir and Ladakh. The word except for the State of Jammu & Kashmir from the Central Laws and Acts has been omitted due to abrogation of Article 370. The National Commission for Backward Classes Act 1993, No. 27 of 1993 is due for this Union Territory. As per D.E., dated 3.9.2019 Page 12, Govt. should implement it stands as far as OBC/OSC of this U.T. is concerned about what is due to them in employment and education. New Rules and Regulation should be framed as per other Union Territories.

SRO 294, dated 21.10.2005, should be repealed, as it has become defunct now. Union Territory of J&K is fully eligible for National Commission for Backward classes. But **New reservation percentages: SCs 8%, STs 10%, Social Castes 4%, ALC/IB 4%, RBA 10%, EWSs 10%. Horizontal Reservation 6 % to Ex-Servicemen and 4 % to PHCs implemented by Government (Amendments in the Jammu and Kashmir Reservation Rules, 2005).**

Updated List of Backward Classes communities as incorporated in Central List of OBC in respect of J&K State includes 1. Bahach Hanjie & Shikara Wallas(Excluding House-boat owners) 2. Bangi, (Sweepers) Bhangi, ( Excluding those in Scheduled Castes) Khakrob, 3.

Barbers(Rural Only), 4. Bhand, 5. Dambali Faqir, 6. Doom, ( Excluding those in Scheduled Castes), 7. Fishermen including Gada Hanz, 8. Gratis(Rural only), 9. Jheewar, 10. Kulfaqir, 11. Kumhar, Kumahar (village Potters), 12. Madari, Bazigar, 13. Mirasi, 14. Sansi, 15. Shaksaz, 16. Shoe-repairers(working without the aid of machines), 17. Shupri Wattal, (Excluding those in Scheduled Castes), 18. Sikligar, 19. Teeli, Teli (Rural only), 20. Village Washermen, 21. Lohar/Tarkhan, 22. Labana, 23. Sheer-Gojries

#### **(D) Why Reservation needed?**

1. To correct the **historical injustice** faced by backward castes in the State of Jammu and Kashmir.
2. To provide a **level playing field** for the backward section as they cannot compete with those who have had access to resources and means for centuries.
3. To ensure **adequate representation** of backward classes in the services under the State.
4. For **the advancement** of backward classes.
5. To **ensure equality** as the basis of meritocracy, i.e., all people must be brought to the same level before judging them based on merit.

#### **(E) Reasons Behind Increasing Demands for Reservation**

Reservation is increasingly seen as a **remedy for the adverse effects** of ill-thought-out development policies. In developed states like Haryana, Gujarat, and Maharashtra, despite their economies being relatively better, three things have been worrying about the people:

1. **Acute agrarian distress.**
2. **Stagnation in employment growth.**
3. **Distortions in the development trajectory.**

In this backdrop, for governments, it is easier to talk of Reservation than to make a **course correction**. Increasing reservation demands among upper castes also arising from the **fear of losing privilege** and the inability to cope with change. Upper castes have begun to feel disadvantaged, especially in the context of **government jobs**, as they don't get similar advantages like backward classes.

### **III. EVOLUTION OF BACKWARD CLASSES/CASTES IN INDIA**

India is a country where a large number of people are found to be illiterate, ignorant, poor, and backward. India is a classical land of Caste in which castes are the main form of social

stratification. The backwardness of Indian people is closely connected with the type of stratification system that it has, that is, the Caste. The main disadvantage here is that the people's status is ascribed to them by birth in certain castes and tribal groups. Thus the problem of the majority of the Indians can be understood, as Prof. B. Kuppaswamy has pointed out that

"only in terms of the basic character of Indian society, which consists of a multitude of closed status groups with unequal ranks, each with its privileges and disabilities supported by traditional sanctions. Thus it must be recognized at the outset that the term class is not appropriate since that term is associated with an economic category and indicates an open status group. By contrast, the backward classes in India form an aggregate of closed status groups they belong to these groups by birth, not because of their economic characteristics."

Hence, it is clear from the above that the concept of Caste is more helpful in understanding the Indian stratification system rather than the concept of class. The British people, too, had made use of the concept of "backward classes" to refer to the most "backward castes" of India. The British Government had used the concept of "backward classes" as early as 1885 in its "Port Saint George Gazette," dated 5th November 1885. M.N. Srinivas has also stated that the term "backward classes" represents, in the Indian context, lower castes, including the scheduled castes. Thus, according to him, the term "backward classes movement" must be understood in the Indian context, as "backward castes movement."

