

QUOTAS WITHIN QUOTAS: A CASE STUDY OF NAGALAND

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DECLARATION

I declare that the dissertation entitled “**Quotas within quotas: a case study of Nagaland**” submitted by me in partial fulfillment of the requirements for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is my own work. This dissertation has not been submitted for the award of any other degree in this University or any other University.

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CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.

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Dedicated to

Apo

Rev. Achumo Kithan.

Aknowledgment

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Acronyms:

SC:	Scheduled Castes.
ST:	Scheduled Tribes.
OBC:	Other Backward Class.
WRB:	Women Reservation Bill.
MBC:	Most Backward Caste.
NHTA:	Naga Hills Tuensang Area.
NEFA:	North Eastern Frontier Agency.
DUDA:	Department of Under Developed Areas.
BRGF:	Backward Regions Grant Fund.
BADF:	Border Area Development Fund.
CMCF:	Chief Minister's Corpus Fund.
CEI:	Critical Employment Index.
ENPO:	Eastern Nagaland Peoples Organization.
DAN:	Democratic Alliance of Nagaland.
KVC:	Kohima Village Council.
NMA:	Naga Mothers' Association.
NWC:	Nagaland Women Commission.
NWHD:	Naga Women Hoho, Dimapur.
ENWO:	Eastern Nagaland Womens' Organisation.
JACWR:	Joint Action Committee for Women Reservation.
PIL:	Public Interest Litigation.
NSF:	Naga Students, Federation.

GBs: Gaon Burahs.

UPA: United Progressive Alliance.

HRD: Human Resource Development.

BPL: Below Poverty Line.

List of Cases

Ashok Kumar Thakur vs. Union of India, Writ Petition (Civil) NO. 265 OF 2006

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A. Peeriakaruppan V. State of Tamil Nadu, 1971 AIR 2303, 1971 SCR (2) 430

Triloki Nath v. J&K State, 1967 AIR 1283, 1967 SCR (2) 265

State of Andhra Pradesh v. P. Sagar AIR (1968) SC 1379

Sabeituo Mechulho & Ors v. St of Nagaland & Ors Writ Petition (C) No.126 (K) of 2011

Rosemary Dzuvichu & Another Vs. The State of Nagaland Writ Petition (civil) 147 (K) of 2011

INTRODUCTION

In a democratic country like India where one of the core principles of the Constitution is the recognition of Equality of all its members without any discrimination, inequality continues to exist in all forms: social, economic, political and cultural. People continue to be excluded from full participation and the realization of their citizenly rights. The core principle of democracy is “Rule of the people, by the people and for the people” but people hardly have any control over their destinies. One of the many reasons behind this persistence of inequality is that India consists of multiple diverse groups and communities. However, while questions of inequality and redistribution are only addressed in group terms, inequality is experienced individually. The group mediates the relationship between the state and individual, with the individual usually being subordinate to the group, as people are typically recognized according to their caste, class, community etc. Besides, groups are not homogeneous in themselves; there are several layers of divisions within a group in terms of gender, ethnicity, class, caste, sexuality, minorities etc. Within a given group, there are always some individuals or groups who are more dominant than the rest of its members, and it is this upper crust of the group which frequently takes advantage of all the benefits administered to the group while the status of the rest remains unchanged.

This leads us to the question of group vs. individual based quotas. Reservations based on group identity often end up benefitting the already advantaged within the group while the deserving suffer. This is because an individual can lay claim to resources only through her identity as a member of a group. Therefore, individuals who may be socially and economically disadvantaged are unable to lay claim on the redistribution of resources just because they belong to a group that is considered advantaged.

Also, when identities are defined through the group, the intensity of identity assertion is greater. People are likely to fight for their interests and demands more vigorously as a group than as individuals. This heightened group identity results in the disintegration of unity between the diverse groups. Heightened group identities further lead to identity politics which can be manipulated by political parties to bolster their vote bank.

A second reason for the persistence of inequality and the exclusion of people from the mainstream arena may be because, though there are formal provisions of affirmative action and preferential treatment through the reservation system yet substantive inequalities go

unrecognized. The structural arrangement of Indian society is such that inequality is socially embedded in the system. Also, the positive action taken is designed to address specifically economic inequality and not to specifically address social inequality. Without recognizing and addressing social inequalities like those based on gender, caste divisions, ethnic groups and minorities it is meaningless to talk about economic justice because it will only end up benefitting the powerful and advantaged groups.

Inequality in itself does not have a specific definition, it exists in relative terms. It can be seen in many forms: economic, political and social. Affirmative action through redistribution is an attempt to bring about a more equal distribution and re-allocation of the existing resources and reservations are instruments of power sharing to give proportional representation to a group on the basis of its group identity. State intervention in the form of reservation is required so as to enable the weaker sections to overcome the “structural inabilities” that obstruct them from competing on an equal level field with the rest of the mainstream.

The historical reason for reservation policy in the Constitution of India was to increase the representation of the weaker sections of society in order to bring about “equality of all” enshrined in the Constitution. The framers of the Indian Constitution felt that some sections of society had hitherto been neglected and therefore required special measures to provide a level playing field to all citizens so that they could be brought at par with the mainstream of society. In line with this, the administrators of the Nagaland government introduced the reservation system for a certain number of tribes, which they felt were lagging behind in administrative employment due to their economic and educational backwardness.

The tribes in Nagaland (where 90% of the population is tribal) come under the Scheduled Tribe category. Even so, the then administrators of Nagaland felt that some tribes required special attention to bring about a more equitable re-distribution of state’s resources. This was the origin of the sub-reservation system for the more backward tribes within the state which was introduced with effect from 1977. Despite the effort for equal distribution of state’s resources, the policy has been marred by many flaws and has become the focus of a power struggle between different tribes in Nagaland. Originally aimed at equality, the policy has become a breeding ground of discrimination and inequality where only the haves enjoy the benefits while the rest suffer. Many tribes which are not under the backward tribe quota are questioning the “deservingness” of the so called backward tribe quotas. The reservation system within the state has become a bone of contention between different tribes in Nagaland. It does not always serve the interest of those people who actually deserve it

because the criteria for the definition of “backwardness” are not properly defined and are subject to a lot of contestations at present.

While the demand for an equitable re-distribution of the state’s resources increases and can be said to be a valid demand of the citizens, it all boils down to the same question of “who is deserving” and how to distinguish the more deserving from the less deserving. What should be the criteria for identifying the deserving? These are some of the prominent questions that are addressed in the first and second chapter of this dissertation. Sections of society who are not included in the share of reservation benefits often feel that they are also disprivileged in some ways and start to demand reservation status. This generates a backlash from groups that are not yet recipients of reservation benefits demanding inclusion in the reserved category. Therefore, the criteria for the definition of “backwardness” need to be adequately defined so as to avoid any discrepancies.

In Nagaland, a second demand by internal sub-groups stems from the women’s groups. The Constitution, through the 73rd and 74th Amendment Act envisaged the empowerment of the grassroots level of governance and the inclusion of the weaker sections i.e. the Scheduled Castes (SCs), Scheduled Tribes (STs) and Women. Therefore, it provided 1/3 reservation for women in local bodies, both rural and urban. However, in spite of the Constitutional provisions, women in Nagaland are yet to be represented in the Municipal Councils as the men in the state have strongly resisted the grant of 1/3 women reservation as envisaged in the Constitution and as provided in the Nagaland Municipal (First Amendment) Act, 2006, passed by the State Legislative Assembly. In spite of the fact that the High Court of Guwahati has directed the state to conduct the Municipal elections with 1/3 of seats reserved for women, the state Government is yet comply with the order and the elections have been postponed indefinitely. Thus, in spite of repeated demands from the women, they are being denied their political right to contest for the Municipal elections as structural in-capacities handicap them from contesting without reservation.

In the third chapter, therefore, the central question is what happens when the dominant members of a group discriminate against members (in these case women) of their own community? If allowing autonomy to a certain group in conducting its own affairs leads to discrimination and exclusion of some of its own members, should the state intervene? How far should the state intervene and what should be the appropriate approach? In an attempt to promote equality, the state formulates certain affirmative measures for some sections of the society but what if those groups which have hitherto experienced inequality and injustice

choose to perpetuate the same with their own group members? These are some of the issues that are raised when examining the demand for women reservation in the Nagaland Municipal Act.

The scenario of sub-groups demanding reservation as a result of under-representation or non-representation is not specific to the state of Nagaland. Looking at the larger landscape of contemporary Indian society, we find demand for sub-quotas on the rise. The most familiar example is the Women's Reservation Bill which has been pending in Parliament **for more than 15 years**. Though the Rajya Sabha had passed the Bill after 13 years of struggle yet it has not reached a consensus to become an Act. One major reason behind this is the demand for sub quotas within the overall 33% reservation, for the OBCs, Dalits and minorities. The Bill in its present form reserves a quota for women per se and does not recognize any distinction of OBCs, Dalits or minorities. Therefore the argument against the Bill is that, if passed in its present form, it will perpetuate further discrimination within the reservation as the women of dominant groups would capture all the reserved seats and the weaker section of women will remain discriminated against and excluded.

Secondly, the Mala-Madiga conflict in Andhra Pradesh over the sharing of reservation quota for scheduled castes is another instance of the demand for quotas within quota. There are 59 castes listed under the category of scheduled caste in Andhra Pradesh, out of which the Mala and Madiga castes constitute about 80% of the scheduled caste population in that state. Both these castes come attached with the stigma of 'untouchables' within the hierarchical caste division. However, within this category of scheduled castes there are further differences between them –which arise from the occupational and hierarchical order of castes. The Malas are considered to be of a higher rank than the Madigas and look down upon the Madigas as lower castes. Consequently, the Malas enjoy a major share of the scheduled castes quota and are unwilling to share this equally with the Madigas. Therefore, the Madigas demand that the SC reservation quota should be divided and each properly constituted subgroup should be given its due because their differential social positions make it impossible for all of them to have equal access to reservations.

Thirdly, in the case of Uttar Pradesh, since the early 1980's the politicization of Dalits and Most Backward Castes (MBCs) is a common phenomenon. On the one hand, the OBCs like the yadavs, lodhis, kurmis and gujars, who have been mobilized in the west UP plains by political parties since the 1960s, are more dominant among the backwards. On the other hand, the MBCs such as the gadarias, jogis, dhiwars, nais, kumhars etc. who have not received

much attention from the political parties are yet to form their distinct identity and do not have a platform where they can articulate their specific needs. Therefore, they remain largely underrepresented in the policy measures that are formulated for the backward classes. These differences in status of positions have led to conflicts between the Dalits and the MBCs resulting in heightened caste consciousness and caste identities. The conflict revolves around issues of social status, distribution of governmental benefits, control over village resources, independent voting, etc. The MBCs complain that a small section of 'forward groups' among the backward such as the yadavs, kurmis, gujars, etc, have benefited from reservations, while the rest remain uneducated and backward. Thus, poor MBCs groups such as gadarias, dhiwars, nais, jogis, kumhars, etc, are the most deprived and therefore, demand a sub-quota within the quota of seats reserved for the backward classes.

