

# DISPUTED PASSAGES

A Report on Law, Reservations and Agitations

**People's Union for Democratic Rights  
Delhi  
December 1990**

**It is the logic of our times,  
No subject for immortal verse,  
That we who lived by honest dreams  
Defend the bad against the worse.**

C. DAY LEWIS

*The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India*

**Article 14**

*Constitution of India*

*Our citizenship is another occasion for pride. And for the poor it consists in supporting and maintaining the rich in their power and their idleness. At this task they must labour in the face of the majestic equality of the laws, which forbid rich and poor alike to sleep under the bridges, to beg in the streets and to steal their bread.*

**Anatole France**

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The Constituent Assembly debates on reservations especially for the 'backward class of citizens' were marked by their diversity and liveliness. Who are the backward classes, how many are they how are they to be identified, what special provisions are to be given to them and for how long -- all became points of contention that in the end remained self-consciously inconclusive. One of the members [Dharam Prakash, United Provinces] pointed out that the term 'backward class' had yet to be defined and there was 'no possibility of it being defined in the near future'. In response to the debate Dr. Bhim Rao Ambedkar thought that 'it would be a justiciable matter'. T. T. Krishnamachari also hoped that the term would be ultimately interpreted by the Supreme Court, but he also added that the very wording would produce a 'paradise for lawyers'. More than forty years after this prophetic debate we seem to have reached square one as the Supreme Court, for the umpteenth time is seized of the matter, while many legal luminaries of the country partake of their paradise. Meanwhile many attempts were made to grant reservations to the backward classes. In recent years each time such a decision was taken there was strife in the streets. The latest was the result of the Central Government's announcement setting aside 27 percent of jobs for backward classes, following the recommendations of the ten-year-old Second Backward Classes Commission Report (otherwise known as the Mandal Commission Report). It led to disturbances in some parts of the country whose most bitter reflection, perhaps, were the self-immolations. It is evident that in the four decades after the Constituent Assembly made its provisions, the issues have become more complicated and the contentions more violent. The executive, bureaucracy, political parties, courts, media, academia -- have all become hopelessly embroiled in the controversy. In the process democratic institutions have got subverted from within. The issue of reservations thus became inseparable from the decay of democratic institutions. This report on **Law, Reservations and Agitations** is thus also a report on the democratic processes in the country.

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# Reservations: 1920-1990

The conflict over the reservation issue that we face today is shaped by seventy years of chequered history. Each one of the elements in the wide gamut of issues that now confront us came to join it at a particular time in the past, from a particular province. Over years a variety of forms of preferential treatment, of which job reservations is but one cipher, came to become part of it through its own specific route. The targeted groups too changed over time, but more confusingly their nomenclature kept changing with times. Some knowledge of this past is necessary to find a way out of this asylum with no gates.

In the colonial period reservations in legislatures were a prominent issue that influenced, to some extent, the course of anti-colonial movement. Reservations in government jobs was a more prominent issue in some provinces than at the centre. Special provisions for certain specified areas ('Scheduled Areas') was a prominent issue at the central level while in provinces, reservations and special facilities in educational sector were more prominent. Thus by the time of independence, preferential treatment for socially identifiable collectives came to include reservations in legislatures, educational institutions, government jobs and to a lesser extent in redistribution of land, housing and resources. The policy also came to include welfare programmes and special protection measures. But who are the targeted groups and how to identify them?

Religious communities, as for instance Muslims, were recognised as a distinct group for the purposes of reservations in legislatures, as the communal question came to prominence in the political agenda. Untouchables in Hindu religion, then variously described as Depressed Classes or Exterior Castes got political recognition after years of struggles, some time around the Poona Pact of 1932. This was also the

period when they came to be known as Harijans. The Government of India Act, 1935, for the first time recognised the need for special provisions for them. Its first Schedule identified these castes, and since then they came to be known as Scheduled Castes. However specifically reserving a quota of jobs for them only came subsequently in 1942 (8.33%), which was later revised in 1946.

But the case of tribals has an altogether different history. Tribal insurgencies that intermittently challenged the state, eventually led the colonial rulers to accept them as a distinct social and political category. They were variously described as Primitive Tribes (PTs), Criminal Tribes (CTs), or Backward Tribes (BTs). They were either quarantined in specific areas or were granted some patriarchal protection measures. But there were no reservations or similar special provisions in the state services or in education. Thus some castes, some tribes and some communities were identified for varying forms of preferential treatment at the central level. But at the provincial level, in addition to these groups, other socially identifiable collectives also came to be recognised. The origin of present day 'Other Backward Classes' is located here. Two Indian States, Mysore and Travancore-Cochin, took the lead along with two British Presidencies -- Madras and Bombay -- in this regard. Most of these Other Backward Classes came under the rubric of 'Depressed Classes', a category that originally came into official parlance with the introduction of Montague-Chelmsford reforms in 1919.

In 1920, the Justice L.C. Miller Committee recommended reservations in government jobs to non-brahmin castes in Mysore. In 1927 the government in the Madras Presidency made similar provisions, both in the educational sector and in government jobs. Later the scope was extended to include all castes and communities,

including upper castes like the brahmins, under what was described as the Communal Government Order. In Bombay the O.H.B. Starte Committee made similar provisions in 1930. It divided them into three groups: Depressed Classes (largely today's SCs), Aboriginal and Hill Tribes (largely today's STs) and Other Backward Classes. Similar reservations came into effect in Travancore-Cochin following the recommendations of the Justice C.D. Nokes Committee in 1935. Thus some sort of special provisions for backward castes/communities came into effect in the entire peninsular India by the mid-thirties. The only exception was Hyderabad, the largest Indian state, whose ter-

ritories were distributed after independence among all these states, except Kerala and Tamil Nadu. In Hyderabad the preferential treatment was for natives (Mulki). It covered not only the educational sector and the government services but also, significantly, the private sector. But outside peninsular India, the reservations did not acquire significance until after independence.

Whatever the forms of preferential treatment and who ever the groups identified, the state policies and programmes were rooted not in the charity of feudal princes or colonial masters from above, but in the popular social movements from below. Non-brahmin movements,

## **Constitution: The Disputed Passages**

- 15(1):** The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- 15(4):** Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- 16(1):** There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
- 16(4):** Nothing in this article shall prevent the State from making any provision for the reservation of appointment 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.
- 29(2):** 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.
- 338(1):** There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.
- 338(3):** In this article, references to the Scheduled Castes and Scheduled Tribes shall be constructed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.
- 340(1):** The President may by order appoint a Commission....to investigate the conditions of socially and educationally backward classes of citizens within the territory of India...
- 340(2):** A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.
- 340(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.

movements for social and religious reform, struggles of dalits and adivasi revolts have challenged the dominant elite, that demanded political attention from the rulers. These popular movements reflected the changes taking place in the power relations between various social groups and among them. These changes were reflected not merely in the political field but also more radically in art, literature and language. The state response, however, was restricted to its own services and education. In a sense perhaps this is what is happening even now.

**Making of the Constitution:** The Constitution straight away accorded specific recognition to both SCs and STs [A. 341 and 342] and made corresponding guarantees in the form of reservations in legislatures [A. 330 and 332], claims in services and posts [A. 335] and in other forms [A. 17, 338 and 339]. Their interests are also to guide the Directive Principles of State Policy [A. 38 and 46]. The process of identifying SCs and STs is a continuous one. In the last forty years the government issued orders revising or modifying the Schedules seven times in case of castes and ten times in case of tribes. We should note however that for specific purpose of reservation in government jobs [A. 16(4)], they are clubbed under the rubric of 'Backward Class of Citizens'.

The Constitution Assembly accepted community based classification for the purpose of preferential treatment only in case of the Anglo-Indian community [A.331,333,336,338(2)] but categorically rejected religious minorities as a separate category. However it guaranteed certain safeguards in relation to freedom and practice of religion [A. 25, 26, 27 and 28], protection of their interests [A. 29] and their educational institutions [A. 30] and religious endowments [Sec. VII].

The Constitution accorded recognition to gender based discrimination in case of 'special provisions' [A.15(3)]. Except in case of some scheduled areas, the state of Jammu and Kashmir and other cases, the Constitution did not explicitly recognise any region-based classification,

especially for the purposes of preferential treatment. Both these groups however merited a reference in the Directive Principles [A. 38,39 and 42] which in the inimitable eloquence of our Constitution, 'shall not be enforceable by any court' [A. 37].

Thus when it comes to preferential treatment of groups of people who otherwise face discrimination in our society, the Constitution left many uncovered in an explicit fashion except in the case of Scheduled Castes and Scheduled Tribes. But the makers of the Constitution were aware of the need for such facilities to other similar social groups, otherwise the promise of equality would make no sense in an inherently inequitable society.

It is in this context that the expression Backward CLASS of citizens or Socially and Educationally Backward CLASSES of citizens should be understood. The expression subsumes not only backward castes of Hindus, but also similar castes or groups of other communities or those communities themselves, women, regionally or economically backward and such other collectives based on varying criteria. While rejecting the much narrower expression backward caste and opting for the expression class or classes, the constitution-makers cited some of these factors for their choice.

If the expression was to be merely backward castes, then all provisions made in favour of other groups would be invalid. As of now such provisions are being enjoyed by people of certain regions (for instance Telengana in Andhra Pradesh, Uttarakhand in Uttar Pradesh and Ladakh in Kashmir), certain minority groups (for instance Christians in Kerala and Tamil Nadu, Muslims in Kashmir and Kerala and Hindus in Jammu), women (in Bihar) and economically backward (in Bihar and Andhra Pradesh). No expression other than Backward CLASS of citizens could have covered such a wide range of collectives. But such are the passions generated by caste in our country that even enlightened liberals are ignoring these invisible others.



# Who are the Backward Classes?

Whether described as 'socially and educationally backward classes' or as the 'backward class of citizens', the expression class was intended to cover many more social groups than backward castes. And even in exclusively caste terms, there is an extraordinary range of social groups that are covered under this category.

At the root of this diversity are the social relations of property, production and exchange as they evolved in historical time. Caste in our social history served as the principal determinant of mechanisms of production of goods and services, distribution of resources and delineation of power. It was also the principal theoretical justification for inequitous social structure. The Constitution is certainly an attempt to deny juridical sanction to this theoretical justification. But in reality post-colonial political economy strengthened caste-based social structures and even reproduced them in modern sectors. In some areas with the technological changes in agriculture some of the earlier cultivator castes, otherwise treated as backward, emerged as the new and aggressive landed gentry, while in other parts, the competition and conflict over the control of natural resources marginalised them. A variety of functionaries of the traditional village economy swelled the ranks of agricultural labourers. This diversity is also reflected in their affinity with the dalits or the absence of it. Thus while the All India Backward Classes Federation in Bihar, while rallying in defence of reservations, could demand the unconditional release of all the accused in the Belchi massacre in which dalits were murdered, an agitation against reservations for backward castes in Gujarat was easily transformed into a communal onslaught against dalits and Muslims.

In areas where the tertiary sector, especially state administrative services are the main avenue of employment, the backward castes faced powerful opposition to their entry. And in general we can find a broad correlation between the four-tier hierarchical division of government services with some sort of caste hierarchy where the Class I is filled with upper castes and Class IV with lower castes. More strikingly we can find such correlations in the manufacturing sector also. The functional divisions within a coal mine, a textile mill, an electronic unit, a chemical factory or even a newspaper office or university broadly correspond to caste hierarchies. Caste structure, thus strengthened and reproduced by contemporary political economy, is further consolidated by the arithmetic of vote blocks and the endless permutations and combinations of electoral alliances. Thus caste still remains, to a considerable extent, a determinant of production, exchange and power, which in turn shaped the diversity and heterogeneity of the wide ranging social groups that fall under the rubric of 'backward castes'. To wish away this living reality is to read centre-page pontifications on the dissolution of caste as a relevant social factor while glossing over the other pages which continue to report instances of caste violence or even the Sunday matrimonial columns where 'caste' remains a criteria for classification.