#### **(A) Reason Behind the Formation of the "Backward Classes" under Indian Scenario**

The term "backward classes" has not been defined properly either by the sociologists or by the constitution-makers. The backward classes are a large mixed category of persons with boundaries that are both unclear and elastic. They seem to comprise roughly one-third of the total population of the country. They consist of three main categories the scheduled castes, the scheduled tribes, and the "other backward classes." The scheduled castes and scheduled tribes are comparatively better defined, and they form roughly 22% of the total population according to the 1971 Census. The "other backward classes" is a residual category. Their position is highly ambiguous, and it is not possible to give an exact statement of their numbers.

#### **(B) Definition of Backward Classes**

Though the term "Backward Classes" is popularly used by sociologists, it is not defined properly. Still for our purpose of the study, we may define it in the following way:

1. Justice K. Subba Rao, former Chief Justice of India, 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, i.e., social, cultural, economic, political and such others."

2. We can generally define "backward classes" as those social groups or classes or castes which are characterized by low literacy and lack of education, poverty, exploitation of labor, non-representation in services, and untouchability.

3. In simple words, the term "backward classes" can be defined as a social category that consists of all the socially, educationally, economically, and politically backward groups, castes, and tribes.

### **(C) Description of the Backward Classes**

The Backward Classes Commission in its Report 1956 described the Backward Classes as consisting of the following groups:

1. Those who suffer from the stigma of untouchability or near untouchability. These groups are classified as Scheduled Castes [S.C.].

2. Those tribes who are not yet sufficiently assimilated into the mainstream of the national life. These groups are classified as Scheduled Tribes [S.T.].

3. Those tribes who, due to long neglect, have been forced to commit crimes. These tribes were previously known as criminal tribes before 1953 and are presently called Denotified Tribes or Ex-Criminal Tribes.

4. "Other Backward Classes" [OBCs] consist of the following groups or communities:

(a) Those nomads who have no occupation of a fixed habitation and are given to mimicry, begging, jugglery, dancing, etc.

(b) Communities consisting largely of agricultural or landless laborers.

(c) Communities consisting largely of tenants without occupancy rights and those with insecure land tenure.

(d) Communities are consisting of a large percentage of small landowners with uneconomic holdings.

(e) Communities engaged in cattle breeding, sheep breeding, or fishing on a small scale.

(f) Artisan and occupational classes without the security of employment and whose traditional occupations have ceased to be remunerative.

(g) Communities, the majority of whose people do not have sufficient education and therefore have not secured adequate representation in Government services.

(h) Social groups from among Muslims, Christians, and Sikhs who are still backward socially and educationally.

(i). Communities not occupying positions in the social hierarchy.

Of the four major groups that constitute the "backward classes," the third category of the group (denotified tribes) is normally included in the 2nd category of S.T.s. Hence, for all practical, the "backward classes" normally consist of the following three major categories of groups:

(i) SCs, (ii) STs, and (iii) OBCs.

#### **(D) Constitutional Position of Other Backward Castes/Classes**

Indian Constitution does not define but only refers to the Concept of OBCs. The third major category of "backward classes" consists of a large number of educationally and economically backward people. Though the term "backward classes" has not been defined by the Indian Constitution.

1. Article 15(4) speaks of the socially and educationally backward.
2. Article 16(4) uses the term "backward class" and speaks of inadequate representation in Services.
3. Article 45 mentions free and compulsory education.
4. Article 46 mentions the weaker sections of the people and includes the expression "the Scheduled Castes and Scheduled Tribes."
5. Article 340 empowers the State to investigate the condition of the Backward Classes and to help them by grants, etc.

Thus the Constitution has accepted the following elements of backwardness; illiteracy and lack of education, poverty, exploitation of labor, non-representation in services, and untouchability.

### **IV. APPOINTMENT OF BACKWARD CLASSES COMMISSIONS IN INDIA**

#### **First Backward Classes Commission 1953 (Kalelkar Commission)**

As it is made clear, the term "backward classes" is vague in the sense that it includes a wide variety of lower classes as well as castes consisting of millions of people. Article 340 of the

Constitution provides for the appointment of a commission to investigate the condition of backward classes. Accordingly, the President [that is, the Union Government] appointed on Jan. 29, 1953. The Backward Classes Commission under the chairmanship of Kakasaheb Kalelkar. The Commission prepared a list containing as many as 2,399 communities that were treated as socially and educationally backward. Out of these, 913 communities alone had an estimated population of 115 million. The Commission adopted the following criteria for determining backwardness:

1. Low Social position in the traditional caste hierarchy of Hindu Society.
2. Lack of general advancement among the major section of a caste or community.
3. Inadequate or no representation in Government services.
4. Inadequate representation in the field of trade, commerce, and industry.