Thus, demands for greater and equal representation in the social, economic and political share in the mainstream arena has been on the rise from diverse sub-groups or internal minorities within a group. The phenomenon is not confined to India. Even in the international context, we learn about increasing demands from diverse sub-groups like sexual collectivities, women, physically challenged, cultural minorities etc. Interestingly, in spite of the fact that there has been a large body of empirical evidence pointing towards the increasing demands of the internal minorities the world over, yet the issue of internal minorities has not been given the attention it deserves. There is scarcely any theoretical literature available which deals specifically with sub-groups or internal minorities'.¹ Therefore, drawing from two empirical examples within the state of Nagaland, I have attempted to address the issue of sub-groups within a group or internal minorities to some extent.

Given the backdrop of increasing demands from the less advantaged groups seeking inclusion into the larger ambit of society, and the further increasing demands from the internal groups within a group, countries have adopted different forms of affirmative measures in order to address the question of social justice and equality. Historically, the demands for equality and justice have changed. The question is no longer about the desirability of social justice; the question has now shifted from the 'why' to the 'for whom'. There is a shift of focus from why justice to who is to be secured justice. This is my point of departure for the present study

¹ Except for few works like Avigail Eisenberg and Jeff Spinner-Halev, *Minorities within Minorities: Equality, Rights and Diversity*, Ayelet Shachar, *Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation*, Yagati Chinna Rao (eds.), *Dividing Dalits: Writings on Sub-Categorisation of Scheduled Castes* and few others.

of Nagaland as a case study through which I attempt to examine the rise in demand for sub-quotas and the politics of internal minorities.

In the first chapter, I will survey and examine the criteria of how backwardness as defined in the Constitution and its usage in the formulation of the policy framework. I will further examine how the very definition of backwardness excludes and includes certain sections of society. The criteria used in identifying backwardness in both the First and Second Backward Classes Commission, the Kaka Kalelkar Commission and Mandal Commission respectively, are examined in detail and a comparison is drawn between them. The second part of the chapter deals with the theoretical concept of sub-group.

In the second chapter, taking the example of job reservation in the Nagaland Government, I will explore the question of backwardness and examine the criteria that are associated with identifying the backward groups. I wish to suggest that reservation policy in its present form is insufficient and inadequate to tackle the diverse needs and increasing demands from innumerable sections of the society claiming to be backward which have come to recognize such reservations as their right. This is because the existing definition of backwardness is insufficient to address the issue of social justice.

The third chapter attempts to look into the internal politics of sub-quotas, how the dominant groups within a backward community exclude and discriminate members of their own community. This is attempted through a case study of Nagaland women's demand for reservations in the Nagaland Municipal Elections.

The concluding chapter will bring these strands together to attempt to answer the question of why demand for sub-groups is on the rise and will contextualize the question of sub-groups within the debate of group rights and individual rights, and will further raise questions revolving around backwardness as an attribute of groups or individual.

CHAPTER ONE

Defining Backwardness

“Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override... Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice.”...John Rawls²

The traditional structure of Indian society was based on “graded inequality”,³ as people were divided on diverse lines of caste, class, ethnic, religion etc and inequality prevailed in all rungs of these divisions. Indian society can thus be, said to be a “compartmental society”⁴ where large numbers of communities prevail with diverse kinds of lifestyles having differential access to life chances. The framers of the Indian Constitution at the time of independence were aware of the large disparities and inequalities that plague the masses of the country. They realised the exigent situation at hand in bringing at par the vast majority of people who had been hitherto excluded and had remained outside the domain of political, economic and social arena of the mainstream society. Therefore, the immediate goal was to secure justice to the vast masses who had been hitherto excluded. The Constitution was, thus, modelled on the motto of ‘Justice- social economic and political’. With this principle as the motto of the Constitution, several rights were laid down based on ‘Equality of All’ which is enshrined under Articles 14 to 18.

In every society, members of different communities share a common value system which is considered to be good for all its members. Similarly, in India the Constitution prescribed ‘Equality of All’ as a common good considered to be a shared value of the political community. The Constitutional provision for preferential treatment in the form of reservation is taken as an instrument in achieving this goal. Preferential treatment refers to a condition

² *Theory of Justice*, Accessed on 15.12.2012, from http://www2.econ.iastate.edu/classes/econ362/hallam/readings/rawl_justice.pdf.

³ Ghanshyam shah, eds., *Dalits and the State*, New Delhi, 2002, p.15.

⁴ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India*, New Delhi, 1984, p.7.

where certain individual or a group of individuals are preferred over the rest of others in order to confer some special benefits to them due to historical injustices that the group may have undergone due to their race, national origin, sex, age, religion etc, in order to rectify the inherent inequality of opportunity experienced by these groups⁵. Thus, Equality based on Justice has been the resounding theme of the Constitution ever since its inception in 1950. However, as Aristotle once said, “justice involves treating equal persons equally and treating unequal persons unequally”.⁶ Equality, therefore, has to be accompanied by ‘equality of opportunity’ if justice has to be achieved. Justice in Aristotelian terms thus includes “‘equality’ or ‘fairness’, and this include distributive justice, according to which different individuals have just claims to shares of some common asset such as property”.⁷ Thus, the pioneers of the Constitution envisaged reservation policy as a measure of affirmative action and redistribution aimed towards ensuring Justice to the people of the country,

In order to put directive principles into practice and thereby to reduce deprivation...the fathers of the Constitution made certain provisions known as ‘protective discrimination’. They are related to political reservations (Articles 330 and 332), reservation of seats in educational institutions (Article 15(4) and 29) and reservation of government jobs (Articles 16(4), 320(4), 333, and 335).⁸

Since then, the state has been seen as a welfare state and people have looked upon the state as a saviour to create ‘positive conditions’ to improve their socio-economic condition.⁹ The above Constitutional provisions are themselves suggestive of the fact that efforts have been made for people who had been historically excluded. However, whether the effort yielded the desired purpose or how the effort has become one of the biggest challenges to the country’s democratic principles is a different story altogether. When the reservation system was first introduced in India in the post independence period, the reservation period was limited to 10 years only. However, even after 65 years of independence the reservation policy continue to exist unabated but benefits of reservation have not always been able to reach the really deserving lot as the share of reservation has not been able to spread evenly among the backward classes.

One of the most important reasons for the uneven spread of the benefits of reservation among the backward communities is because the composition of these communities is

⁵ Dr. Sanjay Paswan and Dr. Pramanshi Jaideva, *Encyclopaedia of Dalits: Reservation*, Delhi, 2001, pp. 10-11.

⁶ Cited in Fred Miller, *Aristotle's Political Theory*, Edward N. Zalta (ed.), accessed on 15/12/2012, accessed from <http://plato.stanford.edu/archives/spr2011/entries/aristotle-politics/>.

⁷ Ibid.

⁸ Shah, op. cit., p.29.

⁹ Ibid., p.15.

heterogeneous. In every community there will be some individuals or groups who are more advanced and better placed than the rest. Many at times, it is the upper crust of the community who corner all the fruits of such re-distributional measures. As Paswan and Jaideva writes, “The benefits have not spread evenly because the communities clubbed under the Schedule Castes are themselves not internally homogeneous, some being far less backward than others. The more advanced among them have increasingly cornered the fruits of reservation, keeping the status of the actual downtrodden unchanged”.¹⁰ Therefore, the conditions of the really needy and deserving sections of the backward classes continue to remain unchanged.

In India, the social structure is compartmentalised into several vertical as well as horizontal segments. For example, in Hindu community social structure is based on the Caste system which is divided into four hierarchical groups (Varnas): the Brahmins, the Kshatriyas, the Vaishya and the Shudras. The four Varnas are further divided into thousands of horizontal sub-groups called Jati. Then, there are thousands of Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBCs) who do not even fall within the ambit of the caste structure. Even within each of these divisions the power dynamics of the sub-groups are unequally structured. These examples only display one dimension of the heterogeneous character of the country. Apart from these segmentations there are several other divisions that are based on ethnic, religious, cultural minorities etc. Given the backdrop of this fragmented society, merely identifying the “socially and educationally backward” sections of the country and providing them reservation without taking into account or sufficiently recognising the inherent social inequalities that exist within the backward classes may lead to gross injustices as the benefits of reservation will only be grasped by the upper crust of the backward classes and the unfortunate lower segments within the backward sections will continue to be left out. Thus, in spite of the best intended effort to bring about equality of redistribution of the country’s resources, large chunks of people in the country continue to remain excluded as the benefits of such affirmative action do not reach the really deserving sections of the country. Therefore, constitutional measures of redistribution like reservation most of the times remain as formal provisions and do not ensure substantively equal distribution among the recipients of such benefits. Substantial equality involves taking into considerations dimensions of social divisions and social positioning, for example, Gender, ethnicity, class, caste, sexuality, minorities etc. Ensuring substantial equality means to ensure that structural inequalities are

¹⁰ Paswan and Jaideva , Op.Cit., pp. 23.

removed and groups which have been excluded hitherto must be fully incorporated into the ambit of the benefits of reservation. Thus, the state can play an important role to play in removing inequalities and levelling society at par with one another.

It has also been argued that in India, instead of focussing on social ills like poverty, untouchability, caste based inequality etc there has been an over emphasis on ‘backwardness’ as Bhikhu Parekh has argued.¹¹ Social ills like untouchability and caste remain deeply embedded in the social structure which thrive to widen the gap between the “haves” and the “have nots”, thereby promoting inequality in society. These social ills directly lead to backwardness though the causes of backwardness have perhaps not been given as much attention as they should have been. Instead the focus has been more on the consequences than the causes. As such, there has been an overt attention towards solving the problems of backwardness directly rather than addressing the causes that lead to the state of backwardness.