We should also note that in social status and political power the same castes do not enjoy the same position across regions, even within a state. Despite this the state has been adopted as the relevant territorial unit to identify a backward caste for the purpose of positive discrimination. But states in Post-Colonial India emerged out of circumstances which are different from, and have little to do with, the social history of castes. The most passionately discussed example in the context of the recent agitation in North India is the identification of yadavs in Bihar as backward. As a matter of fact the contention here is about what constitutes Bihar. The treatment of northern, southern and central Bihar as one homogeneous unit for the purpose of identifying backwardness, has played a surreptitious role in the conflict over reservations. Similar examples abound in the south too, in say the differences between the British administered Madras Presidency and the Princely states of Travancore-Cochin, Hyderabad and Mysore. The irony of our contemporary politics is that in many states, the 'state' itself is under a threat with some regions demanding separate statchood. But these territorial units became homogeneous entities to compound another division.

Thus social relations of property, production and exchange in inherited history and in contemporary political economy, the bonds of affinity or the absence of them with the more oppressed dalit and the territorial unit chosen for identification - all inform the diversity, heterogeneity and complexity of the wide-ranging castes that come together under the category of 'backward castes'. To this one can also add the vagaries of committees, commissions, and court-orders which made the category more elastic. In addition, social groups classified on basis apart from caste also joined them. The range of social groups that fall under the category of 'Backward Classes' thus is unparalleled in any such category invented for the purpose of preferential treatment by the State. Whether this category made for a limited purpose is sufficient to make and sustain it as a single unit for political purposes to win the next round of elections (or to wage a class war for that matter) is a moot point that need not detain us here. But what is more important is that the anti-reservationist's argue, quite ridiculously, that this heterogeneity and diversity is itself an indicator of the irrelevance of caste as a unit for identifying backwardness in India. Thus arguments about a category (BCs or SEBCs) constructed for a limited purpose are sought to be settled at the level of living social reality. Further, arguments about this 'reality' are sought to be responded to at the level of a juridical category. This is a hopeless debate. The term backward caste or backward classes has no uniformly valid meaning, content or connotation. This is perhaps the reason why our constitution-makers left it sufficiently vague and undefined. If after forty years the category became more complicated, and the contention more violent, then it is also a commentary on the nature of our economic development and the character of the democratic polity that we built and unbuilt through all these restless years.

Immediately after the promulgation of the Constitution, the state faced a problem not in reservations in government jobs, but in other forms of preferential treatment, from land allotment in favour of harijans to seats in medical colleges. We shall later see how this lacunae led to the introduction of the First Amendment [A. 15(4)] that facilitated them.

Thus the preferential treatment promised by the Constitution to those sections of society who otherwise face discrimination and oppression was seen as an important device to achieve genuine equality. It also contributed in more ways than many now care to acknowledge, to the making of the Indian nation into a sovereign republic. There was of course an inherent contradiction in granting preferential treatment to some while otherwise upholding the principle of equality. Jawaharlal Nehru, while introducing the First Amendment succinctly stated it: "We arrive at a peculiar tangle. We cannot have equality because in trying to attain equality we come up against some principles of equality" (Parliament Debates, May 1951). The post-independence history of the evolution of reservation policies of the states and the centre must be seen in the shadows of this unravelled tangle.

#### **Post Colonial Period:**

In the post-colonial period the broad division in case of reservations for backward classes between peninsular states and the rest of the country widened. In Maharashtra the reservations which extended upto a total of 80%, were reduced to 57% after the Supreme Court intervention in 1984. In addition to SC, ST and BCs, reservations also exist for a variety of others including Vimukhta Jati and Nomadic Tribes (VJNT), physically handicapped and others. It is also the only state where reservations are made for Project Affected People (PAP). In Andhra Pradesh, following the recommendations of the Ananta Raman Commission (1970) 25% jobs were reserved for the BCs. The Commission also recommended a review after ten years. In 1982 the Muralidhar Rao Commission reviewed and recommended enhancement of the quota

for BCs from 25 to 44% which the Telugu Desam regime implemented, four years later in 1986. Following an agitation, the High Court struck down the order which the government chose not to challenge in the Supreme Court.

In Tamil Nadu the First Backward Classes Commission, headed by A.N. Sattanatham (1970) recommended quota enhancement from the existing 25% to 33%. The DMK regime while accepting some of the recommendations, opted for only a 31% quota. It rejected the commissions' other recommendation for imposition of an income limit as a cut off point ( a formula which later came to be known as the Karpoori Thakur formula). But much later in 1979, MGR in one of his quixotic moves suddenly imposed such a limit inviting powerful opposition. He not only withdrew it but enhanced the quota to 50%. The Supreme Court in its intervention suggested another Commission. The Second Commission, headed by J.A. Ambasankar, submitted its report in 1982. The MGR regime selectively implemented some of its recommendations. However the report itself was placed before the assembly only last year in May, 1989 by the DMK regime. In the state in recent years the effort by some communities like the Vanniyars, to get included among the More Backward Classes has come to the fore.

In Karnataka the recommendations of the Havanur Commission (1975) were partially struck down by the upreme Court in the famous Vasant Kumar case which led to the appointment of another commission headed by T. Venkatswamy. In an extraordinary effort of its kind the commission surveyed 61 lakh households by door to door enumerations. Among other things it recommended the deletion of some of the powerful communities, like Lingayats and Vokkaligas from the list of identified BCs. It led to powerful opposition and the Janata regime did not take any action on it, instead another commission was formed, headed by Justice Chinnapa Reddy, now retired, who had earlier been one of the Judges in the Vasant Kumar case. The report of the Reddy commission remains one of the most

eloquent and reasoned arguments in favour of a just and balanced state policy on reservations. The commission recommended some sort of cut-off point based on income, and parental economic and occupational background. It also reaffirmed the earlier recommendation for deletion of some communities. Its fate is unlikely to be different although in the meantime the Janata regime had been replaced by the Congress-I regime. In Kerala, earlier court interventions on the recommendations of the Vishwanatham Committee, led to the appointment of Kumar Pillai Commission in 1967. The order based on its recommendations was again challenged and Supreme Court intervention led to the appointment of Nettur Commission. Government in general accepted its recommendations, prescribing a 38 per cent quota and super-imposing an income limit in case of some groups, in 1970 itself. But it took quite many years to actually implement them. On the whole the reservations for BCs in the peninsular states are marked by some common features that include higher quotas, inclusion of forward castes or sub-castes and multiple classification within BCs with differentials in the preferential treatment accorded to them.

In so far as job reservations to BCs are concerned if peninsular states represent one extreme, the other extreme is represented by east and north-eastern states. The category (of course not the castes or communities) has no meaning here, nor are there any reservations for them. In West Bengal a committee looked into the matter in 1980 and decided not to construct the BC category in the state for the purpose of preferential treatment.

The situation in the north and western parts of the country is more complex. Any account of this region must begin with Jammu and Kashmir which has the longest and most chequered history of reservations in the north. Firstly under the much debated Article 370, the Constitution applies to the state subject to 'exceptions and modifications'. By the Constitutional Order (application to Jammu and Kashmir) 1954, STs were not recognised as a category in the state.

Similarly no reservations in legislatures exist for SCs. So Article 15(4), 330 to 337 and 339 and 342 are either modified or exempted in their applicability to Jammu and Kashmir. In some sectors like education, and later, judicial services reservations existed right from the mid-fifties. The category SEBCs or BCs here included certain religious groups (all Muslims in the entire state and all Hindus of Jammu!) upper-castes in some parts (as for instance pundits in Kashmir!) people of backward regions (Ladakh) and some occupational groups. These reservations were subject of controversy for many years leading to some landmark judgments in the Supreme Court. Periodically courts have struck down or modified some of these reservations. At least three commissions all headed by judges, made a variety of recommendations leading to further controversies and cases. One of them headed by Justice Gajendragadkar recommended 42% reservations for BCs that covered most of the groups mentioned above. Given the 8% reservation for SCs that makes a total of 50%. But last year the government included for the first time, a list of tribes in the state. Presumably the reservations have now crossed the 50% limit set originally by Justice Gajendragadkar himself in the famous Balaji judgement in 1963!

In Bihar, leave alone south Bihar, there are significant differences in the positions of the backward castes even between north and central Bihar. These variations are located in the land tenurial relations, especially in the case of yadavas and kurmis. Some of them (like Mr B.P. Mandal himself) were zamindars who lost their zamindaris after the abolition while others are those who benefited out of the Zamindari Abolition. The continuing changes in the agrarian technology resulted in changes in economic strength and political power of some of these castes. In some areas, for instance in Palamu, on the edge of the southern plateau one can see that they are on the side of the dalits. But elsewhere, as in Belchi and Parasbigha, some of the worst massacres of dalits in recent memory were perpetrated by these castes. At the level of



## Commissions on Backward Classes: 1918-1990

|                            |   |
|----------------------------|---|
| <b>Andhra Pradesh</b>      | Manohar Pershad Committee (1968-69)<br>Ananta Raman Commission (1970)<br>Muralidhara Rao Commission (1982)  |
| <b>Bihar</b>               | Mungeri Lal Commission (1971-76)  |
| <b>Gujarat</b>             | A.R. Bakshi Commission (1972-76)<br>Justice C.V. Rane Commission (1981-83)<br>Justice R.C. Mankad Commission (1987-?)   |
| <b>Haryana</b>             | Gurnam Singh Commission (1990- )  |
| <b>Jammu &amp; Kashmir</b> | Justice Gajendragadkar Commission (1967-68)<br>Justice J.N. Wazir Commission (1969)<br>Justice Adarsh Anand Commission (1976-77)  |
| <b>Karnataka</b>           | Justice L.C. Miller Committee (1918-1920; Mysore)<br>Naganna Gowda Commission (1960-61)<br>L.G. Havnur Commission (1972-75)<br>T. Venkatswamy Commission (1983-86)<br>Justice Chinappa Reddy Commission (1989-90) |
| <b>Kerala</b>              | Justice C.D. Nokes Committee (1935; Travancore-Cochin)<br>V.K. Vishvanatham Commission (1961-63)<br>G. Kumar Pillai Commission (1964-66)<br>N.P. Damodaran Commission (1967-70)                                   |
| <b>Maharashtra</b>         | O.H.B. Starte Committee (1928-30; Bombay Presidency)<br>B.D. Deshmukh Committee (1961-64)   |
| <b>Punjab</b>              | Brish Ban Committee (1965-66)   |
| <b>Tamil Nadu</b>          | A.N. Sattanathan Commission (1969-70)<br>J.M. Ambasankar Commission (1982-86)   |
| <b>Uttar Pradesh</b>       | Chhedi Lal Sathi Commission (1975-77)   |
| <b>All-India</b>           | Kaka Kalelkar Commission (1953-55)<br>B.P. Mandal Commission (1979-80)  |

**Note :** 1. Where two dates are mentioned they refer to year of appointment and year of submission. Where only one is mentioned it refers to year of submission which is also the year of appointment in some cases.  
2. The three commissions of the colonial period mentioned here had an ambit wider than those groups that later came to be known as Backward Classes.

legislative politics they began emerging strong from about the late sixties. Subsequent to the report of the Mungeri Lal commission (1976) appointed by the earlier Congress regime (1971), the Janata regime made reservations for Backward castes. The anti-reservation agitation forced

the government to modify the order in Nov 1978. Apart from castes, reservations were also made for women and economically backward classes. Within the BCs two categories, Backward Castes and More Backward Castes, were made. The prevailing ceiling for Income Tax exemption is

the economic criteria for some of these categories. This is the famous Karpoori Thakur formula. In the recent controversy this formula came in for much discussion. But one must note that to flaunt income tax limit as a criteria to solve the crisis in a state where the conflict is sustained by agrarian tensions makes little sense. There is no tax on agrarian incomes.

In Uttar Pradesh reservations for Backward Classes came in 1955 itself. Backward regions (like Uttarakhand), rural areas (later struck down by Supreme Court) were also taken into consideration. Initially there were 15 such castes/groups for reservation in government jobs. Later, in 1958 the list was revised when some Muslim communities were also brought into its fold. As some of the backward castes emerged strong in state legislative politics, the Janata Government made reservations for Backward Castes on a larger scale in August 1977, following Cheddi Lal Sathi Commission recommendations. But here, subsequent to the agitation, it was not the government but the court which modified the order. One significant factor here was that the Sathi Commission used ownership of land as one of the criteria for the division between Backward and More Backward castes. In addition to all these categories, reservations also exist for freedom fighters, MISA detainees of Emergency, ex-army personnel and their dependents. One of the specific features of the state is the presence of jats. They are not a twice-born caste. But they did not seek the status of BCs either. In the recent agitation the jat dominated Bhartiya Kisan Union (led by Mahendra Singh Tikait) played a prominent role both in U.P. and in Delhi.