#### **Observations Made by Kalelkar Commission**

Some of the major observations and recommendations made by the Kalelkar Commission and as referred to by Prof. B. Kuppuswamy are mentioned here.

1. One of the first recommendations of the Commission was that the 1961 census should provide caste-wise figures so that "before the disease of caste is destroyed, all facts about it have to be noted and classified in a certain manner as in a clinical record." [Page 11 of the Report of the Commission].
2. The Commission also pointed out the anomaly which arose when some Scheduled Caste persons called themselves "Harijans" but found that they were not eligible for scholarships since the term "Harijan" is not in the authorized list.
3. The Commission also recommended that certain sections of the Muslims, Christians, Sikhs should be included among the "Other Backward Classes" [Page: 27-29 of the Report].
4. The Commission prepared a list of about 2,400 castes based on the position of the Caste in the social hierarchy, percentage of literacy and its representation in government service and industries, etc. The Commission also revised the lists of Scheduled Castes and Scheduled Tribes based on the new information available.
5. The Commission noted that the great majority of the backward classes are ignorant, illiterate, and poor. They are easily exploited by several classes of persons like the traders, the money-lenders.

6. The Commission also noted that the administration system itself, which has to implement the Constitutional provisions, is tainted casteism. This is one of the reasons why the backward classes have no confidence in securing a fair deal even from the administration. The Commission warns that unless this is immediately remedied, there would be class conflicts that would affect national solidarity. [Page 101].

7. The Commission also draws pointed attention to the contradiction between the theory and the practice of Hinduism. While, in theory, Hinduism recognizes the concept of universality in practice, it follows the Laws of Manu, which perpetuate the four-fold divisions of the social order and the superiority of the Brahmin class.

8. The Commission notes, "A complete revolution in the social outlook of the people is necessary for rendering social justice to all the backward people." [Page 104].

9. Dealing with the problems of educational backwardness, the Commission noted that the only general figures available are the literary rates, which show very slow progress. "The problem of education in most of the States is chiefly the problem of the backward classes, for it is they who are extremely backward in education." [Page 109].

10. Even when special scholarships and other facilities are provided, the children of these classes do not study. The Commission recommends liberal budget provision to give scholarships to the students of the backward classes. The Commission recommends that 70% of the seats in professional colleges should be reserved for them, and in making selections, preference should be given to those coming from the most backward classes, which are indicated in the lists drawn up. [Page 125].

11. Concerning representation in government and local body services, the Commission recommended the Reservation of 25% of the Class I vacancies, one-third of the Class II vacancies, and 40% of the Class III and Class IV for the Other Backward Classes. [Page 142].

12. As regards Reservation in services, the Chairman of the Commission laid down: "In this matter, one clear principle must be accepted and observed. Reservations, if contemplated, must not exceed 49% of whatever the total population of all the Reserved Communities is, as far as Classes III and IV are concerned. In the case of Classes I and II, he recommended that "the backward classes will stand to gain both morally and materially if they do not demand a reservation percentage in vacancies. They should demand the greatest facilities for training and education to fit themselves for the highest jobs, as speedily as possible". [Page IX].

### **The policy of the Central Government**

Kalelkar Commission's Report was not accepted by the Central Government due to a lot of criticisms and objections against it. The Government decided to find out highly objective, realistic, and workable criteria to identify the real backward groups and communities of India. The Deputy Registrar General of Census was also consulted to collect through his department information regarding the jobs in which the so-called socially and educationally backward people are found in a large number. Even that did not yield any fruitful results.

### **Negotiations with the States**

The Central Government initiated talks with at least 8 State Governments to identify the castes /groups /communities which could be included in the list of backward classes. In these negotiations with the States, various views came to the limelight. The opinions expressed are given below:

1. Some States expressed the view that it is better to identify "backward areas" rather than backward castes/classes.
2. More than Caste, economic factors should be the main criterion.
3. Some States insisted that no change should be made in the existing caste-based list of "backward classes."
4. Central Government has no legal or constitutional obligation to prepare such a list of "backward classes." Even if the Central Government proposes such a kind of list, the State Governments must have the freedom to prepare their list of backward classes.
5. Some states expressed their fear that the attempts to classify people either in the name of Caste or class would damage not only the unity of the nation but also encourage divisive forces such as Caste.
6. Some expressed the view that the attempts to prepare such a list of backward classes are against the principles of a secular, classless democratic socialist society. Hence, it must be dropped Once and for all.