Subsequently, backwardness has been sought to be reduced or eradicated through a constitutionally mandated reservation of seats for the “socially and educationally backward”¹² classes and also for the Scheduled Castes (SC) and the Scheduled Tribes (ST) of the country. The argument follows that instead of focussing on social inequalities inherent in the structure of Indian society, there is an

Overemphasis on constitutional and legal measures to achieve economic change and social transformation...the problems of social discrimination and economic exploitation have been sought to be tackled primarily through legal, constitutional and administrative measures... to be achieved by a policy of positive discrimination, more specially, by providing for reservations in parliament and in public services.¹³

There is no problem in trying to combat ‘backwardness’ through Constitutional or legal measures. However, the technical problem which arises with such an approach is that there is no consistency between law and the implementation processes. Law may exist in formal terms but its practical implementation may be a completely different experience as there are structural and technical obstacles that emerges when the implementation of such laws is sought. The most common example in the Indian scenario is the dowry system, which the law

¹¹ Bhikhu Parekh, Limits of the Indian Political Imagination, In V. R. Mehta and Thomas, (eds.), *Political Ideas in Modern India*, New delhi, 2006, p.438.

¹² The Constitutional definition for Backwardness is given as “social and educational”.

¹³ S.C. Behar, Reservation: An insufficient Condition for Social Transformation, In Ghanshyam Shah, *Dalits and the State*, New Delhi, 2002, p.312.

had officially prohibited by legislation,¹⁴ yet it is a widely known and accepted fact that the practice continues to thrive in Indian society because it is inherent in the traditional practices of the people and cannot be done away with merely by passing an Act. Similarly, merely focussing on 'backwardness' by formulating a policy of reservation for those considered backward does not sufficiently address the issue of Justice and inequality in society. Therefore, the inherent social inequalities that remain entrenched in the social structure should be addressed sufficiently, if equality has to be achieved at a substantive level.

In spite of these shortcomings, reservation policy continues to be seen as the most popular means of improving the conditions of the backward masses. Undoubtedly, Reservation policy has benefitted many, yet it is also true that the benefits of reservation are increasingly grabbed by the upper crust of the backward sections. These have prevented the benefits of such reservation from percolating through to the sub-groups within them, and the status of these subgroups remains largely unchanged because of their structural location in the social fabric of society. If this is the case, then the end result deviates from the original principal of justice and instead becomes a source of inequality as it perpetuates inequality under the garb of promoting social justice. It only achieves in creating few affluent enclaves among the backward communities. As Uma Ramaswamy writes,

The very success of the policy has brought in its wake a new set of problems. While, on the one hand, protectionism attempts to moderate the inequality between the Scheduled Castes and the rest, on the other hand it has engendered inequality among the Scheduled Castes themselves. The exploitation of benefits by some section of these castes had pushed to the fore the differences rather than the uniformities among them.¹⁵

In the Constituent Assembly debates, H. V. Kamath referred to a statement "In this world there is one flea which is preyed upon by another bigger flea and that bigger flea is again preyed upon by a third flea".¹⁶ This statement is a good example of current Indian scenario. Communities are rarely homogeneous and within a group there are always some groups or individuals who are more dominant and better placed than the rest of the group members and are therefore able to exploit the benefits of such reservation under the garb of group backwardness.

¹⁴ Dowry (Prohibition) Act, 1961. Dowry system is the act of giving gifts to the groom's family at the time of marriage from the bride's family.

¹⁵ Ibid., p.326.

¹⁶ *Constituent Assembly Debates: Official Reports*, Vol. X, 14 October, 1949, p.243.

There has been an attempt to check discrimination emanating from the unequal representation of sub-groups through periodical revision by introducing the concept of 'creamy layer'. The National Commission for Backward Classes defined the 'creamy layer' as "when a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade/profession of high status and at which stage he is normally no longer in need of reservation".¹⁷ Champions of the 'creamy layer' concept were of the opinion that the special rights of the dominant groups within the backward communities should be terminated as many at times it is the upper crust of the backward community that capture all the benefits of reservation and thereby exclude and discriminate their own members.¹⁸ This has the effect of spreading the same disease within their own community from which they were being protected in the first place which in turn further perpetuates inequality. Therefore, they argue that the rationale which backward communities used in demanding special rights should be applicable to their internal groups as well. Thus, if the communities listed under the reservation policy are not periodically revised the very objective and spirit of reservations stand defeated. However, once a community has been recognised as backward the question which emerges is, how do we identify whether a particular community has improved enough to be considered as equal with the rest. Since the criteria for identification of backwardness are vague and defined only as 'social and economic', therefore, it becomes difficult to ascertain who is a backward and who has improved from a state of backwardness to a state of advancement. There is a loophole in the very definition of backwardness therefore the concept of creamy layer though it has been laid down in law yet in practice it stands vacuous.

Reservation policy has also become an arena for political manipulation where political parties try to play the internal minority card to lure voters from the minorities within the larger group. The latest example in Indian political scenario is seen in "the recent offer of the UPA coalition to reserve 4.5 % seats for minorities within the OBC quota of 27% in Government jobs"¹⁹ in order to lure the vast Muslim population in the state of Uttar Pradesh (UP).

In the present chapter, I will look into the criteria of how backwardness is defined in the constitution and its usage in the formulation of the policy framework. I will further examine

¹⁷ *Annual Report on the National Commission for Backward Classes*, New Delhi, 2008, p. 7.

¹⁸ The issue of creamy layer is discussed at length in *Indra Sawhney vs. Union of India*.

¹⁹ R. Upadhyay, Reservation for Minorities- Constituent Assembly Debate- revisited in *South Asia Analysis Group*, Paper no. 4853, Jan. 2012, accessed on 25.02.2012, accessed from <http://www.southasiaanalysis.org/%5Cpapers49%5Cpaper4853.html>.

how the very definition of backwardness excludes and includes certain sections of society. What happens to those people who are a part of the so called advanced communities but yet can be called backward? Are their claims to social justice forfeited just because they belong to a particular group which the authority recognizes as advanced? Do they have rights at all? This can happen in a diverse country like India where caste and class overlap, and the boundary between the advanced communities and the backward communities are not drawn in a definitive manner. Some may be advanced economically and socially but backward in ritual status, while some may be backward economically as well as socially but advanced in ritual status. Some may be backward in all senses of the term but still may be included in the category of advanced communities just because they belong to a community which is considered advanced because most members of that community are advanced in all senses of the term.

The criteria used in identifying backwardness in both the First and Second Backward Classes Commission; Kaka Kalelkar Commission and Mandal Commission respectively, are examined in detail and a comparison is drawn between them. The second part of the chapter deals with the theoretical concept of sub-group.

The backwardness issue:

Questions like who are the ‘deserving’ and what are the criteria for identifying the ‘deserving’ has been a prevailing question ever since the reservation system was introduced in India. The heart of the debate on backwardness has been concerning the criteria for backwardness. Who is a backward? The Constitution defined it as “socially and educationally” backward but the major point of contention with these two criteria arose on the point that, in India, since majority of the masses were illiterate therefore a criteria based on educational backwardness would mean that more than 50% of the population has to be considered as backward. Similarly, social backwardness as the criteria for backwardness is complicated by the overlap between caste and class.

Another point of contention revolved around the fear that since backwardness is not adequately defined therefore, the constitutional definition of social and economic backwardness will only lead to manipulation and misuse, as the term in itself leaves scope for misinterpretation. Article 15(4) defines backwardness as “Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the

Scheduled Castes and the Scheduled Tribes”.²⁰ The word Backwardness is accompanied by the phrase “socially and educationally backward” which implies that any group that is found lacking socially and educationally can prove themselves to be backward and therefore in effect enjoy the benefits of reservation. Therefore, in order to access the benefits of reservation, a community or a group have to prove that they are backward. Some evidence is needed to prove that the group in question is backward. Thus, it can lead to a lot of misinterpretation and discrepancies as communities or groups who are not recipients of reservation will constantly try and prove that they are “socially and educationally” backward, to buttress their demands for the benefits of reservation.

In the Constituent Assembly debates, H. V. Kamath, argued that the word ‘backward’ will create a “paradise for the lawyers”²¹ subject to legal interpretation as groups who can mobilise themselves into politically active groups can press for claims to backwardness just to gain access to resources which demographic welfare states like India are willing to spare for its impoverished population. This is especially true in the wake of recent developments in India. Several cases of internal groups have emerged wherein they increasingly demand sub-quotas within the percentage of quotas that they are already entitled to as a group. Examples can be seen from the Women’s Reservation Bill, the Mala-Madiga conflict in Andhra Pradesh over the share of reservation between the Malas and the Madigas OBCs and in Uttar Pradesh between the Dalits and the Most Backward Castes (MBCs).

Bhikhu Parekh analyses in detail the issues involved in defining the criteria for ‘backwardness’. According to him, “the language of backwardness is not only morally and culturally offensive; it also has great political disadvantages. It divides the Indian society into ‘advanced’ or ‘forward’ and ‘backward groups’ which reduces community bond”.²² Parekh further continues that backwardness is “a matter of degree” some are most backward while others are less, and this creates competition for claims to limited resources²³. Bhikhu Parekh²⁴ has traced the origin of the term ‘backward classes’ in the pre and post-independence era and analysed in detail the strength and weaknesses of the reservation policy in order to address backwardness. According to him, in the Constituent Assembly backwardness was seen as social injustice and to correct it, reservation was seen as the answer to it and almost equated

²⁰ *Indra Sawhney Vs Union of India*, 1992, p.3.

²¹ *Constituent Assembly Debates: Official Reports*, Vol. VIII, 8 June, 1949, accessed on 07.02.2012, accessed from <http://164.100.47.132/LssNew/constituent/vol8p18.html>.

²² Parekh, op. cit., p. 438.

²³ Ibid.

²⁴ Ibid., Pp.437-438.

with social justice. He recognised that the flaws with this kind of approach lie in the deep historical inequalities and disadvantages that prevailed in Indian society which can only be addressed by well laid out programmes for poverty eradication, educational upliftment, economic assistance and other kinds of measures to the afflicted communities whereas reservation policy provides only one way of dealing with the condition of social injustice. According to him the colonial rulers were the first to use the term ‘backward classes’ to mean those castes or communities who were among the poorest and those who lived in the margins of the Hindu society; the Untouchables, the Tribals and Other Backward Classes who later on began to be known as the Scheduled Castes and the Scheduled Tribes and Other Backward Classes (OBCs) respectively. The constitutional framers imported the word “backward” from the colonial rulers and directly started using it in post independence era without further modification, in order to refer to those people who were at the bottom of the society and who were unable to compete with the rest on equal terms.

He argued that the Constituent Assembly used the following three arguments in order to justify the policy of reservation.