In the undivided Indian Punjab, preferential treatment for Backward Classes initially existed only in education sector. The list made for that purpose, without any committee or commission became the basis for job reservations in Punjab, Haryana and Himachal Pradesh, after the states re-organisation. In Punjab subsequently Brish Bhan Committee investigated the matter and made some recommendations in 1966. Later a Vidhan Sabha Committee reviewed these in

1976. One significant feature here is the inclusion of regional backwardness in case of three border districts (that are now described as 'terrorist infested' by the media). But it was struck down by the courts. The castes and sub-castes within Sikhs including jats and ramgharias are included in the list. In Haryana the jats are not included and much of the violence in the recent agitation is attributed to them. But unlike in UP they seem to be seeking the status of BCs here before the ongoing Gurnam Singh Commission. In Himachal Pradesh the BCs are not powerful as a social group. Neither is the quota very significant. But the state is one of the strongest epicentres in the recent agitation. So is the case with the Union Territory of Chandigarh where as of now no reservations exist for backward classes in government jobs.

In Madhya Pradesh the government made reservations to the extent of 25% for BCs, both in education and government services in 1985. The High Court issued a stay on the order. The government did not choose to move the Supreme court.

In Rajasthan the issue has never been significant. In Gujarat the Bakshi Commission recommended reservations for BCs in 1972. The Janata regime implemented them in 1978, with 10% quota. A second commission headed by Justice C.V. Rane rejected caste as a criteria but very nearly approximated this by an innovative use of occupation as a criteria, in 1983. In 1985 the government sought to implement Rane Commission recommendations. It retained caste but increased the quota to 28 per cent. In the face of an anti-reservation agitation, the government suspended the order which also gave birth to yet another committee headed by Harobhai Mehta. Later government also appointed Justice R.C. Mankad Commission in June 1987. It doesn't seem to have submitted its report as yet.

Thus there are broadly three groups among the various states in so far as reservation for backward classes are concerned. In the eastern states practically no reservations exist and

# Reservations in State Government Jobs

(percentage of quota)

| State/Region  | BCs(MBCs) | Women | EBCs | SGs   | SCs           | STs | Total |
|---|-----------|-------|------|---|---------------|-----|-------|
| <b>Peninsular India</b>   |           |       |      |   |               |     |       |
| 1. Andhra Pradesh   | 25*       | Nil   | 6    | Nil   | 15            | 6   | 52    |
| 2. Tamil Nadu   | 30*       | Nil   | Nil  | 20  | 18 (for both) |     | 68    |
| 3. Karnataka  | 35*       | Nil   | Nil  | 15  | 15            | 3   | 68    |
| 4. Kerala   | 40*       | Nil   | Nil  | -   | 8             | 2   | 50    |
| 5. Pondicherry  | NA        | Nil   | Nil  | NA  | 16+           | 7.5 | 23.5  |
| 6. Maharashtra  | 10        | Nil   | Nil  | 27  | 13            | 7   | 57    |
| <b>North &amp; West</b>   |           |       |      |   |               |     |       |
| 7. Uttar Pradesh  | 15*       | Nil   | Nil  | 15  | 30+           | 2   | 50    |
| 8. Bihar  | 8(12)     | 3     | 3    | Nil   | 14            | 10  | 50    |
| 9. Punjab   | 5         | Nil   | Nil  | **  | 25            | Nil | 30    |
| 10. Haryana   | 5         | Nil   | Nil  | **  | 20            | Nil | 25    |
| 11. Himachal Pradesh  | 5         | Nil   | Nil  | **  | 22+           | 7.5 | 34.5  |
| 12. Jammu & Kashmir   | 42        | Nil   | Nil  | **  | 8             | 2   | 52    |
| 13. Madhya Pradesh  | ?         | Nil   | Nil  | -   | 16+           | 20+ | 36    |
| 14. Delhi   | Nil       | Nil   | Nil  | Nil   | 16+           | 7.5 | 23.55 |
| 15. Chandigarh  | Nil       | Nil   | Nil  | Nil   | 15            | 7.5 | 22.5  |
| 16. Goa   | NA        | Nil   | Nil  | NA  | 15+           | 7.5 | 22.5  |
| 17. Daman & Diu   | NA        | Nil   | Nil  | Nil   | 15            | 7.5 | 22.5  |
| 18. Gujarat   | 10        | Nil   | Nil  | Nil   | 7             | 14  | 31    |
| 19. Rajasthan   | Nil       | Nil   | Nil  | Nil   | 16            | 12  | 28    |
| <b>East &amp; others</b>  |           |       |      |   |               |     |       |
| 20. West Bengal   | Nil       | Nil   | Nil  | Nil   | 15            | 5   | 20    |
| 21. Orissa  | Nil       | Nil   | Nil  | Nil   | 15            | 23  | 38    |
| 22. Assam   | Nil       | Nil   | Nil  | Nil   | 7             | 15  | 22    |
| 23. Manipur   | Nil       | Nil   | Nil  | Nil   | 2             | 31  | 33    |
| 24. Meghalaya   | Nil       | Nil   | Nil  | Nil   | NA            | NA  | NA    |
| 25. Nagaland  | Nil       | Nil   | Nil  | Nil   | NA            | NA  | NA    |
| 26. Sikkim  | Nil       | Nil   | Nil  | Nil   | NA            | NA  | NA    |
| 27. Tripura   | Nil       | Nil   | Nil  | Nil   | 15            | 29  | 44    |
| 28. Arunachal Pradesh   | Nil       | Nil   | Nil  | Nil   | Nil           | 80  | 80    |
| 29. Mizoram   | Nil       | Nil   | Nil  | Nil   | Nil           | 45  | 45    |
| 30. Andaman * Nicobar   | Nil       | Nil   | Nil  | Nil   | 15            | 16  | 31    |
| 31. Dadar & Nagar Haveli  | Nil       | Nil   | Nil  | Nil   | 15            | 43+ | 58    |
| 32. Lakshadweep   | Nil       | Nil   | Nil  | Nil   | 15            | 45+ | 60    |
| * multiple classification including MBCs subsumed here under BCs  |           |       | SC   | Scheduled Castes  |               |     |       |
| ** subsumed here under BCs  |           |       | ST   | Scheduled Tribes  |               |     |       |
| + The quotas are different for different grades in the state services. Figures here relate to lower grades which have higher quotas |           |       | SG   | Special Groups which are different in different states. They include variously, people of backward regions, religious minority, community as a whole, denotified tribes, ex-army personnel, some occupational groups, physically handicapped, Project Affected People and a host of others. |               |     |       |
| BC Backward Class including non-Hindus  |           |       |      |   |               |     |       |
| MBC More Backward Class   |           |       |      |   |               |     |       |
| EBC Economically Backward Class   |           |       |      |   |               |     |       |

in the peninsular states they have been long entrenched. In between are the northern and western states where wide differences inform, with Jammu and Kashmir at one end and Rajasthan at the other. The backward classes include not only Hindu castes but also similar groups of practically all religions. Regional, linguistic, ethnic, economic, occupation and gender based classifications are also included. In addition special groups like ex-army personnel, denotified tribes, handicapped people and others are also included. Within the backward castes, sub-divisions are made and in some states a roster system operates. In some cases economic criteria -- income or property -- is used. There is no uniformity in either the criteria used to identify BCs or in the quota prescribed. Years of tortuous interaction between commissions, government orders and courts have resulted in the existing position that is given in the table on reservations. Any attempt at the central level is destined to run into this myriad complexity.

The first known central list of BCs was drawn immediately after independence when the government extended for BCs, the existing post-matric scholarship for SCs. Drawn in an ad-hoc manner by the department of education the list of BCs covered similar groups in all religious communities. In the 1951 census, figures were collected about some of these BCs but the government decided not to process and publish them. The central Government also extended some centrally funded welfare schemes under the aegis of the Planning Commission. Thus in some form or the other the category called the BCs existed at the central level under the Census Directorate, the Department of Education, and the Planning Commission. All three of them however do not seem to have identified the same groups and hence arrived at varying estimates of the number and proportion of BCs. The most inexplicable of all these estimates were those of the Planning Commission. In its First Five Year Plan: A Draft Outline, (1951) the commission estimated the BCs to be about 72.22 millions. But the

peoples edition of the same plan (1953) gives the figures as 54.60 millions.

In 1953 the First Backward Classes Commission under article 340 of the constitution was appointed, headed by Kaka Kalelkar. It submitted its report in 1955. The commission did not follow any noticeably rational method in its identification and estimation of BCs or in its recommendations. About 2399 castes/groups were identified as BCs. They included such disparate groups as betel leaf growers of eastern India, Eurasians of Travancore and Sindhi refugees of North India. In the end five out of eleven members including the member secretary wrote their minutes of dissent. One of them even 'regretted' that the Commission, including the Chairman, was not free from casteism. Finally in a last minute volte face the chairman himself repudiated the entire report in his covering letter to the President of India. The government rejected its recommendations. In fact the Parliament did not even discuss the report. But unusually it discussed it a decade later in 1965.

After the rejection of the commission's recommendations the central government passed the buck to the state governments and asked their suggestions both regarding the groups to be included in the category and the forms of preferential treatment to be accorded to them. In a few years the buck came back to the central government which asked the Registrar General of Census to undertake the job of identifying the BCs who after two years of listless efforts abandoned the attempt. In the meantime the Centre issued a G.O. requesting state governments to fill up the unfulfilled quota of SCs and STs in the educational sector with BCs. This is the first time (and so far the last) that the centre displayed some initiatives towards reservations for BCs. But this order was withdrawn five years later. Finally in May 1961 the cabinet officially decided that no national list of BCs should be drawn up. It suggested that caste based criteria should not be used but however left the choice to state governments. In the Third Five Year Plan the existing scholarships and welfare programmes for the BCs were quietly dropped.



## Census: Use, Abuse and Misuse

The Census is at the centre of much of the controversy on reservations. Essentially it becomes relevant for three distinct purposes which in popular perception get mixed up with each other. The census can be used for the identification of castes, for an understanding of mobility among and across castes and lastly for estimating the proportion of identified backward castes in the total population.

The Second Backward Classes Commission used the 1961 census to identify certain special groups like primitive, aboriginal, hill and other tribes, who are not part of the Scheduled tribes. This has been criticised on the valid grounds that they should be included in scheduled tribes and not under backward classes. But a commission under article 340 cannot recommend changes to the schedule of tribes. The 'authority' which is empowered to recommend these changes - the Commissioner for Scheduled Castes and Scheduled Tribes - had in an earlier report recommended that these be included under the BCs! In Maharashtra the government partly with the help of 1961 census identified such special groups (Vimukti Jati and Nomadic Tribes-VJNT) and made separate reservations for them. Anant Raman Commission in Andhra Pradesh used the 1921 and 1931 Census to identify castes in some cases. In this case, the Supreme Court upheld the constitutional validity of the use of old census (State of AP vs Balaram, Air 1972 SC).

The Census can be used to study social mobility among the backward castes. The Research Planning Team recommended to the Commission, such a cross comparison of caste and occupation data, based on 1891-1931 Census. This study, if carried out, would hinge on the assumption that data are comparable. Anyhow the commission did not (could not?) complete the study except in case of what now constitutes Uttar Pradesh and Bihar

The Census can also be of use to estimate the proportion of backward castes. It is widely believed that caste-wise census listing, other than that for SCs and STs stopped in 1931. But in the case of some BCs a census was conducted in 1951, but the government chose not to process and publish the data.

The First Backward Class Commission did use this unpublished data. The Directorate of Census estimated that 913 castes (of a total of 2399) identified as BCs constituted 31.8% of the total in 1951. However we are not told which castes constitute these 913 castes. So effectively 1931 became the last census where caste details are available. Contrary to widespread myths the Second Backward Classes Commission did not use the 1931 census either for identification of castes or to estimate their numbers. Instead it culled from the data, that forward castes constituted about 17.58% of the population in 1931. (Some of the forward castes included for this purpose, ironically also figure in the commission's own list of BCs such as some brahmin Sub-castes in Andhra Pradesh). The Commission then interpolated these figures over the 1971 figures to arrive at its estimate of 52% BCs in the population. The limited use of 1931 Census to identify some specified forward castes led to endless and baseless spinouts that found their way even into court rooms. Other Commissions used various other methods to arrive at some estimate of the proportion of BCs. There is no way one can satisfactorily arrive at such a figure unless there is some agreement about the list of BCs in the first place. In any case the whole exercise is fairly pointless as no one suggests that the BCs are less than 27% of the population and every one goes by the presumed limit of 50% on reservation quotas. There is in fact no relation between the proportion of BCs and the reservation quota recommended for them. The estimates thus are of little practical significance!