### **The decision of the Central Government**

In light of the expressed views as mentioned above, the Central Government decided to go forward very cautiously. It decided not to prepare a separate list of backward classes /castes other than the S.C.s and S.T.s. However, it accepted in principle the right of the State Governments to find out their criteria to prepare a list of backward classes. The Central Government also suggested to the State Governments that it would be better for them to find out economic criteria rather than Caste for this purpose.

Preparation of a list of backward classes has become more complicated nowadays because the recent censuses do not contain statistical information about the castes, [The First Backward Classes Commission, however, had taken into consideration caste-wise statistics available in the reports of censuses held in 1911, 1921, and 1931, and also taken into account their approximate increase by 1951.] The existence of certain castes that were never taken into account in the census held before Independence has further complicated the process of preparing the list of backward classes. Some such castes also figured in the list of backward classes prepared by the First Commission, and this led to further confusion. Hence, even though the Report of the First Backward Classes Commission was published in 1955, it was not accepted by the Government. It decided to provide an opportunity for a nation-wide discussion on the issue. Finally, it instituted the Second Backward Classes Commission in 1979 under the Chairmanship of B.P. Mandal, an ex-judge and a member belonging to the backward Caste. The Commission submitted its Report in 1980.

### **Second Backward Classes Commission 1979: Mandal Commission**

The Government seriously considered the objectives of Articles 15 and 16 of the Constitution and the Second Backward Classes Commission. Mandal Commission was appointed in 1979. The terms of reference of the Commission included:

- (i) Determination of the criteria for defining the socially and educationally backward classes.
- (ii) Steps to be taken for the advancement of socially and educationally backward classes.
- (iii) Desirability or otherwise of making provision for the Reservation of appointments in favor of backward classes which are not adequately represented in public service.
- (iv) Presenting a report setting out the facts as found by the Commission making such recommendations. The Commission submitted its Report on 31 December 1980.

### **Acceptance of the Recommendations of Mandal Commission**

After long deliberations on the recommendations of the Mandal Commission, it was decided by the then Government to implement the same. The Mandal Commission, in its Report 1980, has listed 3743 castes and communities in the Central List whose population is estimated to be 52% of the total population of India. The Commission has recommended a 27% reservation for such a large segment of the Indian population. Several Writ Petitions were filed in the Supreme Court questioning the said Reservation. All the Writ petitions were disposed of by the Honourable Supreme Court by its judgment dated 16th Nov. 1992. The Court also directed the Government and each of the State Governments to set up a permanent

body for reflecting upon the request for inclusion and complaints regarding inclusions in the list of OBCs. Accordingly, a National Commission for Backward Classes (NCBC) was set up on 14th Aug. 1993, which had been reconstituted on 28th Feb. 1997.

As per the directions of the Supreme Court, the Govt. of India has notified the Central List of OBCs comprising in the first phase, the castes/communities which are common both in the list prepared by the Mandal Commission and State Backward Classes List for 21 states and 5 Union Territories. Recently, three notifications on inclusion/amendment in the Central List of OBCs have been issued by the Government.

## **Reservation Policy As Per Mandal Commission**

### **Criteria of Backwardness**

A reservation facility has been provided for people who are considered to be backward. But how is the backwardness of a community decided? At present, as we are discussing the issue of Reservation in the context of the Mandal Commission's recommendations, it is relevant here to mention 11 criteria for determining social and educational backwardness as used by the Commission. In the social and economic indicators, there were four criteria each, while in the educational indicators, there were three criteria. Thus, in total, there were 11 indicators. These 11 indicators or criteria, which fall into three categories, are mentioned below:

#### **A. Social Criteria**

1. Social backwardness as considered by others.
2. Dependence mainly on manual labor for livelihood.
3. Marriage of 25% girls and 10% boys in rural areas, and of 10% girls and 5% boys in the urban area below 17 years.
4. Female work Participation 25% above the state average.

#### **B. Educational Criteria**

1. Children between 5 and 15 years never attending school 25% above the state average.
2. Student drop-out rate 25% above the state average.
3. Matriculation rate 25% below the state average.