1. *Principle of Equality and Justice*: The Constituent Assembly envisaged the provision of equality of opportunity to all its citizens. However, the Scheduled Castes and the Scheduled Tribes were too ‘backward’ and ‘weak’, to take full advantage of the opportunities that are available to them. Therefore, they needed assistance in order to be ‘uplifted’ from their ‘lowly’ state so that they can compete with the rest on equal footing. Hence, Reservation policy was seen as one of the most important instrument to secure equal opportunity to all citizens.
2. *Principle of Inclusion and Integration*: In the past, the Scheduled Castes and the Scheduled Tribes had been ‘excluded’ and even ‘rejected’ from the fold of Hindu society, hence they remained ‘backward’ and ‘weak’. Therefore in order to include and integrate them with the rest, reservation policy was necessary.
3. *Principle of power and democracy*: Reservation in legislatures and government services will ensure equal share of power between the upper Hindu castes and the backward Castes and Tribes. By allocating a share in political power the ‘backward communities’ can take advantage of the opportunity and use it for their wellbeing.²⁵

²⁵ Parekh, op.cit., pp. 440-441.

Bhikhu Parekh²⁶ further raised the issue of internal divisions among the backward groups. As the backward groups are not homogeneous, there are divisions even between them: the upper backwards and the lower backwards and their interests more often do not coincide, some aspire to come out of poverty while some aspire to improve their social status. These make unity between them difficult in order to fight against their backwardness which plagues them. Another fear which Parekh expressed was vote bank politics. There is a possibility that the backward groups will become a tool in the hands of the political parties to increase their vote bank, since backward groups are not a definite group they can be shaped and regrouped by adding other groups and excluding some according to the choice of the parties in power.

Addressing backwardness through the policy of reservation does provide some opportunities to the backward communities but it does not entirely solve the problem of vast inequalities, poverty and different kinds of disadvantages that exist in society. As Bhikhu Parekh had mentioned, it plays only a 'small and supporting role'. This approach further increases the value of reservation by making it a scarce commodity where huge masses of communities must compete to gain access to the benefits it offers. This not only results in backlash from the communities that are not a recipient of reservation benefits but it also heightens internal politics as there are many sub-groups within the backward community who feel dissatisfied with the existing distribution of the reservation benefits and thereby seek to secure more. Since communities are rarely homogeneous in nature, the lines of divisions even among the backward communities are innumerable and only those who have the resources to exploit the advantages provided by reservation can hope to gain access to the largest number of benefits while the more backward within the backward community are often left outside the purview of such benefits. Thus, the demand for sub-quotas within the backward community increases as more and more groups come to feel that they are being deprived of their rights.

In the Constituent Assembly, the question of 'who is a backward' received extensive attention. Some members were against the mention of the word 'backward' in itself as it will result in ambiguity and chaos. According to them, since majority of the country's masses are illiterate and socially backward, mention of the word 'backward' will result in increasing numbers of communities who will claim access to reservation by claiming to be backward. This will further heighten identity consciousness which will lead to division between the numerous communities in India. By designating certain communities as backward or

²⁶ Ibid., p. 440.

advanced it divides them instead of bringing them together on the ground of equality. Therefore they opined for focussing on educating the backward population of the country.

In *Indra Sawhney vs. Union of India* and *Ashok Kumar Thakur vs. Union of India*, the most common objection against the reservation policy has been focussed on the issue that the benefits of reservation will not reach the deserving sections of society but end up benefitting the upper crust within the group. Therefore, the top creamy layer of backward classes should be identified and removed from the lists of backward classes. Thus, the government should check the periodical progress of such classes in order to avoid reservation of seats from becoming a vested interest.

Backward Classes Commissions:

Under Article 340, a Backward Classes Commission was appointed,

To investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove difficulties and to improve their conditions.²⁷

Following this, the First Backward Classes Commission popularly known as Kaka Kalelkar Commission, was appointed in 1953. The Commission formulated the following criteria for identifying the socially and educationally Backward Classes:

1. Low social position in the traditional caste hierarchy of Hindu society.
2. Lack of general educational advancement among the major section of a caste or Community.
3. Inadequate or no representation in government services.
4. Inadequate representation in the fields of trade, commerce and industry.²⁸

However the report submitted by the First Backward Classes Commission was rejected by the Central government on the ground that the tests for identifying the Backward Classes were not objective. Therefore, no action was taken as a follow up on the recommendation of the first Backward Classes Commission. Thereafter, the Central Government decided that no all India lists of Backward Classes can be drawn up and eventually the task of identifying the Backward Classes was entrusted upon the states to formulate individual state wise criteria for tests of backwardness. Consequently, many states went ahead and set up their own Backward

²⁷ *Indra Sawhney vs Union of India*.

²⁸ Sawhney, India..., op. cit.

Classes Commission using their discretionary power to formulate tests for identification of backwardness.

There are three main issues which led to the rejection of the Kalelkar Commission Report, viz.

1. *Caste*: The Commission used caste as a criterion in identifying the backward classes. It interpreted backwardness as a result of social evils like caste and targeted those social evils as a solution towards economic, educational and social backwardness. Therefore, the principle of “using the thorn to remove a thorn”²⁹ was used to justify the usage of caste as a criterion for identifying backwardness. To this, the government stated that “It cannot be denied that the Caste system is the greatest hindrance in the way of one’s progress towards an egalitarian society, and recognition of the specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of castes”.³⁰
2. *Creamy layer issue*: It prepared a list of 2,399 backward castes or communities as backward classes. To this the Government pointed out that if such huge numbers of communities were to be regarded as backward then, “the really needy would be swamped by the multitude”³¹ and no real help will reach to them as the benefits of reservation will be cornered by the upper crust of the backward communities.
3. *Divergent opinions*: There was no unanimity among the members of the Commission regarding the usage of caste as the criteria for identifying backwardness. Three out of five members were against caste as a criterion for tests of backwardness.

Apart from the above three main reasons, it was the last minute letter of Kaka Kalelkar, the chairman of the First Backward Classes Commission, to the president that led to the questioning of the credibility of the Commission’s Report. Kaka Kalelkar, at the end of the investigation realised the danger of using caste as the a criterion for identifying backwardness and became unhappy about the idea of reserving seats for certain section of society and in a letter to the president, he wrote,

²⁹ S. Laxman, Rao, *Society, State and Positive Discrimination: Institutional Interference with Mandal Commission*, University of Hyderabad Ph. D. Thesis, 2011, p. 106.

³⁰ Rao, op. cit., P. 107.

³¹ Ibid.

Being convinced that the upper castes among the Hindus have to atone for the neglect of which they were guilty towards the 'lower' classes, I was prepared to recommend to the Government that all special help should be given only to the backward classes. My eyes were however open to the dangers of suggesting remedies on the caste basis when I discovered that it is going to have most unhealthy effect on the Muslims and Christian sections of the nation. This was a rude shock and it drove me to the conclusion that the remedies we suggested were worse than the evil we were out to combat...This painful realization came to me almost towards the end of our labours. I could not stem the current of opinion within the Commission itself and ultimately decided to side with the majority with whom I cooperated throughout in formulating remedies on caste basis. It is only when the Report was being finalized that I started thinking anew and found that backwardness could be tackled on a number of bases other than that of caste...the problem of backwardness is not merely one of serving a few minorities here and there, but it is a problem of the reconstruction of society itself. It is a changeover from the medieval feudal basis to a modern democratic society based on equal respect for the personality of every individual.³²

He, therefore suggested that the only criteria for identifying backwardness should be to identify the "deserving and poor" irrespective of their community or caste. This will combat community fuelled tensions that may emerge as an aftermath of using caste based criterion of backwardness. To quote him again,

We feel that the investigation into the backwardness in the nation and of the people ought not to have been confined to finding out such sections of the people or such classes, castes, communities or tribes as are backward. We have come to the conclusion that this group investigation is repugnant to the spirit of democracy. In a democracy, it is always the individual (not even the family) which is the unit.³³

These lines of Kaka Kalelkar are clearly suggestive of the fact that caste based criteria for investigation into the social and educational backwardness of a group goes against the ethos of the Constitution as it will arbitrarily exclude and include certain communities from the ambit of reservation benefits and thereby perpetuate inequality. This defeats the very purpose for which reservation policy was envisaged and enshrined in the Constitution. A second threat comes from the tendency of backlash; communities which are not yet a recipient of the benefits of reservation would constantly try and prove to be backward in order to gain access to the benefits of reservation. Thus, their energies instead of striving towards proficiency and merit will be concentrated towards gaining an entry into the category of 'backward classes'. Before long, almost every community in the country will start to demand reservation claiming to be backward which will unnecessarily open a Pandora's box.

³² Shriram Maheshwari, *Mandal Commission Revisited: Reservation Bureaucracy in India*, 1995, pp.44-45, 69.

³³ Maheshwari, op. cit., p.55.

The Report of the Commission was not acted upon and the discretionary power of designing criteria for identifying the socially and educationally backward classes was entrusted to the state thereon with a suggestion to go along economic lines rather than caste lines. However, the Government's proposal of substituting caste with economic criteria was later challenged in *Indra Sawhney V. Union of India* and the Supreme Court ruled against the Government's proposal of identifying economically backward classes. Consequently, the criteria for socially and educationally backward classes began to be formulated differently across the states.

In 1979, a Second Backward Classes Commission was appointed under the name Mandal Commission to determine a criterion for identifying the "socially and educationally" backward classes and to suggest steps to help them overcome their backwardness. The Mandal Commission report came up with eleven 'Indicators' or 'criteria' for determining social and educational backwardness. These 11 'Indicators' were grouped under three broad heads, i.e., *Social, Educational and Economic*. They are:-

1. *Social:*

- (i) Castes/Classes considered as socially backward by others.
- (ii) Castes/Classes which mainly depend on manual labour for their livelihood.
- (iii) Castes/Classes where at least 25% females and 10% males above the state average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas.
- (iv) Castes/Classes where participation of females in work is at least 25% above the State average.

2. *Educational:*

- (v) Castes/Classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the State average.
- (vi) Castes/Classes where the rate of student drop-out in the age group of 5-15 years is at least 25% above the State average.
- (vii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.

3. *Economic:*

- (viii) Castes/Classes where the average value of family assets is at least 25% below the State average.
- (ix) Castes/Classes where the number of families living in Kuccha houses is at least 25% above the State average.
- (x) Castes/Classes where the source of drinking water is beyond half a kilometer for more than 50% of the households.