BCs or SEBCs as a category ceased to exist at the central level.

Almost two decades later the Janata government appointed the Second Backward Classes Commission in December 1978, headed by Bindhyeshwari Prasad Mandal. Formal notification was issued on 1, January, 1979, inauguration took place three months later and actual work began a further three months later. Meanwhile L.R. Naik, a M.P replaced another member Dina Bandhu Sahu who resigned on health grounds. The elections to the Parliament and assembly in the ensuing period also adversely affected the functioning of the Commission. It finally submitted its report, in December 1980, to the President who had appointed it but to a different Prime Minister.

The commissions' report consists of seven volumes (actually six but that is another story). The first volume is the Main Report and Recommendations, the second volume consists of various annexures including data on

the current proportion of BCs in the central services and the report of the Research Planning Team. The third volume is a review of the relevant Constituent Assembly debates and landmark judgements of the Supreme Court done by the Indian Law Institute, sponsored by the Commission. The fourth volume is a similar sponsored study by the Tata Institute of Social Sciences, Bombay comparing the reactions to reservations for BCs in the northern states of UP and Bihar with the southern states of Tamil Nadu and Karnataka. The fifth volume was to consist of processed tables giving the results of the survey done for the commission. But the report does not carry these. This volume comprises of only one page! The sixth volume is a minute of dissent by L. R. Naik along with long lists of "Depressed Backward Classes" that were identified for all states and Union Territories.

The Commission estimated, on the basis of replies to a questionnaire, that BCs constitute 12.55 percent of central services, 14.4 percent of autonomous bodies and 10.60 per-

cent of central public sector undertakings. Such an estimate is necessary for the Commission since the Constitution makes provisions for reservations to Backward Classes only when they are 'not adequately represented in the services' under article [A.16(4)]. But the criteria adopted to identify BCs is somewhat strange. It includes all castes other than brahmins, kshatriyas and vaisyas thus including kammas, redies, jats, maratthas and other such groups otherwise not included in the category of BCs. The consequent over-estimation of the figures would perhaps be offset by other overwhelming considerations. The second criteria specifies that both the father and grandfather of such a BC civil servant should not have an educational level beyond the primary stage. In case of non-Hindus there is an additional criteria that the income level of the parents should be about Rs 71 per month, approximately equivalent to the poverty line. How any one can expect the progenies of people below poverty line to become civil-servants in the central government at any level is beyond comprehension. In any case it does not appear to us that all the departments, autonomous bodies and public sector undertakings replied to the questionnaire. Among the missing departments was the Department of Personnel!

The Commission based its understanding and observations on the basis of studies generated by seven premier institutes of the country, interviews and interactions with a variety of public figures and associations and impressions gathered in its tour of 22 out of the 31 states and UTs. It sponsored one seminar, commissioned two studies and involved experts at four levels.

The actual identification of BCs was based on four sources: Personal knowledge gained through tours and public evidence, list of BCs notified by various state governments, Census of 1961 for identification of certain special groups and its own socio-educational field survey. For the non-Hindu BCs two criteria were used: (i) all untouchables converted into any non-Hindu religion; and (ii) such occupational communities

which are known by the name of their traditional occupations and whose counterparts have been included in the list of Hindu BCs.

The Research Planning team suggested a one percent sample survey of all castes horizontally across territorial divisions. The Expert Panel prepared a design of the survey. But the Technical Advisory Committee rejected the one percent sample survey instead opting for a 100% survey of a representative two villages and one urban block in all the 406 districts of the country. The actual work was done after conducting orientation programmes at the centre,

state, and district levels, with the help of the Bureau of Economics and Statistics, National Sample Survey and Central Statistical Organisation. The data collected thus was processed by the National Informatics Center, Electronics Commission. A subcommittee of the Technical Advisory Committee suggested generation of 156 tables for each of the 31 states and Union Territories. But the commission opted for 31 tables only making a total of 961 tables. And then inexplicably it did not include these tables in its missing fifth volume. The Commission nowhere explains this omission But its Member-secretary, who after his retirement was also

## Criteria of the Commission

The following are the criteria adopted by the Second Backward Classes Commission in its socio-educational field-survey

### A. Social

1. Castes/classes considered as socially backward by others
2. Caste/classes which mainly depend on manual labour for their livelihood
3. 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
4. Castes/classes where participation of females in work is at least 25% above the state average

### B. Educational

5. Castes/classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the state average
6. Castes/classes where the rate of student drop-outs in the age-group of 5-15 years is at least 25% above the state average
7. Castes/classes amongst whom the proportion of matriculates is at least 25% below the state average

### C. Economic

8. Castes/classes where the value of family assets is at least 25% below the state average
9. Castes/classes where the number of families living in kuchha houses is at least 25% above the state average
10. Castes/classes where the source of drinking water is beyond half a kilometer for more than 50% of the households
11. Castes/classes where the number of households having taken consumption loan is at least 25% above the state average

|                   |                         |   |      |   |           |
|-------------------|-------------------------|---|------|---|-----------|
| <b>Weightage:</b> | Social indicators:      | 3 | (x4) | = | 12        |
|                   | Educational indicators: | 2 | (x3) | = | 6         |
|                   | Economic indicators:    | 1 | (x4) | = | 4         |
|                   | <b>TOTAL</b>            |   |      |   | <b>22</b> |

*All the castes/classes which had a score of 50% (11 points) or above are treated as SEBCs*

director in one of the companies of India's most controversial corporate group, suggested in a recent article, that the prospect of a bulky volume prevented them from publishing this crucial data. Lack of space is the most ingenious argument advanced on behalf of any commission or branch of the government of India so far!

Ideally and logically the commission should have given an exhaustive list of castes /groups which it identified on the basis of the four sources for its identification. Instead it only presented a long list of 3743 castes/groups for all the 31 states and UTs in a combined manner without indicating which group was identified on the basis of which source. In other words the relationship between the Commissions labour and elaborate surveys and the final list was nowhere explained.

The Commission made a variety of recommendations. It recommended 27% reservations for the identified BCs in central government services, autonomous bodies, public sector undertakings including nationalised banks, universities and colleges and those private undertakings that receive financial assistance from the state. In the educational sector it recommended programmes for adult education, special schools and financial assistance to the BCs. It also recommended schemes to foster business and industrial enterprise among BCs. It suggested that radical land reforms should be given highest priority. Finally it recommended a review of the entire scheme after 20 years.

Eventually three extensions and two years later, the commission submitted its report. A further two years elapsed before the Government placed it before the parliament in April, 1982. Two discussions in the two houses of the parliament took place for two days. The report was neither rejected nor categorically accepted but the buck was passed on to a team of anonymous civil servants. A further two years later the government published the report for the benefit of the public who have no access to their parliament. The matter

rested with civil servants, save some demands by some political parties when elections were round the corner.

Finally in January, 1990, the central government initiated measures to implement the recommendations of the Commission. It asked all state governments to give their views. Despite repeated reminders not all of them responded. In early July it informed them of its intention to go ahead. On 7 August V.P. Singh made his announcement and on the 13th the formal G.O. was issued. The expression Mandal Commission instead of the usual staid Second Backward Classes Commission on also received official sanction. In the process Mandal Commission almost became a symbol in the agitation that followed against the G.O.

During the course of the agitation the symbol acquired many characteristics and attributes that have very little to do with the content of the seven volume report. The symbolic status it acquired became so powerful that the Haryana governor Dhaniklal Mandal faced the wrath of some of the agitating students who were under the mistaken notion that he was the author of the report. And in Hyderabad students put up posters like 'Mandal Commission go back', presuming that like Simon in the colonial period, the Mandal Commission was visiting them long after Mr B.P. Mandal died.

As a matter of fact the official G.O., in effect took only one of the many recommendations of the Commission that relates to job reservations to the extent of 27%. This quantum has no direct relation to the Commissions' laboured exercise but with the presumed limit of 50%, set by the Supreme Court. Even in the matter of castes/groups the G.O. did not follow the list of the Commission but only to those common to both the commissions' list and that of the states, thus excluding atleast 16 states and union territories where there are no such lists. The possibility of some castes figuring in the states' list but not in the Commission's list are slim since the Commission explicitly took the former into its consideration while preparing its own list. Hence the



public debate should have focussed on the criteria, method and the list of the various State Governments. No one seriously made such an attempt. Not even the Supreme Court is able to get hold of the relevant lists even after four months. Yet the symbol guided the course of events, as it is the case with the other major controversy of current times.

Article 340 of the Constitution nowhere makes it clear that the commission appointed under it to 'investigate the conditions of socially and educationally backward classes' should prepare a list of SEBCs. However unless such a list is prepared Article 338(3) of the constitution which presumes such a list to be made by the commission appointed under A 340, for the purpose of appointing a special officer makes no sense. Even if any Commission prepared a list it is not binding on the Government. In fact

the Constituent assembly rejected an amendment to that effect. Hence in terms of constitutionality the case of SEBCs or BCs is different from those identified under the schedules of the constitution identifying SCs and STs. It should also be noted that for the purpose of job reservation [A. 16(4)], unlike for other special provisions under [A. 15(4)], the category is Backward Class of Citizens and not Socially and Educationally Backward Classes of Citizens. And SCs and STs, for the purpose of job reservations are part of 'Backward Class of Citizens' [A. 16(4)]. Any discussion on any reservations made for any people covered by a list prepared by any commission must face these confusing clauses which, as pointed out earlier, were anticipated by some members of the Constituent Assembly. They pinned their hope on Supreme Court. Some Hopes!

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# Supreme Court: Gradation and Degradation

On 9 April 1951, a seven member full bench of the Supreme Court delivered two judgements: one related to reservations in state services [A. 16(4)] and the other to reservations in educational institutions [A. 15 and 29]. Both relate to the communal G.O. of the composite Madras state. The two cases mark the beginning of a tortuous journey to find judicious interpretations to constitutional provisions.

In the first case [Venkatraman vs Madras AIR 1951 SC] the court struck down the communal G.O. since it also made reservations in government jobs for upper castes and thus violates Article 16(4) which facilitates reservations only for 'backward classes'. In the second case (Madras vs Champakam Dorairajan AIR 1951 SC) the court struck down reservations in a medical college on the basis of the same G.O. on the grounds that it violates Article 15 ('prohibition of discrimination on grounds of religion, race, caste, sex or place of birth') and in specific Article 29(2) (Denial of 'admission into any educational institution maintained by the state...on grounds only of religion race, caste, language...'). Thus in effect the Supreme Court struck down reservations made for the upper castes in the first case and those made for the lower castes in the second. One can note in passing that in the first case the state was a respondent and in the second case it was the appellant.

Around the same time the order of the Collector of Poona, acquiring land for establishing a Harijan colony was struck down by the Bombay High Court since it discriminates on grounds of caste, violating Article 15(1) [Jaswant Kaur vs Bombay AIR 1052, Bombay]. Both this case and the second Madras case brought to light sharply a serious lacunae in the constitution. It makes provision for preferential treatment to the discriminated sections only in case of state services [A. 16(4)] but not in any other field.

Thus the Constituent Assembly, which had

by now become the provisional Parliament, almost within a year of passing the constitution brought the First Amendment to it. (The First Amendment, of course, is not only related to this issue. It also facilitated 'reasonable restrictions on right to freedom' that paved the way for detention without trial.) The amendment enables the government to make 'special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes' [A. 15(4)]. Except government jobs, the special provisions include practically everything ranging from reservations in professional colleges to land distribution in favour of Scheduled Castes and Tribes. But typically almost all of the controversies that came to the Supreme Court, under this provision, relate to reservations in educational institutions, especially professional colleges. Not that redistribution of land is less controversial but perhaps in the view of the status quo, courts are not the effective instruments to settle such a fundamental conflict.