#### **C. Economic Criteria**

1. Average value of family assets 25% below the state average.
2. Families living in Kachcha houses 25% above the state average.

3. Sources of drinking water beyond 500 meters for more than 50% of the families.
4. Consumption loans by households 25% above the state average.

### **Weightage Given to Each Category of Criteria**

The above mentioned 11 criteria were differently weighted. Social criteria were given a Weightage of 3 points each, educational criteria 2 points each, and the economic criteria one point each. Thus the total value was 22 [ $4 \times 3 + 3 \times 2 + 4 \times 1 = 22$ ] points. Any caste getting more than 50% of the points, that is, 11 points, was counted as backward.

### **Reservation for the OBCs Among the Non-Hindus**

Mandal Commission extended the reservation facility to the OBCs among the non-Hindus. The above mentioned 11 criteria are mostly applied to the case of Hindu communities, including the tribes, to decide their backwardness. Some other criteria are adopted for determining the OBCs among the non-Hindus. All untouchables converted to non-Hindu religions are considered as OBCs. If a non-Hindu community continued its traditional occupation, and if that occupation qualified a Hindu community to be treated as backward, then the non-Hindu community would be included among the OBCs.

### **Four Channels for Collecting Data to Identify the OBCs**

The Mandal Commission found out four channels to collect data to identify castes, Communities, and groups that could be included among the OBCs. These four channels were:

1. Detailed questionnaires for the public advertised extensively in English and vernacular dailies.
2. Evidence from 97 M.P.s.
3. Extensive tours of States and Union Territories for meeting elected representatives, leaders of social and Caste associations, and representatives from the public.
4. Survey of 405 of the 406 Districts of the country.

### **Main Recommendations of Mandal Commission**

1. The Commission recommended a 27% reservation of the jobs for the OBCs. It enlisted 3743 castes and communities which are entitled to this Reservation. As per Article 15(4) and 16(4) of the Constitution, the total quota of the Reservation should not exceed 50%. Hence, the Commission recommended only 27% reservation for the OBCs through their share in the total population exceeds 52%.

2. The Commission recommended that those candidates from the OBCs who were selected through open competition should not be adjusted against the reservation quota.
3. The system of the Reservation should apply to all levels of promotions.
4. Unfilled reservation quota should be carried on over for 3 years and de-reserved only thereafter.
3. Relaxation of upper age limit for direct recruitment from the S.C.s and S.T.s should be extended to the OBCs.
6. A roster system for each category of posts should be adopted, as in the case of the S.C.s and S.T.s.
7. The 27% reservation to OBCs applies to the jobs in central government services and public sector units, including the banking sector, LIC, etc.
8. This Reservation is also applicable to the private sector undertakings such as educational institutions that receive financial grants from the central or State governments.
9. All the universities and colleges that receive financial assistance from the Government are expected to implement this Reservation.
10. Due modifications in the existing system of law, if necessary, should be undertaken to enforce this Reservation.

### **Some Other Special Recommendations**

1. To improve the backward community student cultural environment, especially in the places in which OBCs reside a large number, special efforts must be made to give them additional coaching, vocational training, and other educational facilities. OBC students studying in professional courses may require such assistance to keep pace with the other community students.
2. In all the States, rural people belonging to the OBCs must be given financial assistance either through subsidy or cheap rate loans to encourage them to take more and more interest in industrial and commercial activities. If needed, the rural semi-skilled and skilled persons of these communities must be provided with facilities to improve their expertise in their respective fields.
3. All the State governments are advised to implement land reforms strictly to remove the dependence of the tenants, landless laborers, rural professions, and the owners of small landholdings on the money-lenders and the rich farmers.

4. The Central Government must provide financial assistance to the State governments if they are not able to mobilize sufficient funds to take up the various welfare activities mentioned above for the benefit of the OBCs. This assistance the Central Govt. must provide just as in the manner in which it is providing such assistance to the States for the welfare activities of the S.C.s and S.T.s.

#### **V. HISTORIC JUDGMENT OF THE SUPREME COURT (INDRA SAWHNEY ETC. VS. UNION OF INDIA AIR 1993 SC 477)**

After the fall of V.P. Singh's and Chandrashekar's ministries at the Centre, the 10th Parliamentary elections took place in 1991, in which Congress came back to power, and P.V. Narasimha Rao became the Prime Minister. His Government announced in Sept. 1991 that within the 27% of the Union Govt. 's civilian jobs reserved for socially and educationally backward classes [SEBC], preference would be given to the poorer sections of such classes. He went a step further and declared 10% reservation for the other economically backward sections of the people who were not covered by any of the existing schemes of Reservation.