(xi) Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average.³⁴

The test of Backwardness based on caste has been one of the most controversial issues as has been reflected all the way from the deliberations of the First Backward Classes Commission to the Second Backward Classes Commission to the landmark Supreme Court judgements like *Indra Sawhney V. Union of India* and *Ashok Kumar Thakur V. Union of India* etc. Despite this fact, caste being so entrenched in the social fabric of Indian society, it continues to remain an important criterion in identifying the socially and economically backward classes of citizens. It has been repeatedly upheld in the Supreme Court Judgements like *M. R. Balaji V. State of Mysore*, *A. Peeriakaruppan V. State of Tamil Nadu* etc. that caste is also a class of citizens and if found to be socially and educationally backward, they can be awarded reservations merely on the basis of their social and educational backwardness and not necessarily because of their caste identity.

Another contentious issue is the exclusion of the creamy layer, in a Journal titled *Interpreting Mandal II Judgement: A Fine Balancing Act Or a Missed Opportunity* by Niranjana Sahoo, he quoted the Chief Justice in the Supreme Court judgement *Ashok Kumar Thakur V. Union of India and Others* regarding the creamy layer “extending the benefits of quotas to those who have already attained economic well-being or educational advancement would be unreasonable, discriminatory or arbitrary, resulting in reverse discrimination”.³⁵ Therefore the Supreme Court held in favour of exclusion of creamy layer within the backward classes. . In *Periakaruppan vs State of Tamil Nadu*,³⁶ the Supreme Court held that a backward class once regarded as a backward class cannot remain ‘backward for all times’ as it would ‘defeat’ the very purpose of reservation. Periodical check therefore, provides us an escape from the situation of exploitation by the upper section of the backward classes.

B.R. Ambedkar, the chairman of the Constitution Drafting Committee, on being asked ‘who is a backward community’ replied that “A backward community is a community which is backward in the opinion of the Government”.³⁷ Thus the term ‘backward’ was left to interpretations by the state governments. Ambedkar further attempted to explain the word ‘backward’ by outlining two formulae,

³⁴ *Indra Sawhney vs Union of India*, pp9-10.

³⁵ Quoted in Niranjana Sahoo, *Interpreting Mandal II Judgement: A Fine Balancing Act Or A Missed Opportunity* in *The Indian Economy Review*, p.20, accessed on 17.02.2012, accessed from [http://dreamdiary.in/cms/export/online/modules/analysis/attachments/Interpreting%20Mandal%20-II%20\(IER\)_1216036018126.pdf](http://dreamdiary.in/cms/export/online/modules/analysis/attachments/Interpreting%20Mandal%20-II%20(IER)_1216036018126.pdf).

³⁶ Sahoo, op. cit., pp.383-384.

³⁷ *Constituent Assembly Debates: Official Reports*, Vol. VII, 30 November, 1948, pp. 699-702.

Firstly, there shall be equality of opportunity for all citizens, secondly if this principle was to be operative in its fullest term there ought to be no reservation at all and everyone should be placed at equal footing but there are certain communities who have been outside the administration services thus far therefore there shall be reservations in favour of certain communities which have not so far had a 'proper took-in' so to say into the administration.³⁸

To quote him further,

We have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether.³⁹

These were the justificatory lines that Ambedkar used to explain the usage of the term 'backward' in the constitution in article 16(4). Thus according to Ambedkar, backwardness mainly means those who were not adequately represented in the administrative services.

In *M. R. Balaji vs the State of Mysore*,⁴⁰ the Mysore High Court held that the beneficiaries of reservation has to be in accordance with the constitutional provision of article 15 (4) "socially and educationally backward classes". Therefore, literacy and low employment in government services were considered to be 'intelligible' criteria for educational backwardness the latter being the result of educational backwardness. The court also rejected 'income, occupation and varna' as the sole criteria for social backwardness and decided to include 'status' accorded to the communities by the society in general. To ascertain social backwardness, factors like poverty, occupation and habitation were to be employed. However the question which arises is whether low status is a result of educational and economic backwardness which need to be remedied by preferential treatment or whether low levels of economic and educational backwardness are the result of low status in society. Which factor precedes the other? The implied rationale for social and educational backwardness as the decisive criteria of backwardness was that if a community is educationally advanced it is bound to be socially advanced as well due to the effect of education. Thus, social, educational and economic backwardness were seen as related to one another. Therefore, the cause of one factor was seen as proceeding immediately from the other.

³⁸ *Constitution, debates, reports*, op. cit., pp. 699-702.

³⁹ *Ibid.*

⁴⁰ Dr. Sanjay Paswan and Dr. Pramanshi Jaideva, (eds.), *Encyclopedia of Dalits in India, Human Rights: Role of Police and Judiciary*, Vol.13, 2003, pp.280-290.

The politics of sub-quotas:

The recognition of social justice as the basis for a democratic and egalitarian society has led to the emergence of several programmes of preferential treatment for groups that were considered below the margins of the mainstream society. Several decades ago, the fight had been against the recognition of the rights of the minorities and groups that were not at par with the rest of the society. Their disadvantages may be historical injustices, identity claims, cultural, economic, social and political. However, due to the democratic principles of equality to all citizens and welfarism aim in bringing about an equitable redistribution of state resources so as to ensure social justice to all citizens, the fight has been won to some extent. Today a new challenge has arisen about the question of what happens to those individuals or groups within a backward group that are a minority or are more backward than the rest.⁴¹ How do such individuals or group articulate their needs and demand claims to equal access to opportunities that is reserved to their group as a whole and how to devise policies so as to address the needs of all the members of a targeted groups especially of the most marginalised and excluded lot of the group. This new challenge has prompted the state to revise its welfare policies so as to accommodate the interests and demands of the internal groups within the targeted communities. India is an example of a society that has addressed the issue of internal minorities to some extent.

Though the marginalisation and exclusion of certain individuals or groups within a group has always existed yet very little attention has been given to the issue of internal groups or sub-categorisation of groups within a group. The attention so far had focused more on the dynamics between the so-called forward groups and the backward groups and less on the dynamics within the backward groups. Eisenberg and Jeff Spinner had argued in *Minorities within minorities: Equality, Rights and Diversity* that “most arguments either took for granted the fact that individuals were culturally alien to minority groups by focussing on groups for whom this assumption seemed to fit, such as indigenous people or argued that individual rights were a means by which the solidarity of minorities were easily sabotaged”.⁴² Then they go on to say “in both ways, the putative cultural gulf between liberal and illiberal groups tended to obfuscate the complex politics and pluralism of interest within minority communities”.⁴³

⁴¹ The idea has been taken from A. Eisenberg and Jeff Spinner- Halev’s introductory chapter on *Minorities within Minorities: Equality, Rights and Diversity*, 2005.

⁴² Eisenberg and Spinner- Halev, op. cit., p.4.

⁴³ Ibid.

Multiculturalists like Will Kymlicka argue that “the aim of multicultural citizenship and minority rights is to provide groups with external protections and not to protect minorities in imposing internal restrictions on their members”.⁴⁴ According to them, “the external protections that minority groups seek are valuable because they allow minorities more power to direct their own affairs, and this usually includes interpreting and imposing traditions and practices on their members- sometimes practices that are oppressive and discriminatory against some of their members”.⁴⁵ This clearly brings out the heterogeneous character of a group be it a minority or a majority or advanced or backward groups, members never share the same needs and aspirations and are unequally endowed either by birth or geographical location or several other reasons. In any group (more so in minority groups and backward groups) members are in danger of being oppressed and discriminated by their own fellow-members who may be dominant and more privileged than the rest of them and are better placed to take advantage of the existing opportunities that are granted to them because of their minority character or the backwardness of their community. Here the question which arises is how to create a balance between majority (advanced) vs. minority (backward) and minority group vs. Individual rights. This dynamics directly leads us to the question of whether group based preferences violate the rights of individuals within the minority groups.

The question of group rights or individual rights has been the central debate between the liberals and communitarians. While the liberals contend for individual rights as a priority the communitarians are of the view that it is from the group that the individual derived its well being but when backward members as a part of the protected group are discriminated against by their own dominant members such members are rendered helpless in all dimensions and become unreachable and inaccessible to all forms of measures that are designed especially for them. They become invisible from the sight of the state as well as from the sight of their own communities. Their citizenship rights are thus denied and they become neither refugees who (at least) are protected under some laws of the country nor a recognised minority since they are excluded from the very claims of minority rights which are supposed to address the needs of such members. They become invisible. Then the question which emerges is what happens to those members who are discriminated against by their own members? What mechanism can address such discrimination and to whom such members appeal to claim their rights? In accommodating the minority communities, in the words of Williams,

⁴⁴ Ibid.

⁴⁵ Eisenberg and Spinner- Halev, op. cit., p.5.

If it empowers that community to impose patriarchal hierarchies upon their female members, or to deny rights of equal membership to religious dissenters or cultural non-conformists, then there is a strong tension between the principle of individual equality and the practise of group accommodation ...this leads to a problem which Ayelet Shachar had labelled 'the paradox of multicultural vulnerability: the ironic fact that individuals inside the group can be injured by the very reforms that are designed to promote their status as group members in the accommodating, multi cultural state'.⁴⁶

Shachar further called such internal minorities as "at risk individuals".⁴⁷ Here Nancy Fraser's three dimensional theories of justice can be invoked, the three Rs: Redistribution, Recognition and Representation. Redistribution provides a remedy for socio-economic injustices rooted in exploitation, deprivation and economic marginalisation, Recognition remedies cultural injustice rooted in cultural domination, non recognition and disrespect⁴⁸ and Representation is a remedy for political injustices rooted in misrepresentation, misframing and exclusion.⁴⁹ Fraser's idea of justice is "parity of participation...Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction".⁵⁰ Therefore in order to provide justice is to Re-distribute socio- economic inequalities, to Recognise cultural differences and to Represent the 'political community'. Representation signifies the "political" the "who" of justice; who is to be included and excluded in the political community where struggles for economic and cultural benefits are played which sought to redistributed and recognised. According to her representation is the political framer who prepares the platform for redistribution and recognition. Given that justice can be provided to only those who are included in the political community therefore only when a community has a voice and can participate in "frame-setting" only than that community can be said to be given justice as they become a part of the decision maker themselves. Exclusion from membership of political community would amount to what "Hannah Arendt called 'the right to have rights', that sort

⁴⁶ Eisenberg and Spinner- Halev, op. cit., Pp.27-28.

⁴⁷ Quoted in Gurpreet Mahajan, *Can intra-group equality co-exist with cultural diversity? Re-examining multicultural frameworks of accomodation* In A. Eisenberg and Jeff Spinner- Halev (eds.), *Minorities within Minorities: Equality, Rights and Diversity*, 2005, p.