It is this Article 15(4) and reservations made therein which provided the Supreme Court the occasion to deliver landmark judgements on many issues but not government jobs. The Indian Law Institute study sponsored by the Second Backward Classes Commission made a review of 55 landmark judgements in the period 1951-79. 24 of them relate to reservation of seats in medical colleges. We have made a further review of about 38 such judgements in the period 1980-89. About 17 of them relate again to medical colleges. These major judgements include Champakam Dorairajan (1951), Balaji (1963), Chitralekha (1964) Laila Chacko (1967), Balaram (1972), Shameen (1975), Arti Sapru (1981) and Arif Hameed (1989). It is pertinent to note that out of the 6 million who are enrolled every year in higher education, only about 12,000 go to medical colleges in a country of 900 million. The social character of an

emotive contention that daunted the route of so many legal milestones needs no further comment.

It is very difficult to list exhaustively all the issues debated and decided in the Supreme Court in matters relating to reservations. The extraordinary range of issues can be seen in the somewhat incomplete list that we have prepared (Quest for Legal Barometers). Practically on every one of the 40 issues listed one can cite two judgements in conflict with each other. In such a situation all reviews of court judgements, including the one done for the Second Backward Classes Commission, become partisan. It is quite possible that ours is no exception.

Among the important issues which became relevant in the recent times are those relating to caste, class, quota and their constitutionality. In 1970 the Bihar government issued an order leasing out roadside land to landless Harijans. It was challenged on the ground that harijans are not a scheduled caste, which in a sense is correct since no caste called 'Harijan' figures in the schedule of the constitution that lists 1086 castes. The court had to perforce uphold the argument and held that "Harijan is not a caste but a conglomeration of people of different castes who were taken to be untouchables by the savarna Hindus. The argument, therefore, that a classification like harijans is based on caste, is not correct". The only other way in which granting of lease to harijans can be justified, under Article 15(4), would be if they are a socially and educationally backward class of citizens, assuming that harijans are not Scheduled Tribes. But in the case of SEBCs, Article 340 implies that the fact they are indeed socially and educationally backward has to be established in the first place. But in this case the court circumvented the problem by citing Section 57 of the Indian Evidence Act which enables the court to assume that certain 'facts...need not be proved' Suggesting that it need not be proved that harijans are socially and educationally backward, the court upheld the order of the government (B.C. Swain vs Secretary W and T

department, AIR 1974). Thus, if we go by this case, Harijans are not a scheduled caste but part of the SEBCs!

In Jammu and Kashmir small cultivators were recognised as a backward class, following Justice Wazir Commissions recommendations. The Supreme Court struck down the classification. It held that: "all that can be said about the cultivators is that they are persons who cultivate land or live on land and that the simple accident that they hold land below a certain holding is supposed to make them a class... The error... lies in placing economic considerations above considerations which go to show whether a particular class is socially and educationally backward" [Janaki Pandey vs J and K AIR 1973 SC]. In sharp contrast is the case of roadside station masters. In 1960 a case arose out of conflict between Roadside Station Masters and Guards in the Central Railway in the matter of promotions in which the latter were treated preferentially. The All India Station Masters and Assistant Station Masters Association challenged the scheme on the grounds that guards do not constitute a class distinct from them and hence they cannot avail these promotions as it violates Article 16(1). The court held that the 'roadside Station Masters belonged to a wholly distinct and separate class from guards and so there could be no question of equality of opportunity in matters of promotion as between Roadside Station Masters and Guards' [AIR 1960 SC 384]. Thus if one judgement suggests that guards are a class, another asserts that small cultivators are not a class!

The judicial pronouncements regarding the 50 percent limit to reservations are also ridden with similar problems. The Supreme Court pronounced it for the first time in the famous Balaji case relating to medical college admissions, under Article 15(4). Following the recommendations of the Naganna Gowda Committee, the government of Mysore made reservations upto the extent of 68%. Initially in July 1961 as the judgement noted, the government "emphatically expressed opinion that the reserva-

# Quest for Legal Barometers

In the last forty years the Supreme Court gave its pronouncements on the following issues in over 160 cases involving major judgements, that we reviewed. The list is not exhaustive.

## I. Criteria

### **1.1 Caste:**

1. Sole criteria
2. One of the criteria
3. Who are the backward castes
4. How to identify them
5. Who will identify them
6. What is social backwardness

### **1.2 Educational:**

7. What is educational backwardness
8. Is the level of education an indicator of backwardness
9. What is that level
10. What should be the distance between that and the state average
11. Can qualifying marks be lowered
12. Can rank be lowered

### **1.3 Economic**

13. Is it a valid criteria
14. Can it be sole/ one of the criteria
15. Is income an indicator
16. What is the level of income
17. Father's income or family's

### **1.4 Occupation**

18. Is occupation a criteria
19. Should it be only traditional occupation
20. What is a traditional occupation
21. Mental or manual labour

### **1.5 Other Related**

22. Is it both educational and/or social backwardness
23. Validity of two fold classification within

## **Backward Classes**

24. Can community as whole be treated as backward
25. Is regional backwardness a valid criteria
26. Can rural areas as a whole be treated as backward
27. Is father's occupation relevant or grandfather's
28. Natural father or adopted father
29. Can the caste of husband become that of wife
30. Relative backwardness or absolute backwardness

## II. Employment

31. Is it only for appointments or also for promotions
32. Can the unfulfilled quota be carried forward
33. If so what is the limit to it
34. In case of promotions is the length of the leap a consideration
35. Can the reservations in reverse be applicable to retrenchment

## III. Quota

36. What is an excessive quota
37. Who decides it
38. Should the quota have a relation with the percentage of population
39. Can old caste census be used in deciding the percentage
40. Are the courts competent to prescribe a quota.

*Those who have attacked compensatory discrimination schemes in courts have compiled a remarkable record of success, while those seeking to extend compensatory discrimination have been less successful.*

**MARC GALANTER**

**Competing Equalities:**

**Law and the Backward Classes in India, 1984.  
p. 511**



tion of 68%...would not be in the larger interests of the state". But later in the course of the arguments before the court, the government stood by the 68% quota. "What happened between July 10, 1961 and July 31 1962 does not appear on record", as the judge ruefully noted. It was in this context that Justice P.B. Gajendragadkar stated that "In this matter again, we are reluctant to say definitely what would be a provision to make. Speaking generally and in a broad way a special provision should be less than 50%" [Balaji vs Mysore, AIR 1963 SC 649-650].

Over the years this reluctant statement by an unwilling judge has acquired almost mythological sanctity. In the ensuing period it was clarified that the limit does not exhaustively cover all categories for whom reservations are made [Suhasini vs Mysore AIR 1966 Mysore]. Although originally made in the context of reservations in educational institutions, the Balaji judgement came to be accepted as a guideline in case of job reservations also [Devadasan vs India AIR 1964 SC; Triloki Nath vs Jammu and Kashmir AIR 1967 SC; Natarajan vs The Director General of Post and Telegraph AIR 1970 Madras]. However later the court explicitly permitted reservations upto 55% [Maharashtra vs Shivaji Garg AIR 1984 SC], cautioned that it should not be taken as a precise formula [Chakradhar Paswan vs Bihar AIR 1988 SC], questioned the 50% limit [Kerala vs Thomas AIR 1976 SC] and even questioned the competence of the Supreme Court to prescribe any such quota [Vasant Kumar vs State of Karnataka AIR 1985 SC]. As a matter of fact, as of now, more than 50% reservations exist in Tamil Nadu, Karnataka, Maharashtra, Arunachal Pradesh, Dadra Nagar haveli and Lakshadweep. The contention over the upper limit is closely related with that over merit. But the real impact of any scheme on the merit principle can not be known by the percentage prescribed. It is subject to many factors other than a mythological figure. The relaxation or otherwise of the minimum floor of qualification, the actual division of reservation into compart-

ments, the number of beneficiaries who succeed on merit, their inclusion or exclusion in the quota prescribed for them and the actual availability of candidates from these groups to fill the quota-- all have a bearing on the issue merit and efficiency. To treat a static statistic an infallible indicator of elusive efficiency in disregard of so many social exigencies is to miss the wood for the trees.

The case of divisions within the backward castes, which was struck down in the Balaji case is no different. This was cited as the reason for the Second Backward Classes Commission's rejection of L.R. Naik's minute dissent. But as of now such sub-classification exist in Andhra Pradesh, Tamil Nadu, Karnataka, Kerala and Bihar. In case of reservation for people of backward areas the courts held them valid in case of Ladakh [Sardool Singh vs Medical College, AIR 1970 J & K], but struck them down in the case of border districts of Punjab [Gurinder Pal Singh vs Punjab AIR 197 Punjab] but again upheld them in the case of Uttar Pradesh [U.P vs Pradeep Tandon AIR 197 SC]. The onus of proof to establish that certain castes are not backward was held to be on the petitioner and anti-reservationists in one case [Rajendra vs Madras, 1968 SC] while in another case it was held to be on the state [UP v. Pradeep Tandon].

An important issue is whether sub-clauses (like 4 of Article 15 or article 16) under which reservations are made, are exceptions to the general rule of equality guaranteed in the first clauses of 15 and 16 and in Article 14 or are these sub-clauses intended to enrich and give meaning and content to the general rule of equality in an inherently inequitable and inequalitarian society like ours. In this matter not only does one judgement differ with the other, but one judge has even differed with himself. In the Devadasan case the majority judgement held that Article 16(4) was an exception to Article 16(1) while the minority judgement held that it was not an exception but a legislative device to achieve genuine equality [Devadasan Vs. India, AIR 1964 SC]. More than a decade later major-

ity judges including Justice V. R. Krishna Iyer, agreed with the earlier minority judgement and held that Article 16 (4) was not an exception. But the minority judges upheld the earlier majority contention. One of the minority judges even averred that the article speaks of 'equality of opportunity, not opportunity to equality' [Thomas Vs. Kerala, AIR 1976 SC]. But a few years later in another case, judges including again Justice V. R. Krishna Iyer held that Article 16(4) was an exception to Article 16(1) [Akhil Bharatiya Shoshit Karamchari Sangh Vs. India, AIR 1981 SC]. Supreme Court evidently is not yet able to unravel that 'peculiar tangle', Nehru spoke about, in a judicious manner.

This selected and selective review of the legal position on some of the important issues should make it clear that it is hazardous to state any position as *the* legal position. Hence an authoritative review of the trajectory of the evolution of the court's view on reservation is difficult. In the initial period upto the Balaji judgement in 1963, the number of cases were not very many nor were the issues that many. Gradually as reservations became socially and politically more important the scope of the Supreme Court widened itself. The frequency increased as the issues multiplied.

Altogether as far as we could ascertain, from 1951 to 1989 approximately 160 cases came up in Supreme Court under articles 15(4) and 16(4). Over 80 of them relate to educational institutions and other similar cases. Government jobs proper do not constitute more than 40 cases, of which overwhelming majority relate to promotions. In all these cases reservations for STs hardly figure, while those of SCs figured prominently in promotion cases or relaxation of minimum qualifications. In case of backward castes, the principle of reservations itself was attacked. It should also be noted that about 40 of these cases relate to reservations other than those that are caste based, like region, place of birth or residence, occupation etc. In ranking of litigant states, Karnataka, Andhra Pradesh and Jammu & Kashmir top.

In the end it is not the confusions and contradictions, with all their qualifying provisions, that is the hall-mark of the judgements. Nor is it merely "the dithering and vacillation on the part of judiciary in dealing with the question of reservations" that Justice Desai commented upon [Vasant Kumar Vs. Karanataka, AIR 1985 SC]. What seems to be striking is that there seems to be no finality on any matter under judicial review. The review of the Indian Law Institute makes a valiant attempt to recapture what is the position on all major issues. Such a review of case law was also undertaken by the court itself [Chhotelal Vs. U.P., AIR 1979 SC] which the Commission quoted at length in its main report (Vol. I). But in the decade that followed many of the major holdings of these reviews burst asunder as the Supreme Court completely re-opened them, as for instance, in the cases of the Akhil Bharatiya Shoshit Karamchari Sangh (1981), Vasant Kumar (1985) and Chakradhar Paswan (1988), to cite a few. In the process, highly specialised debates hitherto confined to academic circles entered court rooms as in the reference to the similarities, between Karl Marx and Max Weber in their concept of class, as in the Vasant Kumar case. But academic work does not seem to have provided any particularly noticeable clarity to the judicial pronouncements, although the latter did provide legitimacy to the positions taken by some of our academic experts. In the end we are struck by the inherently indeterminate character of Supreme Court's stand, which calls for a review of its role in the reservation issue.