The controversial issue of the implementation of the Mandal Commission's Report was taken to the Supreme Court, which gave a historic judgment. The Court upheld the 27% reservation recommended by the Mandal Commission but struck down the Narasimha Rao Govt. 's decision to reserve 10% jobs for other economically backward sections.

Important aspects of this judgment as enlisted by Prof. Ram Ahuja are:

1. Caste has been accepted as a basis for identifying the beneficiaries of reservations.
2. The upper limit of reservations has been fixed at 50 percent.
3. "Creamy layer" has to be excluded from reservations.
4. Reservation in certain technical posts is not advisable.
5. There can be no reservations in promotions.
6. The Union Government shall specify the socio-economic criteria to exclude socially advanced persons among the backward classes.
7. Permanent commissions should be set up by the union and state governments to examine complaints of over-inclusion and under-inclusion and requests for inclusion in the list of backward classes.

In the light of these developments, which are at the background of the Mandal Commission's Report and its implementation, it is relevant here to discuss the pros and cons of the present reservation policy.

### **Arguments For and Against Reservation**

The National Front Government's (1989-90) sudden announcement of accepting the recommendations of Mandal Commission's Report in August 1990 evoked-widespread resentments and supports throughout the nation. This announcement of Prime Minister V.P. Singh was described as a political decision. The student community, in particular, protested against it very sharply in North India. Spontaneous agitations took place in several places of the nation. During mid-September and mid-October 1990, more than 160 young people attempted to commit suicide as a mark of then Protest against the unjustifiable reservation policy. However, not a single political party openly protested the Government's reservation policy.

Mandal Commission's recommendations, which formed the primary bases of the reservation Policy, have both positive and negative aspects. The recommendations were warmly welcomed in some circles while they were strongly opposed in some other circles. Arguments both in favor of the recommendations and against them have been advanced.

### **Merits of Reservation Or Arguments In Favour of It.**

1. **Providing Justice to All:** Reservation policy is likely to satisfy and uplift all those weaker sections of the society which were discontented and had suffered injustice and insults for decades. If fundamental rights are to be guaranteed to all, then they are to be guaranteed to the weaker sections also. Reservation is one of the means of guaranteeing such equality. Competition becomes just only when participants are equal.

2. **Reservations are not Made on Caste Basis alone:** It is wrong to say that reservations are made only on the caste basis, and hence such a policy is likely to perpetuate casteism. For example, Rajputs in Bihar are not included in the list of backward classes, whereas Rajputs in Gujarat are included; similarly, the Yadavs of Bihar and U.P. are included but not the Yadavs of Haryana; Patels of Gujarat are not included, but Patels of Bihar are in the list. Reservations are made based on educational and economic backwardness also. Further, to remove inequalities of Caste, actions on the coastline are necessary. Upper castes monopolized the privileges and high-income occupations for centuries. To remedy this situation, jobs must be preferentially allotted to the backward, and admissions for them in educational institutions must be provided until parity is restored.

**3. Economic Factor as a Criterion will Help only the Poor among the Forwards:** A poor member of a forward community will fare better than the poor among the S.C.s, STs, and OBCs. This is quite natural because the forwards are mostly literate and are in touch with the latest developments. Further, they are in regular social contact with the other forwards who have already progressed. Possessing upper caste culture helps them to be at ease with the ways of those who judge merit.

**4. Merit will not Become a Casualty:** The argument that reservation policy damages the principle of merit is untenable. If merit were to be the sole factor for providing opportunities to the people, then the country should have progressed a lot with the leadership of the "so-called merited" people. Administration by the "meritorious" has been unable to implement land reforms and programs to remove untouchability and backwardness among the masses of India. They have no right to speak about merit.

**5. Influence of Caste is Present in the Current Product:** Reservation is sought not to compensate for the past wrongs, but for removing the injustice in the present dispensation, where the forward castes continue to grab all the privileges. The handicaps experienced by the S.C.s, STs, and OBCs are nothing but the accumulated effect of exploitation at the hands of the upper caste people who reserved all the privileges for themselves.

**6. Lower Castes do not have Benefits of Connections, which the Upper Castes have:** Proper socio-economic and political connections are an important asset among the forward castes. Because of such connections, even the poorest among the upper castes can get benefits without much difficulty. At the same time, the lower caste people are always at a disadvantage in establishing such useful socio-economic connections.