⁴⁸ Nancy Frazer, *From Redistribution to Recognition? Dilemmas of Justice in a Post- Socialist Age* in *New Left Review*, no. 1/212, July- August 1995, pp. 70-71.

⁴⁹ Nancy Frazer, *Reframing justice in a globalizing world* in *New Left Review*, No. 36, November- december 2005.

⁵⁰ *Ibid.*, p.5.

of misframing is a kind of ‘political death.’”⁵¹ Thus “they become non-persons with respect to justice”.⁵²

Multiculturalists have been accused of promoting inter-group equality and ignoring intra-group equality. Gurpreet Mahajan shares the view that because of this accusation, multiculturalists are forced to invent ways whereby “equality within the community is accommodated along with the commitment to promoting equality between communities...while at the same time promoting diversity”.⁵³ Thus according to Mahajan “the real challenge comes from internal minorities who seek equal treatment within a community” where the question is “whether diversity and equality can co-exist”.⁵⁴

Nancy Fraser has also addressed this question extensively in most of her writings. In her article, *From Redistribution to Recognition? Dilemmas of Justice in a “Post- Socialist Age*, she brings out the dilemma between recognising cultural differences and maintaining socio-economic equality at the same time. She argues that both forms of injustices are ‘intertwined’ and in order to address any of them the other has to be recognised too. However the real challenge arises when both claims interfere with each other when remedy is sought. Remedy for economic injustice lies in “political-economic restructuring” which she calls “Redistribution” and remedy for cultural injustice lies in “cultural or symbolic change” which she calls “Recognition” however the dilemma arises when Redistribution entails “putting the group out of business as a group” while on the contrary recognition entails “valorising the group’s ‘groupness’ by recognising its specificity”.⁵⁵ She used the example of gender to explain the societal structuring of the gender division of labour which favours male workers: higher paid, male domination in manufacturing and professional occupations while disfavours female: lower paid, female-dominated ‘pink collar’ and domestic service occupations. From this perspective it would appear that the remedy lies in deconstructing the identity of women as a group and in the restructuring of political-economic spheres and providing redistribution. However, culturally also women are disfavoured as they are devalued by being subjugated to sexual assault, domestic violence, objectification of women etc. From this angle, the remedy lies in recognising the differences of the women and providing cultural restructuring and recognition of their worth. Thus, we see that both

⁵¹ Quoted in Frazer, *Reframing, Justice, Globalizing...* op. cit., P.9

⁵² Ibid.

⁵³ Eisenberg and Spinner- Halev, op. cit., p. 90.

⁵⁴ Ibid., p.95.

⁵⁵ Frazer, *Redistribution, Recognition, Justice*, op. cit., p.78.

injustices interfere and enhance each other and to provide a remedy for both these injustices would require not only redistribution but also recognition as both claims do not inhabit airtight compartments but are connected and overlap to reinforce each other. To quote Frazer, “cultural norms that are unfairly biased against some are institutionalised in the state and the economy; meanwhile, economic disadvantage impedes equal participation in the making of culture, in public spheres and in everyday life. The result is often a vicious circle of cultural and economic subordination”.⁵⁶ Mahajan also shares similar line of thought when she says that in promoting group difference and allowing minority groups to govern themselves, such minorities might start to suppress and subordinate vulnerable members of their community.

The Indian reservation system has proved to be an example of such subordination as special rights reserved for backward communities are captured by the ‘elite group’ of these communities and people who actually deserve such special rights are deprived of. L.R. Naik, one of the members of Mandal Commission, realised the negative effects of the creamy layer and wrote thus in his note of dissent,

Intermediate ‘backward classes’ had made their presence felt in the caste hierarchical society, either by their numerical strength or their age-old co-existence with other advanced communities in villages and towns... intermediate backward classes perpetuated the treatment they themselves received at the hands of the upper castes, against the ‘depressed backward classes’.⁵⁷

Naik further wrote that the population of the intermediate backward classes and the depressed classes were almost equal (according to 1931 Census, out of 43.70% Hindu backward classes, depressed backward classes constitute 25.56%). He, therefore, recommended that 15% out of the 27% Other Backward Classes (OBCs) reservation should be reserved for the ‘depressed backward classes’.

The argument that the upper crust of the backward section will capture all benefits of reservation policy is not new, but dates back to post Kalelkar Commission Report. When the Commission submitted its report, it listed out 2,399 backward classes. It aroused the attention of the Government towards the creamy layer impact; however, apart from the definition of creamy layer no further safeguards were initiated to specifically address the issue of the internal minorities or the sub-groups within a group. This is still a burning issue as seen from the examples mentioned above. However the fear that these backward communities would use rights benefits to discriminate against their own members and therefore should not be

⁵⁶ Frazer, *Redistribution, Recognition, Justice*, op. cit., pp. 72-73.

⁵⁷ Maheshwari, *Mandal, Revisited, Bureaucracy*, op.cit., pp.11-12.

given special rights is unjustified in a democratic state which propounds equality to all its citizens as its principle. Reservation policy if it claims to aim at inequality prevalent in society must not only recognise formal inequality but must also devise some ways to address the unequal structural arrangements of society by recognising the substantive inequality that continues to plague the country. This can be done first and foremost by acknowledging the fact that the power dynamics within a group is not neutral; some are dominant and more advanced while some are a minority and more backward. If this fact is recognised, policy measures can be formulated in such a way so as to address the needs of the different structurally located sub-groups within a group. The formulation of the concept of creamy layer is one such measure which attempts to recognise the upper crust of the backward groups and measure their level of progress so as to eliminate them if they have reached the level where they no longer deserve reservation. If this concept was to be implemented scrupulously it would lead to an ideal situation where those groups which have progressively advanced can be eliminated from reservation and those groups which are yet to benefit from the reservation can be extended the benefits of reservation.

Reservation, however popular and desirous, if allowed to continue interminably, will cause serious repercussion and backlash to society, one of them being the death of merit and excessive dependence on others resulting in ossification of society. Another unintended consequence could be the fragmentation of society on communal lines promoting a politics of gerrymandering which more often than not results in the erosion of the cohesive social fabric. A third negative consequence could be the increasing effort of communities to gain entry into the backward class category in order to gain access to the benefits of reservation policy instead of striving for merit. Eventually, a point has to be reached or decided whereby the need for preferential treatment will cease to exist or even if a need arises, new means of dealing with the situation will have to be formulated otherwise a country with so much fragmentation and diversification will never be rid of the need to depend on reservations to address inequalities which is not only vertical but horizontal as well.

Backwardness has an inherent exclusionary character as its definition excludes and includes certain sections of society from the purview of social justice by depriving them the benefits of reservation. The very definition of backwardness presents itself as a set of complexities regarding the criteria for the determination of backwardness as shown from the Kalelkar and Mandal Commissions and several landmark judgements of the Supreme Court such as *Indira Sawhney V Union of India* etc. The criteria that are selected for the determination and

definition of Backwardness may result in gross injustices by intentionally or unintentionally excluding certain sections of society. If, a comprehensive criterion covering all aspects of backwardness is not formulated OR if a deserving group does not qualify to be a backward as per the criteria formulated for ascertaining backwardness, then, certain groups will be deprived of the benefits of such affirmative action in spite of their deservingness, and this will promote grave injustices in society. Thus the problem associated with the definition of backwardness can be seen as a case of “misframing” as Fraser had defined.

Given the segmental division of Indian society on the lines of caste, class, religion, ethnicity and the existence of huge inequalities not only among these groups but even within these groups, has given rise to a feeling of deprivation and discrimination to almost every other sub-groups within a group, as they are excluded from the benefits of reservation which they have come to recognised as their birth right. The increasing demand for a sub-quota by the sub-groups within the backward communities demonstrates that the very logic of reservation can be stretched endlessly, from a goal of ensuring social justice and providing a level platform to the minorities and the hitherto excluded groups, the goal must now shift to ensuring substantive equality to the more backward sub-groups within a backward group. Thus, the provisions of reservation to the backward communities have resulted in the rise of new identities within the backward groups i.e the more backward minority sub-groups. These have given rise to a new set of question of whether reservation system has really achieved its original intention of reducing inequality or has it further facilitated or heightened inequalities within the backward groups which are now under the ambit of legally recognised system of reservation policy.

CHAPTER TWO

Reservations Policy in Nagaland: A Political History

The term “Reservation” has a very specific genealogy in the policy discourse of Nagaland. Before the state of Nagaland was created, it was known as NHTA (Naga Hills-Tuensang Area)⁵⁸ with the Naga Hills District forming part of the Assam administrative division and the Tuensang division forming part of the erstwhile North East Frontier Agency⁵⁹. In 1960, following an agreement between the Government of India and the Naga Peoples’ Convention, a 16 Point Agreement was signed⁶⁰ which led to the creation of the state of Nagaland on 1st December 1963⁶¹ and the merging of the two units namely, Naga Hills District and Tuensang division.

The tribes of Nagaland in general are covered by the reservation policy guaranteed under the Constitution of India which reserves 7.5% for the Scheduled Tribes in public employment and educational institutions. However, it was not until mid-1966 that special reservation for any tribe was initiated as all tribes were considered equally backward socially, economically and educationally. Considering the overwhelming tribal population (95%) of Nagaland State, a fear was voiced regarding threats to the future security and rights of the backward indigenous people from the ever-increasing infiltration of the non-tribal population. Therefore in 1966, the Government of Nagaland notified that “in appointment to all grades of services in Nagaland, except exceptional technical posts, preference shall be given to those candidates knowing one of the Naga dialects in Nagaland”.⁶² This order was the genesis of preferential treatment for indigenous tribals in Nagaland and in 1967; it was notified that 80% of the vacancies in the Nagaland State Services were reserved for those “indigenous inhabitants”⁶³ who knew any one of Naga dialects⁶⁴. Thus, based on Articles 335⁶⁵ and

⁵⁸ Nagas has a long history before it came to be known as Nagaland however in brief the history of Nagaland is traced from 1957 onwards after the formation of Naga Hills- Tuensang Area (NHTA).

⁵⁹ Naga Hills- Tuensang Area Act, 1957.

⁶⁰ 16 point agreement between Government of India and Naga Peoples convention, July, 1960.

⁶¹ The State of Nagaland Act, 1962.

⁶² Vide No. APB.1/24/64 dated 25/07/1966.

⁶³ Vide Order No. AR-8/8/76 dated 28/04/1977: For a person to qualify as indigenous inhabitant he or she should have settled permanently in Nagaland prior to 1-12-1963.