In recent years the courts have become an integral part of the agitations on reservation issue. Over the last decade they have very nearly come to play a social and political function which they are not meant for. Practically every major attempt by the political authority, with the approval of the legislature, to grant reservations was resisted by the status quo and court interventions paved the way out albeit temporarily. In U.P., court struck down major part of the government order in 1979. In Maharashtra the quota was reduced by the Supreme

Court in 1984. In Madhya Pradesh the High Court issued a stay order in 1985 which the government did not choose to get vacated. In Andhra Pradesh the government never appealed against the High Court order striking down its decisions in 1986. And recently Allahabad High Court stayed the decision of the U.P. government in December 1990. In all these cases the court interventions have become useful either to upper castes agitators or to the political leaders who were looking for a face saving device, or to both, Courts as institutions are increasingly being perceived as tools in the hands of those who favour the maintenance of status quo.

It is in this light one should view the case against the recommendations of the V.P. Singh government. Initially a large number of petitions were filed both in the Supreme Court and in various High Courts. The apex court transferred all cases to itself. The then Attorney General on behalf of the then government averred that it would take at least 'two to three months' to identify the castes and groups. The Supreme Court in its order on 11 September asked the government not to take any further steps. Meanwhile the Supreme Court Bar Association in a highly improper, if unprecedented move, called for a one day token strike demanding the withdrawal of the order. To put it bluntly the

## Caste and Class in Supreme Court

*....the expression 'classes' is not synonymous with castes*

**Justice Koka Subba Rao**  
**Chitrlekha Vs Mysore,**  
**AIR 1964 SC 1823**

*In determining whether a particular section form a class, caste cannot be altogether excluded. But in the determination of a class, a test solely based upon caste or community cannot also be accepted.*

**Justice Shah**  
**Andhra Pradesh Vs Sagar,**  
**AIR 1968 SC 1379**

*The expression 'backward class' is not synonymous with 'backward caste' or 'backward community'*

**Justice M. Hidayatullah**  
**Triloki Nath Vs Jammu and Kashmir,**  
**AIR 1969 SC 1**

*A caste has always been recognised as a class*

**Justice Hegde**  
**Pariakarumpan Vs Tamil Nadu,**  
**AIR 1971 SC 2303**

*The homogeneity of the class citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens*

**Justice A.N. Ray**  
**Uttar Pradesh Vs Pradeep Tandon,**  
**AIR 1975 SC 567**

professional body pronounced its judgement before the Supreme Court did so. The extreme impropriety of the matter, protested only by a handful of lawyers, seems to have escaped the attention of the legal luminaries leading the majority. On 21 September the Bar Association, in response to a highly provocative coverage of the first self-immolation, itself became a petitioner and moved the court for a stay, which the court refused. As the spate of suicides continued unabated leading to a deterioration in the law and order situation in pockets of North India, the matter came up again on 30 September. The Association cited the law and order situation explicitly as the reason behind the move. This is a specious argument. It suggests that extraneous factors like law and order should be taken into consideration in matters of constitutionality. This is nothing short of an invitation extended by and on behalf of the Supreme Court Bar Association for large scale social violence to influence the pace and course of the judicial process. There are thousands of cases pending before the Supreme Court, including the controversial case of Union Carbide, Bhopal, where the poor and oppressed victims of the world's largest chemical catastrophe are still awaiting justice without creating any law and order problem that can catch the attention of the

Supreme Court Bar Association. The Supreme Court in its order on 30 September merely reiterated its earlier order "without taking into consideration the submissions with reference to the happenings after 21st September". But with the clarification that the court did expect "that the law and order situation shall immediately improve...so that the hearing of the matter can be taken up by this court in appropriate atmosphere". There is an oddity in the way in which the court phrased its reference to the law and order situation while otherwise refusing to take it into consideration. Anyhow the order also explicitly stated that the 'full text of our order shall be immediately released to the press and the government controlled media for the purposes of transmission to the public at large'. However the full text was never carried by large sections of the media. Instead many of them erroneously described it as a stay, an expression never mentioned in the text that they chose not to carry. It served its political purpose.

Presently the arguments in the case are at a preliminary stage. It is difficult to predict its possible course after the change in government. But one of the senior counsels representing the anti-reservationists is now the Attorney General of the new government.

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*We are afraid the courts are not necessarily the most competent to identify the backward classes or to lay down the guidelines for their identification except in a broad and general way. We are not equipped for that; we have no legal barometers to measure social backwardness. We are truly removed from the people, particularly those of the backward classes, by layer upon layer of gradation and degradation.*

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Justice Chinnappa Reddy  
Vasant Kumar Vs. Karnataka  
AIR 1985 SC 1510

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# Agitations

Growing poverty, unemployment and a decadent development process shapes the content of much of the tension over the reservation issue. But the issue has successfully deflected the public concern from such persistent features of our system. Only about 250 million, out of the estimated population of 900 million, are employed in the country. A substantial number of them work in agriculture and allied sectors. The reservation issue however centres around the organised sector. According to the latest *Economic Survey* only about 7.4 million (29%) out of the total of about 26 million work in the private sector. Article 16(4) cannot cover them. The remaining work in the public sector. In the Central Government Service, the subject of the recent agitation, only about 3.4 million people are employed. In government jobs the principle of reservations applies only to new vacancies, subject to the availability of candidates (hence the reason why despite 40 years of having over 22 per cent of the jobs reserved for them, SCs and STs still do not constitute 22 per cent of Central government employees). The new vacancies arise out of retirement of old employees and the creation of new jobs. The former depends on the age limit to recruitment, the retirement age and the average years of service. In the Central Government services, going by the trends in the recent years, approximately 96,000 jobs thus become vacant every year. The new jobs depend on the growth rate of employment, which is consistently on the decline in tune with an equally consistent increase in investment. The decline in the growth rate is sharpest in Central Government services, where recently it touched a new low of 0.7 per cent per annum. In other words the new jobs going by the recent trends, are likely to be around 24,000. Thus in the immediate future, around 120,000 jobs would be created every year in the Central Government services. The situation is no better in other sectors either. But every year gradu-

ates who enter the job market alone constitute two to three million. This grim future conveyed through myriad forms of reality and its images haunt our youth. And ours is a country where about 58 per cent of the population is below 25 years old.

These issues of unemployment and employment, of destitution and development, however are among the least of the concerns of the anti-reservation agitations. Many agitations around the reservation issue that rocked different parts of the country from time to time were in fact not about job reservations at all but about admissions in Medical Colleges. Among the first notable agitations was in the composite Madras State. After the Supreme Court upheld the denial of admission to backward classes in educational institutions in the Champakam Dorai Rajan case in 1951, the Dravida Kazhagam gave a call for protest. Periyar E.V. Ramaswamy Naicker led the agitation in August 1951. It was marked by processions, student strikes and bandhs. In fact Jawaharlal Nehru referred to this agitation while introducing the amendment that brought Article 15(4).

After that for a long period, occasional protests notwithstanding, major agitations did not take place till the late seventies. However agitations demanding preferential treatment for the people of backward regions took place in undivided Assam, Punjab and Bombay and in Andhra Pradesh, Bihar and Uttar Pradesh.

When the Janata government in Bihar, and later in Uttar Pradesh, announced reservation in government jobs for backward castes, both the states were rocked by agitations. In UP a large section of government employees also participated in the agitations. The situation was diffused with the court intervention. In Bihar large scale caste conflict erupted even in the rural areas in October-November 1978, following the decision. The upper caste agitators even at-

## Of Merit and Mediocracy

One of the most enduring arguments against reservations is that it denies opportunities to meritorious candidates. This argument is based on one crucial assumption that marks scored by the students are the only unique measurement of his or her merit. In response many have pointed out that neither can marks represent merit nor can they be attributed to the individual devoid of his/her social, economic, and parental background. As the Commission report succinctly pointed out "merit in an elitist society is an amalgamation of native endowments and environmental privileges" and that the element of privilege should be "duly recognised and discounted for when unequals are made to run the same race". Further assuming that the subjects in which the candidates score high has a direct relation with the job for which they are selected, it is also argued that the absence of meritorious candidates affects the efficiency of the state services. To say the least this is a highly questionable assumption. Besides it ignores all other attributes like honesty, integrity and commitment. In response to this fetishisation of merit and efficiency, another dangerous trend is emerging. This trend bestows social legitimacy to a lack of effort towards competence and professional commitment. In the process, the actual operation of the present system of 'merit and efficiency' is getting lost.

In recent years the credibility of the examination system has declined to such an extent that many colleges, institutions and universities do not believe in other institutions' evaluation and subject students to a further test. In many places the universities subject their own brilliant students to further tests before admitting them to higher courses. Over the years at every stage in the career of a student these filtering mechanisms have sprung up. The consequent proliferation of entrance tests has led to the multi-million rupee industry of private coaching centres which, and not the universities, impart 'merit' among prospective candidates.

One can also see how the system works in central services, the subject of recent controversy. About four to five lakh students appear for the preliminary examinations every year. The number of students selected is determined by the number of vacancies notified by the various ministries and departments of the Central government. But very often they don't notify in time. As the Union Public Service Commission (UPSC) itself ruefully noted in its 38th Annual Report "ministries and departments did not intimate even the tentative number of vacancies. As a result in respect of some examinations the number of vacancies notified initially did not bear any relation to the number of vacancies finally reported for being filled on the basis of the results of these examinations". The preliminaries have two papers: a compulsory General Studies Paper and one out of the 22 optional papers offered. The number of candidates selected at subsequent stages from each subject is in direct proportion to the number who offered it as their option. Thus if 50 percent students offer history (the most popular optional for the last few years) and a further 20 per cent offer sociology (second most popular), then 50 per cent of the next stage are reserved for history students, 20 per cent for sociology and so on.

It was in this process that the latest available figures, for 1984-86, suggest that around 9400 candidates were selected per year for the Mains. But of this those who eventually qualified varied from 8 per cent in 1985, 8.5 per cent in 1984 and 9.5 per cent in 1986. But then if the tentative estimate of UPSC are wrong, not all of those who are qualified will find vacancies to fill up!

Thus in the present system a history candidate, say with 45 per cent marks would be selected over and above candidates who score, say, 75 per cent from less popular optionals like Physics, Engineering, Economics etc. And this meritorious history candidate thus selected (perhaps with a special interest in Ancient India?) over all other students, is expected (or is believed) to contribute to the efficiency of, say, the department of customs or industry! It is this system of merit and efficiency that the votaries of the meritorian principle feel is presently under threat because of reservations.

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*Mediocracy has always triumphed in the past in the case of upper classes. But why should the so-called meritorian principle be put against mediocracy when we come to scheduled castes, scheduled tribes and backward classes..*

**Justice Chinappa Reddy**  
**Vasant Kumar Vs Karnataka,**  
**AIR 1985 SC 1508-09**

tempted to forge an alliance with the dalits (*"Agra-Harijan bhai-bhai. Yeh pichhdi jaati kahan se aayi?"*) while the All-India Backward Class Federation demanded not only reservations but also the unconditional release of all the accused in the Belchi massacre. The caste conflict took a heavy toll as, according to official figures, about 118 people were killed. Finally the situation was diffused with the modifications announced by the Karpoori Thakur government super-imposing the income tax exemption level

mentioned earlier. It must be noted that the anti-Mandal agitation also first took place in Bihar, soon after the V.P. Singh government came to power, in December 1989. It was believed to be an exercise by the Congress(I), then ruling in Bihar to breach the alliance supposed to have been forged between Rajputs, backward castes and minorities in the parliamentary elections that brought V P Singh to power. All educational institutions were closed, briefly, in the third week of December. But soon the agitation pe-

## Economic Criteria: For What?

The use of economic criteria for the identification of Backward classes is one of the much debated issues in the recent agitation. But unfortunately many obfuscations have clouded the issue.