**7. Reservation is to be Made Meaningful through other Efforts:** It is unscientific to believe that Reservation alone can bring about widespread changes among all the members of the backward classes. On the contrary, various other measures, such as the spread of education, increase in infrastructural facilities in the areas where the S.C.s, STs, and OBCs live, are very much necessary. The reservation facility is to be supplemented through other efforts.

**8. Social Benefits of Reservation do Spread Very Rapidly:** Various studies and observations have revealed that even though only a few families are going to be benefited directly from the Reservation, the social benefits of the Reservation are going to spread very rapidly. It means the reservation facility can create new awareness, self-confidence, courageousness, adventurous spirit, and self-respect among the backward castes/classes.

## **Demerits of Reservation or Arguments Against It**

1. **Gross Neglect of Merit:** One of the most widely criticized aspects of reservation policy is that it affects the merit very badly. Candidates are to be recruited for jobs, and admission is to be made to the educational institutions on a merit basis. This is required in the interest of the concerned agencies, disciplines, individuals, and also in the larger interest of the nation. Neglect of the principle of merit will bring down efficiency and lower the morale of the meritorious. This double effect is dangerous for national growth and development. As Guha (1990) has pointed out, reservation "mortgages the future of India."

2. **Provision of Reservation is an Insult to the Fundamental Rights and Equality of Opportunities:** The Constitution should treat the people of India on equal terms. But Reservation provides some special treatment for some sections of the unfair society. As the fundamental rights have an overriding power, Reservation should not be allowed to stand in their way.

3. **Providing Compensation for the Past Injustice is Meaningless:** It is true that some sections of Indian society were treated very inhumanly and were exploited in various ways. But those exploited are dead and gone. Causing injustice to the forward castes in the present generation will not restore the losses of the past generations of the backward castes.

4. **Reservation Causes Great Injustice to the Forward Castes and Classes:** It is very unfair to do injustice to one section of the society to assure justice to another section. Reservation thus does great injustice to the forward castes. The forward castes have given their contribution to the march of society. Their members are also prepared to put forth efforts to help the nation to take a big leap towards progress. Denying them an equal opportunity is not only injustice but also unfair.

5. **Poverty and Economic Criteria should be the Basis of Reservation:** Reservation is required for the genuinely poor people. Irrespective of the Caste, class, region or religion, or sex to which they belong, they must be assured of help through the Reservation; if the Reservation is given in this way, it can be regarded as just and appropriate. But the present reservation policy benefits only a small elite fringe among the lower castes.

6. **Reservation Contributes to the Perpetuation of Caste:** Modern independent India visualizes a casteless society. Attempts to provide Reservation based on Caste will only enhance the importance of Caste and increase caste mindedness and "caste patriotism." Reservation Policy will only lead to the reversal of the historical cycle by enlivening the Caste. In other words, the Reservation will create a backward moving society.

**7. Removal of Corruption should be our First Priority, but not Reservation:** From the Point of view of national development, what is more, important is an honest administration and not an administration by inefficient and meritless people. Reservation will only add to the corruption because people try their level best through all possible means to reap the benefits of Reservation.

**8. There are other Better Solutions to the Progress of Backward Classes:** It is wrong to think that Reservation alone is the master-fixer of solutions to the problems of backward classes. Social and educational backwardness is mostly due to the habits and attitudes of the people. These could be changed through the spread of education, including what can be called a "cultural revolution."

**9. Reservation is only a Political Game and nothing else:** The haste with which the reservation policy came to be introduced during V.P. Singh's administration itself makes it evident that it is more a political gimmick than a considered scheme for the amelioration of the problems of the backward classes. Political parties and their leaders wanted to create a permanent "vote-bank" through the implementation of the reservation policy.

**10. Fear Experienced by the S.C.s and S.T.s:** Reservation policy has vertically divided the Hindu population into "forward communities" and "backward communities." It has fanned the fire of animosity, ill-will, jealousy, contempt, and hatred between these two communities. Instances of clashes and conflicts between the two have been on the increase ever since the policy of Reservation came into force. Hence, it has created terror and horror in the minds of the poor S.C.s, STs, and OBCs. Further, clashes between the backward castes on the one hand, and S.C.s on the other, have also increased.