16(4)⁶⁶ of the Indian Constitution, a new order was issued in 1972 by which “80% of all appointments to technical and non-technical posts, gazetted and non-gazetted, were to be reserved for the indigenous people of Nagaland”.⁶⁷ And by 1973, 100% appointment to non-technical Grade 111 and 1V and 80% of all other appointments or posts was reserved for the indigenous tribes.⁶⁸

Following the chronology of events, thus, we find that “reservation” was first introduced in Nagaland for the protection and welfare of the indigenous inhabitants (i.e. the Scheduled Tribes of Nagaland) from the outsiders. From then it went on to become a policy for the upliftment of the backward tribes within the State or, in other words, the more backward tribes within the Scheduled Tribes of Nagaland who themselves are a reserved category guaranteed by the Constitution of India.

A part of the Agreement between the Government of India and the Naga Peoples Convention (the 16 Point Agreement) was the special protection guaranteed to the state of Nagaland under Article 371A⁶⁹. Under this Article, another special feature was the provision given to Tuensang District whereby a Regional Council was to be formed under the Governor with six representatives (out of 46 seats) to the Nagaland legislative assembly for a “period of ten years until such time when the tribes in the Tuensang District are capable of shouldering more responsibility of the advanced system of administration”⁷⁰. The Regional Council was created to facilitate the administrative advancement of the Tuensang District Region due to its relative Backwardness as compared to the Naga Hills Districts (Kohima and Mokokchung Districts) of Nagaland. However in 1974, at the completion of the stipulated time of ten years, the then Regional Council of the Tuensang Division was dissolved and Tuensang

⁶⁴ In Nagaland, every tribe speak their own distinctive dialect intelligible only to the members of the tribe. However the lingua franca of the state is Nagamese and English.

⁶⁵ Article 335: The claims of the members of scheduled castes and the scheduled tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State.

⁶⁶ Article 16(4): Nothing in this article shall prevent the State from making any provision for the reservation or appointments or posts in favors of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the state.

⁶⁷ Vide No.APB-2/20/72 dated 02/11/1972.

⁶⁸ Vide Order No. APPT-18/06/67 dated 06/07/1973.

⁶⁹ Article 371 A in short was to safeguard the tribal law, traditional institutions and practices of the Nagas.

⁷⁰The Constitution (Thirteenth Amendment) Act, 1962.

District joined other districts of Nagaland under uniform laws and participated in the elections of the State Legislative Assembly for the first time⁷¹. The dissolution of the Tuensang Regional Council was the genesis of the job reservation for backward tribes in Nagaland⁷². After the dissolution, Tuensang Region was bifurcated and Mon District was created for a closer administration of the region in order to bring about development in the area⁷³. When Tuensang division became a regular part of the rest of the state, an agreement was made between the Government of Nagaland and the councillors of Tuensang Regional Council that the tribes of Tuensang Region would be given 25% job reservation⁷⁴ and the six tribes of Tuensang Region along with one more tribe (Chakhesang tribe)⁷⁵ from the Naga Hills came to be designated as 'Backward Tribes' which also meant that the other tribes automatically came to be known as 'Advanced Tribes'.

According to the 1971 census, the population of Tuensang Region consisted of 35% of the total population of the State but the percentage of state Government employees from this region was as low as 16.08% and 17.47% in technical and non-technical posts respectively (1991 census).⁷⁶ It sent only 20 representatives to the State Legislative Assembly which is 1/3 of the 60 member Assembly. The state administrators felt an urgent need to give greater attention to the tribes of the Tuensang division⁷⁷ partly because of the fact that the tribes within this unit had insignificant representation in the services of the state and partly because

⁷¹ The Tuensang and Mon District (Assimilation of Laws) Act, 1974, (Nagaland Act No.1 Of 1975).

⁷² Here emphasis must be made to indicate that reservation refers only to state government employment. Under this, various employment oriented exams conducted by the state government are also covered an example is Joint Entrance Exam (JEE) for higher technical studies etc. Earlier job reservation was not strictly implemented in all departments but now efforts are being made to implement it in all departments.

⁷³ Later on in 2004, Longleng District and Khiphiri District was carved out of Tuensang and Tuensang Region (now Eastern Nagaland) at present consists of four districts Tuensang District, Mon District, Longleng District and Khiphiri District.

⁷⁴ Mentioned by one of the parliamentary secretaries in a meeting convened by Chief Minister in July, 2007.

⁷⁵ Though Chakhesang tribe do not belong to Eastern Nagaland and is part of the Naga Hills yet geographically the Tizu group of villages (consisting of seven villages) within the Chakhesang Tribe lies on the Eastern side of Nagaland and hence their relative backwardness and insignificant representation in government services were taken into consideration in allotting reservation to the tribe of Chakhesang along with the Eastern Naga Tribes

⁷⁶ The percentage mentioned is of 1991 census which is after two decades when the impact of job reservation had began to show. This indicates how low the percentages of government employees were at the time when reservation policy was initiated.

⁷⁷ Henceforth, referred to as Eastern Nagaland as per the popular usage in Nagaland in present times.

of the relative “backwardness”⁷⁸ of this region. They hoped to improve the quality of life here, socially and economically, by providing them with jobs in government services through reservation. Therefore in 1977, an order was issued whereby,

25% (twenty five percent) of the total number of vacancies of non-technical and non-gazetted posts under the Government of Nagaland shall be reserved for persons belonging to the following tribes which are educationally and economically **very backward** and have insignificant representation in the services for a period of ten (10) years.

Konyak.

Sangtam.

Khiamniungan.

Yimchunger.

Phom.

Chang.

Chakhesang.

Further, it stated that, 25% of all other vacancies out of 80% of the total number of such vacancies already reserved for members of the Scheduled Tribes of Nagaland vide Order No.APPT-18/6/67 dated 6/7/1973 would be reserved for persons belonging to the above mentioned tribes.⁷⁹

In 1979, the reservation policy was reviewed and it was found that the economic and educational condition of other tribes was similarly backward, and therefore “the percentage of reservation for the educationally and economically Backward Tribes was raised from 25% to 33%. The Zeliang Tribe was also now included,”⁸⁰ increasing the number of tribes under backward tribe reservation to eight. This further increased to nine tribes in 1994 when the Pochury Tribe was added to the list of educationally and economically Backward Tribes⁸¹.

Initially, this reservation policy was to be implemented for a period of ten years which accordingly was to expire in 1988. However, after deliberation by a cabinet sub-committee⁸²,

⁷⁸ Here the word backwardness is used for “educational and economic” backwardness as per the definition given by the state and not as “socially and educationally” backward as envisaged in Article 15(4) of the Constitution of India.

⁷⁹ Vide NO. 8/9/76 dated 11.01.1977.

⁸⁰ Vide No. AR-8/9/76 (Pt.II) dated 16/08/1979.

⁸¹ Vide No. RCBR/5/87 dated 24/03/1994.

⁸² Vide No. Cab-20/85(pt) dated 21/01/1988: R.C. Chiten Jamir Cabinet Sub-Committee Report was set up. However no further action was taken on the report and Government decided to arbitrarily extent the Reservation policy till further orders.

it was decided to continue the reservation policy “till further orders”⁸³. In 2008, the allocation of percentages of reservation to the tribes was revised and 33% reservation of jobs were divided between the “Backward Tribes” of Eastern Nagaland consisting of Tuensang District, Mon District, Longleng District and Kiphiri District, and the “Less Backward Tribes” of other parts of Nagaland which states that,

25% of all categories both Gazetted and Non-Gazetted posts are reserved for persons belonging to the 6 tribes of the four Districts of Mon, Tuensang, Khiphiri and Longleng, namely,

Chang.

Khiamniungan.

Konyak.

Phom.

Sangtam and

Yimchunger.

Further, the balance 8% of all categories both Gazetted and Non-Gazetted posts are reserved for the remaining Backward Tribes, namely,

Chakhesang.

Pochury.

Zeliang.⁸⁴

In 2011, the percentage of job reservation was further increased from 33% to 37% with the inclusion of Sumi tribe of Kiphiri District. The distribution of reservation among the Backward Tribes was then fixed at 25% for the ‘Backward Tribes’ of the 6 Eastern Naga tribes and the remaining 12% was divided among the 4 tribes of ‘Less Backward Tribes’; with Chakhesang and Pochury Tribes⁸⁵ getting 6%, Zeliang tribe 4% and the Sumi tribe of Kiphire District was fixed at 2%.⁸⁶ At present, there are 9 tribes covered by the job reservation for backward tribes with more tribes demanding it. At the same time, there is also a demand for a total review of the existing job reservation system.

⁸³ Vide Office Memorandum No. RCBT-5/87 dated 29/09/1993.

⁸⁴ Vide Notification No.RCBT-5/87 (Pt.-II) dated 23.07.2008.

⁸⁵ The tribes of Chakhesang and Pochury were clubbed together because of the fact that they inhabit Phek District and considered similar culturally, socially and economically.

⁸⁶ Vide Notification No. RCBT-5/87 (Pt-II) dated 14th April, 2011.

The Roster System:

As there was no regulation regarding the distribution of government services among the backward tribes, and because the level of education and population among the Backward Tribes was unequally distributed, it was realised that jobs were not being uniformly distributed among the backward tribes. The tribes with a bigger population were not sufficiently represented in the government services in proportion to their population, whereas tribes that have higher literacy rates were able to bag more Government jobs in the competitive examination conducted by the state. For example, Chakhesang tribe with a population of 88,534 constituting 8.68% out of the total population of Nagaland, with a literacy rate of 67.28% has 4,300 (6.8%) Government employees, whereas the Konyak tribe with a population of 1,49,699 constituting 14.67% out of the total population of Nagaland, with a literacy rate of 34.36% has only 3,047 constituting 4.82% Government employees.⁸⁷ These unequal social and educational endowments have created an imbalance in the representation of Government services among the backward tribes. Therefore, a mechanism called the Roster System was introduced⁸⁸ as a measure to safeguard and protect the interest of all backward tribes and to create relative equality in the distribution of Government jobs. Accordingly, a 200 Point Roster table was prepared for the backward tribes of Nagaland whereby job vacancies in the state government were to be rotated among the ten backward tribes which was to be repeated once the cycle is complete. In case of non-availability of candidate from a backward tribe whose turn has come, it will be extended to the next tribe on the roster list to whom no benefit will be extended in the subsequent recruitment year.