At present economic criteria are used to identify a category called the 'economically backward class' in Andhra Pradesh and Bihar. More or less similar is the case of 'Project Affected People' in Maharashtra. This category has the merit of satisfying the constitutional requirement of being a 'recognisable and persistent collective'. The economic criteria is also used to identify the backwardness of a caste. The Second Backward Classes Commission report used the poverty line as a cut-off point to identify non-Hindu OBCs in central services. It also used at least three economic criteria, including assets, to identify the backwardness of a caste. In Uttar Pradesh Chhedi Lal Sathi Commission used landed assets, not income, to identify the more backward classes among the backward classes. Economic criteria is also used to identify sections within an identified backward caste for whom preferential treatment is to be granted. At present some such income criteria is used to identify sections within BCs in Andhra Pradesh, Bihar, Gujarat, Karnataka, Kerala and Maharashtra. But income in our country is the most unreliable of all economic criteria, except perhaps for fixed income groups who constitute less than five percent of the population. Powerful agrarian elites, some of whose progenies are now asking for economic criteria do not pay any income tax. However in a more systematic manner some sort of economic criteria including parental status was suggested by Justice Chinnappa Reddy Commission in Karnataka, to identify sections within an identified caste. Occupation, instead of asset or income can be used as a criteria to identify a backward class. In 1970 Justice J.N. Wazir commission in Jammu and Kashmir included, among other things, sixty two traditional occupations in its list of Backward classes. but the Supreme Court held the list as arbitrary. Justice C.V. Rane Commission made thus far, the most systematic and comprehensive attempt to identify the Backward Classes on the basis of about sixty-three occupations. It was a thorough attempt to approximate to caste determined social backwardness without necessarily adopting caste labels.

Thus one can note that economic criteria include occupation, assets and income. Further the criteria can be applied in many ways; to identify a social group without formally referring to caste names, to identify a backward caste/class and to identify sections within an identified backward caste. Further it can also be used to identify classes as such, like agricultural labourers, small peasants, industrial labour, fixed income groups etc. The fundamental question is whether reservations and other kinds of preferential treatment are to be used for individuals or to 'recognisable and persistent collectives'. Unless one faces this issue the debate over the adoption of economic criteria will remain 'in the streets that follow like a tedious argument of insidious intent'.

tered out. The Janata Dal also won the assembly elections held in February this year.

By far the most virulent anti-reservation agitation took place in Gujarat. Here also the Janata government implemented reservations for BCs in 1978. However the first Gujarat agitation in 1981, originated over reservations for Scheduled Castes and Scheduled Tribes in Medical Colleges. The government, in December 1980, decided to 'carry forward' reservations to the following years if the quota was not filled due to non availability of eligible candidates in post-graduate medical courses. The decision followed the recommendations of the Medical Council of India. It is pertinent to note here that the Council's other recommendation suggesting compulsory two-year service for all doctors in rural areas was never sought to be implemented by any government.

Soon the agitation went beyond the miniscule post-graduate medical courses and became a generalised anti-reservation agitation against all kinds of reservation to any set of people. Eventually it became a massive communal onslaught, especially against dalits. Bastis and villages were burnt and thousands rendered homeless, as the agitation went on unabated for four months till April 1981. Central and north Gujarat, along with Saurashtra were the focal points. Professional bodies, political parties, police and the press added fuel to the fire. Media in particular played an insidious role in spreading casteist and communal violence. The report of the Inquiry Team of the Editor's Guild of India ("The Cracked Mirror") remains an eloquent testimony to the sufferings of the dalits at the hands of the Gujarati press of Ahmedabad. The agitation eventually influenced the government to appoint the Justice C.V. Rane Commission.

In January 1985, two years after the commission submitted its report, the government resurrected it. It rejected the criteria adopted by the Commission, but accepted the quota and increased the reservations from 10 to 28 per cent for the BCs. Once again an agitation rocked the

state for about five months. Not only political parties, the press and police, but this time the famed Gandhian trade unions in the textile mills of Ahmedabad also got embroiled in the casteist and communal conflict. Muslims, along with dalits faced the brunt of this agitation against reservations for BCs. For one day briefly police mutiny let loose hell in the capital city, when they attacked the office of the *Gujarat Samachar*. Large scale destruction of Muslim and dalit bastis and localities rendered thousands homeless. Para military forces and the army also intervened for a brief period. This time too the All India Newspaper Editor's Conference indicted the press, especially the *Gujarat Samachar*. Eventually the government diffused the agitation by appointing another committee.

In Andhra Pradesh in July 1986, Telegu Desam regime resurrected the Muralidhara Rao Committee four years after its report was submitted and increased the quota for BCs from 25 to 44 per cent. Students took to the streets in protest. The six week agitation came to an end with the High Court quashing the order. The rivalry between the Telegu Desam and the Congress(I) in the state had a role in the agitation. More than a year later this rivalry resulted in widespread conflict between kammas and kapus, sections of whom are identified as BCs. These clashes were however not linked to the reservation issue.

In the light of the history and character of agitations spanning two decades, the factors that govern them and their intent should be obvious. In fact the study done by the Tata Institute of Social Sciences, sponsored by the Second Backward Class Commission (Volume IV) listed and tested nine hypothesis that explain the factors that govern the backlash against reservations. Ten years later the agitation that followed the implementation of some of the Commission's recommendations, chillingly confirm the findings of its fourth volume.

The anti-Mandal agitation took off immediately with the formation of the Anti-Mandal Commission Forum (AMCF) in Delhi University.



The forum and the media attention it received played a crucial role in spreading and sustaining the agitation. Large chunks of anti-reservationist agitators both in Delhi and elsewhere were students. In fact it seemed to have ignited the students particularly in those places where, for the last many years, Central Civil Service were the main attraction for the students. Some

of the universities listed as top ranking in the number of candidates appearing in the examinations held by the Union Public Service Commission (UPSC), were hot spots of the recent agitation. Delhi, Jaipur, Allahabad, Hyderabad, Chandigarh, Patna, Lucknow and Bhubaneswar have repeatedly figured as the universities from which more than 60 per cent of

## Deaths and Disturbances in the Agitation August-November 1990

|                          | Curfew<br>(places) | Para-military<br>interventions | Police firings |           | Caste conflict |           | Suicides   |            |
|--------------------------|--------------------|--------------------------------|----------------|-----------|----------------|-----------|------------|------------|
|                          |                    |                                | No.            | Killed    | Places         | Killed    | Attempts   | Deaths     |
| <b>North &amp; West</b>  |                    |                                |                |           |                |           |            |            |
| 1. Bihar                 | 2                  | 3                              | 5              | 3         | 12             | 39        | 8          | 3          |
| 2. Chandigarh            | 1                  | *                              | 2              | -         | -              | -         | 19         | 8          |
| 3. Delhi                 | -                  | 1                              | 4              | 5         | -              | -         | 20         | 9          |
| 4. Gujarat               | -                  | -                              | 2              | 2         | -              | -         | 5          | -          |
| 5. Haryana               | 14                 | 8                              | 11             | 4         | 2              | 2         | 36         | 24         |
| 6. Himachal Pradesh      | 3                  | 30                             | 3              | 7         | -              | -         | 11         | 8          |
| 7. Jammu                 | 1                  | 1                              | 1              | 1         | -              | -         | 4          | 1          |
| 8. Madhya Pradesh        | 2                  | 2                              | -              | -         | -              | -         | 18         | 11         |
| 9. Punjab                | 12                 | *                              | 1              | 1         | 1              | -         | 29         | 23         |
| 10. Rajasthan            | 1                  | 3                              | 4              | -         | -              | -         | 4          | 2          |
| 11. Uttar Pradesh        | 5                  | 2                              | 6              | 8         | 3              | 7         | 43         | 20         |
| <b>Peninsular States</b> |                    |                                |                |           |                |           |            |            |
| 12. Andhra Pradesh       | -                  | -                              | -              | -         | -              | -         | 2          | 1          |
| 13. Karnataka            | -                  | -                              | -              | -         | -              | -         | 1          | 1          |
| 14. Tamil Nadu           | -                  | -                              | -              | -         | -              | -         | 1          | -          |
| 15. Maharashtra          | -                  | -                              | -              | -         | -              | -         | 1          | 1          |
| 16. Kerala               | -                  | -                              | -              | -         | -              | -         | -          | -          |
| <b>East &amp; Others</b> |                    |                                |                |           |                |           |            |            |
| 17. Orissa               | 7                  | 2                              | 4              | 7         | -              | -         | -          | -          |
| 18. All Others           | -                  | -                              | -              | -         | -              | -         | -          | -          |
| <b>Total</b>             | <b>48</b>          | <b>52</b>                      | <b>43</b>      | <b>38</b> | <b>17</b>      | <b>48</b> | <b>202</b> | <b>112</b> |

\* There are no reports of para-military interventions specific to the anti-Mandal agitation in Punjab and Chandigarh -- presumably because they are already there.

**Note:** The figures relating to Uttar Pradesh excludes the three week agitation following the decision of the government [which at the time of writing this report is called Janata Dal(S)] led by Mulayam Singh Yadav, regarding reservations in state government jobs. Allahabad High Court issued a stay on the order on 6 December 1990.

the candidates come, in the UPSC Annual Reports of the last three years.

AMCF, Delhi University attempted to forge an alliance with some of the upper-caste peasantry of Haryana and Western Uttar Pradesh. At least on one occasion Delhi witnessed large scale lumpen violence reminiscent of the 1984 riots. Two policemen were killed in the violence. Police violence inside a college and indiscriminate lathicharge at least on two occasions were also widely condemned. During the course of the agitation police opened fire on four occasions killing five persons. A private video film by Newstrack (India Today Group) on one of the instances of firing received a lot of attention, largely due to its selective coverage. It also made the Police Commissioner apologise on behalf of the police (for their manner of handling a corpse), some thing which the police is not known to do. As a matter of fact high-profile media coverage has obscured the wider social composition of the agitation in Delhi. It ranged from the elite students of the university to assorted hoodlums, and supporters of BJP and Congress(I).

Elsewhere in the country varying sets of people participated in the agitation. In Himachal Pradesh government employees played a leading role. They went on an indefinite strike for more than a month. The government also invoked NSA and ESMA. Two major instances of indiscriminate firing were reported at Mandi and Chamba in which 6 people were killed. Recently the government ordered a judicial enquiry into these firings. In Haryana the agrarian rich upper caste peasants played havoc in many places. In Jammu communal forces seem to have played a role as the local list includes Muslims as BCs.

Media which otherwise gave so much coverage did not pay attention to casteist violence that took place in many parts of the country. As far as we could gather from diverse sources, giving scanty information, such violence took place in Begusarai, Madhepur, Saharsa and other districts of North Bihar, Patna and Na-

wada in Central Bihar. At one stage the state government imposed a 'punitive tax' in the 150 km stretch between Patna and Barahaiya in North Bihar. In some of these places BCs seem to have played the role of aggressors as is the case with the Pappu Yadav gang. In Hapur, Ballia and Meerut in UP, dalits became the victims of upper caste violence. Casteist violence also took place in Amritsar in Punjab, Rohtak and Bhiwani in Haryana. Altogether in four states, casteist violence took place in 17 districts in which at least 48 people were killed. The coverage of casteist violence being deliberately under-reported, this is probably a gross underestimate.

In Chandigarh six students on fast against reservations were killed by unidentified 'terrorists'. In Punjab both the Khalistanis and the Akali Dal factions were divided over the issue of reservations to Backward Classes.

The anti-reservation agitation in the peninsular states is quite subdued except to some extent in Andhra Pradesh, especially Hyderabad city. But in the state rallies and bandhs took place in defence of reservations. In the eastern states, except parts of coastal Orissa, there was practically no agitation. The uneven nature of the agitation is reflected in the table on disturbances.

The anti-Mandal agitation slowed down after the Supreme Court order on 30 September. The communal tensions generated by BJP's Rath Yatra and the subsequent fall of the V.P. Singh government also relegated the issue to back-stage. Eventually the denouement when it came, went unnoticed. In AMCF, Delhi University, in the recent 'elections', a new leadership replaced almost all of those who played a prominent role during the height of the agitation. Some of the leaders attributed it to casteism. Some criteria this!