## **VI. JUDICIAL SCRUTINY OF RESERVATION**

The **State of Madras v. Smt. Champakam Dorairajan (1951)** case was the first major verdict of the Supreme Court on the issue of Reservation. The case led to the First Amendment in the Constitution. The Supreme Court in the case pointed out that while in the case of employment under the State, **Article 16(4)** provides for reservations in favor of the backward class of citizens, no such provision was made in Article 15. According to the Supreme Court's order in the case, the Parliament amended Article 15 by inserting Clause (4).

In the **Indra Sawhney v. Union of India (1992)** case, the Court examined the scope and extent of Article 16(4). The Court has said that the **creamy layer** of OBCs should be excluded from the list of beneficiaries of Reservation, there should not be Reservation in promotions, and the total reserved quota **should not exceed 50%**.

The Parliament responded by enacting the **77th Constitutional Amendment Act**, which introduced Article 16(4A). The Article confers power on the State to reserve seats in favor of S.C. and S.T. in promotions in Public Services if the communities are not adequately represented in public employment. The Supreme Court in **M. Nagaraj v. Union Of India 2006** case, while upholding the constitutional validity of Art 16(4A), held that any such reservation policy to be constitutionally valid should satisfy the following three constitutional requirements:

1. The SC and S.T. community should be **socially and educationally backward**.
2. The SC and S.T. communities are **not adequately represented in public employment**.
3. Such reservation policy **shall not affect the overall efficiency** of the administration.

In the **Jarnail Singh vs. Lachhmi Narain Gupta case of 2018**, Supreme Court holds that Reservation in promotions does not require the State to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes.

The Court held that creamy layer exclusion extends to S.C./STs and, hence the State cannot grant reservations in the promotion to SC/ST individuals who belong to the creamy layer of their community.

In May 2019, the Supreme Court upheld the **Karnataka law** that allows reservations in promotions for S.C.s and S.T.s with consequential seniority.

## **VII. CONCLUSION**

The policy of Reservation has a great implication for Indian society. It has set in motion processes that are capable of transforming a hierarchical society into an egalitarian one. The caste system effectively restricted privileges for a few upper castes and enforced difficult menial labor on the lowest castes. Reservation and other aspects of positive discrimination have virtually put a limitation on the actual monopoly of the forward castes on legislation, Government, administration, and Education. The S.C.s, STs, and OBCs have now greater fortunes to occupy positions in the legislature, posts in the administration, and seats in educational institutions. Reservation is an attempt to provide enough opportunities to the neglected sections of the Indian society to take part in the national development processes. It is believed that native intelligence has a tendency to be normally distributed and evenly shared by all human groups. Therefore, for the development of the nation's economy, society, and polity, the best from all sections of the population, including the S.C.s, STs, and OBCs, should be encouraged to participate in national life.

We are now living in an age of growing liberalization and globalization. In the growing liberalization of the economy, the role of the Government, including regulation, is decreasing. More liberty is given to the people and the men of talents. In this age, more and more talent of all sections, forward, backward, and others, can be more usefully marketed in the private sector producing more, by more, and for more.

Certain precautions are, however, necessary to see those reservations do not create a permanent vested interest in small sections of the group for whom reservations are provided. The present reservation system is not a fool-proof system. It has its limitations, no doubt. Despite its limitations, the policy of Reservation continues to stay. It is inadmissible and practically impossible at this stage to scrap the policy altogether. According to Roy Burman, the policy of Reservation has to be made more rational and scientific. In the given economic and political structure, Caste should not determine one's life chances.

B.S. Bhargava and Avinash Samal (1998) have given some suggestions to improve the policy of Reservation. According to them,

1. Income should be given more importance in determining the backwardness of the individual and not the Caste to which he belongs.
2. The concept of "creamy layer" should be applied to S.C.s and S.T.s also. It means rich people who belong to the category of S.C.s and S.T.s should not be given reservation facility.
3. Reservation should be restricted only to the first generation beneficiaries. Children belonging to those who have availed of the reservation facility should not be given the same facility once again.
4. Concession of scholarship may be provided to S.C., S.T., and OBC students securing more than a prescribed percentage of marks (say, 50% and above).

If the above-mentioned suggestions are implemented, then the benefits of Reservation will be spread more evenly and widely within the targeted growth. This will also help to reduce opposition for the Reservation by the forward castes. Nation-building or national prosperity is not the responsibility of any particular section alone. On the contrary, it is a collective process in which all sections of society should play an equally important role. The purpose of Reservation is to provide a chance for those sections of the society which have been neglected so far to play their role in this collective process.

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