However to harp on the widespread unrest among the students haunted by a bleak future is unfair and unjust. What is more significant is the role of institutions in the anti-reservation agitation. First among them are the political parties

who otherwise preside over the fate of the nation. During the last parliamentary elections both the National Front and the BJP included implementation of the Mandal Commission's recommendations in their manifestos. Constituents of the National Front, like the Telegu Desam, which stood by the upper castes and refused to appeal to the Supreme Court in 1986, now became a supporter of reservations. Within the Janata Dal, it eventually became the baby of only one of the factions, at least until the next elections. BJP which promised it in its manifesto led its youth and students' wings to participate in the anti-reservation agitation. Congress(I) President Rajiv Gandhi opposed the Mandal Commission north of the Vindhyas, supported it south of the Vindhyas and in a meeting in Nagpur during the height of the agitations kept silent about it. Meanwhile hoodlums patronised by his party indulged in widespread arson and looting in the Trans-Yamuna areas of Delhi during the agitation. Among the left only the CPI organised a mammoth, but largely unreported rally in defence of reservations in the capital. Left Front government in West Bengal opposed them while that in Kerala supported them.

A remarkably large number of academics took part in a campaign of disinformation on the issues involved. They let biases overtake the social concerns and couched their ill informed interventions with intellectual pretensions. Professors enjoying the status of intellectual legitimacy spread incorrect impressions about the Commission's seven volume report that they perhaps had not even cared to read. A large number of Delhi University teachers who during their strikes, thrice in the last eight years, opposed the introduction of the element of 'merit' in their promotion scheme, suddenly became champions of the meritorian principle. The role of academia has to be seen in the context of the association of academic experts with various commissions on backward classes.

Political compulsions and legal confusions paved the way for the entry of academic experts since about the early seventies. Many of them

became associated with various commissions and committees including the Second Backward Class Commission. But as the issue acquired an emotive character in public debate, some of them who were hitherto confined to incestuous academic circles suddenly found a prospect of becoming middle-class household names. Far to many of them found the opportunity irresistible and succumbed.

The Second Backward Class Commission involved experts at four levels. Its Research Planning Team, consisting of five experts, made many recommendations. Later another ten member Expert Panel made further suggestions. The panel agreed with the Team's observations that 'provisions in respect of socially and educationally backward classes....relate to socially recognisable and persistent collectives' and not to individuals'. Further it had endorsed the observation that in the Indian context caste is a relevant factor to identify such collectives. Yet some of them later denounced the use of caste as a criteria. In the interregnum one of their distinguished colleagues, late Prof. I.P. Desai in his 'Concurring Note' to Justice Rane Commission subjected the observations of these experts to a reasoned critique. He even wondered 'how much this decision (of the experts) was instrumental in suggesting to the (Mandal) Commission in making the position to begin with and also the position to end with without sufficient knowledge of all castes for inclusion....and also not selected for such inclusion.'" (C.V. Rane Commission, p. 111) There is no known response of the experts to this critique by Prof. Desai. The experts also suggested cross tabulation of caste and occupational data of Census from 1891 to 1931 to study social mobility of the caste. And this after leading economic historians have expressed their grave misgivings about the reliability of occupational census data for comparative purposes, especially in this period. The experts' recommendations about one per cent sample survey across the country was rejected by another set of experts, statisticians, as being not a feasible idea. Contrary to the impressions created in the popular mind it was not

## Big Coverage and Bitter Harvest

On 20 September a large number of news papers gave a wide coverage, including a particularly disturbing visual, to a self-immolation attempt by a student of a Delhi University College, against Mandal Commission. Such a form of public protest was hitherto confined to Tamil Nadu, first in 1964 at Tiruchi in anti-Hindi agitation. Five died in such attempts in that agitation. In 1982 when DMK leader Karunanidhi was arrested five committed self immolation. MGR's illness in 1984 caused 12 self immolations and his death in 1987, 26 suicides. But this is the first time that self immolations and suicides as a form of social protest swept across on such a large scale. Altogether 202 people attempted suicide in 15 states, of which 112 people died. The five north Indian states Uttar Pradesh, Punjab, Haryana, Chandigarh and Delhi accounted for more than 140 attempts. For sure it is doubtful whether all such attempts attributed by the media to the reservation issue actually are related with it. But that is besides the point. What is relevant is that even in a country which has a high rate of suicide anywhere in the world (a daily average of 144 in recent years), especially among the youth (85 of these suicides are of those below 30), this form of protest and its spread has disturbing implications.

Many of these people who attempted suicide, it appears from available case studies, are from poor or lower middle class families, including women (30 per cent of the total attempts) and many of them are young. 57 per cent are in the age group of 18 or below and another 24 per cent in the age group 19-25. Amongst the youngest are a 12 year old girl in Himachal Pradesh and a 13 year old boy in Punjab. It is very difficult to imagine that these young people know what they are doing and why. In particular, self immolations, with their demonstration effect and what the psychologists call the self-glorification element, spread fast. 57 per cent of the total attempted self immolations while others used modes like poison and hanging. That so many of our youth were led to this macabre step reflects the moral degeneration that has afflicted our public life. While some of the pro-reservationists dismissed the phenomenon with derision, the anti-reservationists elevated it to the extent of encouraging it.

Indisputably the high profile media coverage including some particularly insensitive visuals, played a catalytic role in provoking more and more people to attempt suicide in protest against the reservations. A Delhi based social service organisation, Sanjivini Society for Mental Health (SSMH) based on some case studies in Delhi concluded that media coverage played a crucial role. A paper presented at the Indian Psychiatric Society seminar attributed the attempts to "reverence historically bestowed upon the concept of self sacrifice, traditional middle class mores, perceived distress, the highly impressionable age, along with media glorification" as the factors behind the phenomenon. Post Graduate Institute, Chandigarh, based on its case studies of 22 attempts, also highlighted, among other things, the role of media coverage in spreading the phenomenon.

But so far not a single responsible body of the media fraternity thought it fit to investigate the matter. Such cynicism and lack of accountability which has driven so many of our boys and girls to their bitter end has ominous implications to our democratic fabric.

the Commission which rejected this suggestion. In all these experts recanted some of their position without any explanation, ignored critiques made by their colleagues from the same discipline, did not take into consideration the studies made by other specialists and finally failed to convince another set of experts about the feasibility of their proposals. Instead ten

years later they woke up and went into a spree of centre-page articles, with the help of other academics. In the process half-truths and white lies spread by the university academia came into circulation that further helped the forces of status quo. Its implications for the legitimacy of universities as centres of learning, in the eyes of the oppressed sections of our population should



be obvious. The academia was able to play this role largely due to the honoured place given to it in the media.

Any reflections on the power and effectiveness of press in this agitation can be understood only in the context of the nauseating role played by the government controlled media. Day after day, Doordarshan, with a coverage of over 300 million, ignored the agitation while all and sundry figures supporting the government were given coverage to an obscene extent. As the credibility of the electronic media plunged to a new low, print media acquired a power that has no relation to its objectivity. The press with some exceptions, announced their editorial opposition to the decision irrespective of their internecine wars with each other. Sensational and sensationalised reporting of the agitation were given wide coverage to the exclusion of the obligations towards other issues. A systematic study of the role of the media has already pointed out the extraordinary extent of coverage given by the country's two leading newspaper chains (S. Shivanandan: Mandal, Mandir and Masjid; Dubious Role of Media, *Mainstream*, Oct 20). In a fit of frenzy the newspapers suppressed crucial facts and highlighted some events beyond all proportions which in turn set off chain reactions leading to more coverage, as happened in the case of self-immolations. In addition to the blatantly casteist abuse that poured out from the staffers, the intellectuals on hire also became useful. In some cases the rejoinders were wilfully suppressed. In the process the line between reporting an event and creating it, between editorial prerogative and professional ethics got lost somewhere. Freedom of the press became an instrument of power in

the hands of status quo, as has always been the case with the government controlled media.

One of the less noticed aspects of the anti-reservation agitation has been the role of the bureaucracy. In some states the bureaucracy and not the Commission, drew up the lists whose basis remained hidden from the public. Even where a more systematic list with public knowledge is drawn, the bureaucracy in inscrutable layers in the labyrinth of government orders has rendered many of them ineffective. Political parties in power usually go by symbols like the quantum of reservations recommended. In the actual order there are many hurdles created. Even on the Second Backward Class Commission, a group of anonymous civil servants played an important role right from 1982 to the last days of the V.P. Singh government. In fact some hints of their role could be seen by those who followed the arguments in the recent Supreme Court case. The role of this faceless bureaucracy needs to be brought to light by a public enquiry. Even the most liberal estimates put the proportion of upper castes in the central government at not less than 65 per cent. Let us note that during the height of the agitation the Class I Officers Association of Central Government came out against reservations, including for SCs and STs in clear violation of the Constitutional provisions that they are paid to enforce.

Thus the reservation issue illustrates the decay that is afflicting bureaucracy, political parties, the media and the academia. In a way the poignant futility of self-immolations that so many of our young people attempted is a bitter commentary on these institutions -- not only on the grim future that haunts them.

# Conclusion

The contemporary contentions over the issue of reservations are thus shaped by a long and chequered history spanned over seven decades. The issue involves questions larger than employment, merit, efficiency and the like. The oppression and marginalisation of increasingly larger sections of society, the nature of economic policies that sustains and generates these, the remarkable resilience of inherently undemocratic ideologies that we inherited, the changing power relations between various social groups and the idioms adopted by them to articulate their conflicts, the ability of polity to contain these conflicts within the parameters of democracy and social justice -- have all a bearing on the reservation issue. In fact the constitutional policy of preferential treatment, of which reservations are a part, took its shape in the context of this restless transition.

Forty years later as the contradictions get aggravated, the contentions confined to lively debates in an Assembly burst asunder to become strife in the streets leading to death and destruction. We are now faced with bitter ironies of our post-colonial existence. The Constitution of independent India announced the death of caste as a juridical category. But it remained socially, politically and ideologically alive. And now constitutional institutions are being kept alive only juridically even when they are being deprived of their democratic content, as they become instruments in the hands of an aggressive ruling elite to retain its power and privilege. On the other hand, people at the margins, either societal or territorial, are increasingly becoming assertive. Witness for instance the restless frontiers on all sides of our land borders now and the movements against displacement and oppression within the country. Reservations in particular and the policy of preferential treatment in general cannot be isolated from this larger political context.

The constitutional promise of preferential treatment was a 'legislative device to effect a genuine equality'. The policy also was an attempt to make oppressed sections partake in building a new social order. But over these years as inequality became more intensified, the oppressed became more restive. And preferential treatment became an attempt to contain the unrest.

In a sense the Mandal Commission saw the job reservations it recommended in this light, when it stated that "it is not at all our contention that by offering a few thousand jobs to OBC candidates we shall be able to make 52 per cent of the Indian population forward.... By increasing the representation of OBCs in the government services we give them an immediate feeling of participation in the governance of this country....the psychological spin-off of this phenomenon is tremendous; the entire community of the backward class candidates feel socially elevated. Even when no tangible benefits flow to the community at large, the feeling that now it has its 'own man' in the 'corridors of power' acts as a moral booster" (Vol. I, Ch. XIII, Para 13.4). Such a moral booster without any tangible benefits is perhaps the only remaining legacy of earlier times as the prevailing anti-welfare, anti-poor atmosphere relegated such lofty goals as social justice and self reliance, development and structural reforms to obscurity. In such a context the moral booster also assumes a distinctly political significance. Defending his decision on Mandal Commission, former prime minister Vishwanath Pratap Singh cautioned that "deep social frustrations can convert themselves into a revolt against the political system itself. The symptoms must be seen and attended to in time. Otherwise discontent seeps in deeply and then it finds violent expression which the status quo society does not understand." (Interview to Indian Express, 23 November)

The status quo society of course never appreciated the state policy in this light. In fact Nani Palkhiwala, the well known constitutional expert, termed the government decision to grant reservations as a "threat to the security of the state". The adverse reactions to any form of preferential treatment from the status quo society must be seen in the context of growing authoritarianism both within and outside the state apparatus in the polity. Strident militancy of communal and obscurantist forces, anti-social violence in the streets by the propertied classes

and the increasing army interventions in civilian conflict are the hallmarks of this growing authoritarianism. And our hallowed modern and democratic institutions are being sucked in by these forces with increasing social sanction. Thus the forces unleashed by the palliative attempts to grant some reservations to some sections in some government jobs becomes yet another challenge to the fruits of hard-won battles of our people. Democratic forces must make a space of their own and rally round in defence of these rights.

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