Criteria for Backwardness in Nagaland:

Based on the discretionary power given to the state for determining the criteria of backwardness, the framers of the state's reservation policy decided that even though constitutionally the criteria for measuring "backwardness" are "social and educational", yet these two parameters may not be applicable in Nagaland. Therefore it was decided that the parameters for backwardness in Nagaland would be "economic and educational" instead of "social and educational". The peculiarity of Nagaland about which they were concerned was

⁸⁷ Data of population and education mentioned are in accordance to 1991 population census and the number of Government employees are as per the census taken in 1998 by the department of Development of Under Developed Areas (DUDA), Nagaland. This difference in years is due to the lack of availability of records.

⁸⁸ The old 100 Point Roster Table notified vide Notification No. RCBT-5/87 (Pt-II) dated 23rd July, 2008, was revised and new 200 Point Roster Table was notified vide Notification No. RCBT-5/87 (Pt-II) dated 14th April, 2011.

that more than 90% of the population of Nagaland comes under the reserved category of Scheduled Tribes and has an egalitarian tribal character of community life; therefore, rigid class or caste structure does not exist as compared to other states of the country. A huge gap between the tribes in terms of economic, social and education also does not exist, and hence it was felt that, the parameters applicable in other states may not be applicable in Nagaland. As such, the usage of the word “socially” (as defined in the constitution and as per the popular usage in other states) as a parameter for backwardness would be out of context.

However, the parameters for determining economic and educational backwardness were not defined properly and were left to the discretion of various committees set up. Till date, three such committees have been set up to examine the job reservation policy of the state and to recommend measures to help the upliftment of the backward tribes. They are the Banuo Committee Report,⁸⁹ the Kevichusa Committee Report⁹⁰ and the Temjen Toy Committee Report.⁹¹ The following three sources were used as data by the committees to ascertain the level of backwardness of a tribe; population census, literacy figures⁹² and the number of government employees’.⁹³ The Backward tribes in Nagaland were classified into two categories; ‘Backward Tribes’ and ‘Less Backward Tribes’. The former refers to the Eastern Nagas consisting of four districts, namely, Tuensang, Mon, Khiphiri and Longleng Districts; and the latter consist of Sumi tribe of Kiphire District, the Tizu group of Chakhesang tribe (both under the erstwhile Tuensang district), Pochury tribe and Zeliang Tribe.

A unique feature about the tribes in Nagaland is that tribes are divided on geographical lines, in other words a particular tribe will be concentrated in a majority in a specific region or a district. For example, Tuensang district consists of five major tribes, namely, Chang, Sangtam, Khiamniungan, Yimchunger, Phom and some villages of Sumi tribe. Similarly,

⁸⁹ Vide Notification No. NO. RCBT-5/87 (Pt) dated 4th July, 2007; this committee was set up to examine and review the general working of the existing reservation policy and to suggest changes regarding inclusion/exclusion of tribes.

⁹⁰ Vide Notification No.RCBT-5/87 (Pt-II) dated 18.07.2008; this committee was set up to suggest a proper benchmark or yardstick for determining backwardness for the purpose of prescribing job reservations.

⁹¹ Vide No. AR-3/GEN-194/2009 (pt) dated June 29, 2010; this committee was set up to examine the findings and report of Kevichusa Committee.

⁹² It determines the educational level of a tribe in comparison to its population.

⁹³ It determines the economic condition of a tribe in comparison to its population.

Sangtam, Yimchunger and Sümi tribes inhabit Kiphiri Districts.⁹⁴ Zeliang tribe inhabits Peren district, Ao tribe is concentrated mostly in Mokokchung district, Lotha tribe is concentrated in Wokha district, Chakhesang in Phek District and so on. The geographical division and distinction creates an overlap in the usage of tribes and districts so that when a mention of Tuensang District refers to the tribes of Chang, Sangtam, Khamniungan, Yimchunger, Phom and Sumi and similarly when Peren district is mentioned, it is referring to Zeliang tribe and so on. Therefore, the districts and the tribes are used interchangeably. Therefore, when the reservation policy was first formulated, its distribution was supposed to be based on the backwardness of an area or region but slowly, because of the geographic concentration of the tribes within an area, it led to the distribution of reservation on the lines of tribes and backwardness began to be identified according to data collected tribe wise. Thus, geographical location remains an important criterion in ascertaining the backwardness of a tribe. This claim can be justified better if we focus more closely on three tribes namely, the Sumi tribe of Kiphiri district, Chakhesang tribe under Phek district and Rengma tribe of Tseminyu Tehsil.

Firstly, we shall examine the case of Sumi tribe. Though the main homeland or base of Sumi tribe lies in Zunheboto district, it shares a border with Kiphiri District and some of its villages (7 Sumi villages and 6 mixed tribe villages according to 2001 census) extends to Kiphiri District and shares similar socio-economic conditions along with the two other major tribes: the Sangtam and Yimchunger of Kiphiri district. Now, Kiphiri District comes under Eastern Nagaland and has been covered by the 25% reservation of the Eastern Nagas ever since reservation policy was introduced in Nagaland. Though the Sumi villages that were in Kiphiri District was part of erstwhile Tuensang division under NEFA, yet the Sumi tribe in general falls under the advanced tribe's category and is not entitled to job reservation. Therefore, in spite of the fact that these villages are as backward as the other tribes of Kiphiri district like Sangtam and Yimchunger who are entitled to a share in reservation, yet the Sumis of Kiphiri were long denied a share in the reservation. It was not until 2011 that a 2% was given to the Sumis of Kiphiri district,⁹⁵ after many representations⁹⁶ were submitted to the Government of

⁹⁴ In the Eastern side of Nagaland the tribes inhabiting the four different districts overlap in other words a single tribe can be found on all four districts however a tribe always have a base area where majority of their villages can be found and practicing their local culture and dialect. This is also true in other parts of Nagaland.

⁹⁵ This reservation benefit was extended only to the section of Sumis under Kiphiri district that has a low level of economic condition and educational backwardness. The Sumis of Kiphiri were part of the erstwhile Tuensang Division under NEFA. The benefit was not extended to the whole tribe of Sumi as they were under the category of advanced tribe and considered to be relatively higher in terms of economic and educational level.

Nagaland and a committee was constituted to examine the desirability of including this section of Sumi tribe before the demand was eventually granted.

Secondly, the Tizu group of Chakhesang tribe (consisting of seven villages) was a part of erstwhile Tuensang Division under NEFA and the tribe as a whole had been beneficiaries of the reservation policy ever since its inception. However, in 2008 when backward tribes were divided into 'Backward Tribes' and 'Less Backward Tribes' the 33% reservation was also divided between the two categories; 25% for the 6 tribes of 'Backward Tribes' category and 8% for the 3 tribes of 'Less Backward Tribes' category. The division led to a reduction in the share of the Chakhesang tribe from 4% to 2.6%⁹⁷ which prompted the Chakhesang Peoples Organisation (CPO) to file a Public Interest Litigation (PIL) in the Guwahati High Court against the state Government on job reservation of backward tribes in Nagaland.⁹⁸ Meanwhile, the share of Chakhesang tribe increased from 2.6% to 4% and until the present reservation policy is reviewed the current status will remain.

Lastly, the Rengma tribe of Tseminyu submitted a memorandum⁹⁹ wherein they pointed out that over the past 15 years from 1989 to 2004 their tribe had been negatively represented in government services (2.72% government employees) with regard to employment as no candidate of their tribe had been able to qualify in the state conducted exams like Nagaland Civil Service (NCS) and Nagaland Police Service (NPS). Between 2003 and 2004 no Rengma candidate could qualify for the Nagaland Public Service Commission (NPSC) and even in other departments their tribe's representation was very low.¹⁰⁰ Therefore their demand was that Rengma Tribe should be considered for inclusion in the reservation policy for the backward tribes. However, the demand of this tribe was not granted.

One of the reasons why the demand of the Rengma tribe was not entertained is because this tribe comes under the category of 'advanced tribes' and shares the same geographic location, and has the same access to infrastructural facilities, as the other advanced tribes. However,

⁹⁶ Memorandum No.P/KDSH/R-1/2004-05 dated 27.04.2005.

⁹⁷ The reduction was done following the Banuo Committee Report that the three tribes had improved positively and therefore its share in reservation can be reduced and henceforth categorized as 'Less Backward Tribes'. They maintained that the Chakhesang villages in Tizu area still need assistance and should be retained within the reservation policy; however the rest of the tribe need not be retained.

⁹⁸ The case is sub judice in the High Court of Guwahati.

⁹⁹ Vide Memorandum from Member of Legislative Assembly 12 dated 28/03/05.

¹⁰⁰ Accessed on 18.04.2012, accessed from [www. Rengmastudents.in/activities/reservation](http://www.Rengmastudents.in/activities/reservation).

the grounds on which the Rengma tribe was demanding reservation were that in spite of the fact that it comes under the 'advanced tribe' category, and the statistics portray it- as more advanced than those in the backward tribe category, the ground reality is that the level of their representation in employment is very low. Though the census data shows a high rate of literacy, it does not imply that there is an equal rate of employability because to be counted as literate one simply needs to know how to read and write in any one language which does not guarantee employment. Even a person who does not have a formal education can become literate if he learns how to read and write. This is how statistics can be deceptive as they count every head that can read and write as literate without specifying the eligibility of a person for employment. Unless proper criteria for identifying employability are formulated and implemented, examining the statistics from a purely statistical point of view does not provide a comprehensive tool for identifying deserving people.

In all these three cases we see that an important feature which determines the backwardness of a tribe is its geographical location. It is also true that the more remotely located a tribe is the more backward it is. Thus, remoteness and inaccessibility due to poor connectivity adversely affects the infrastructural development of an area thereby resulting in backwardness of the tribes. This is especially true in the case of Eastern Nagaland as is evident in the *Nagaland State Human Development Report*,

On the whole, the level of socio-economic development in the western regions of Nagaland is higher than in the eastern side. This is because contiguity to Assam provides better connectivity while on the Myanmar side accessibility still presents formidable problems. The present Mon and Tuensang districts were also part of the 'un-administered areas' during the British period.¹⁰¹

In general,

Nagaland's remoteness is one of the factors that has adversely impacted the spread of banking infrastructure, availability of credit, and consequently, industrial development in the State. During 2001, credit deposit ratio (CDR) for Nagaland was only 13.6, the lowest in the country. The low CDR has hampered the ability of the State to break the vicious cycle of remoteness and inability to attract capital flows due to overall resource-deficiency, which is made worse by the presence of continuous insurgency. Thus, Nagaland has been unable to effect key investments (government and private) to develop infrastructure and accelerate the growth of the economy.¹⁰²

Low connectivity can also be taken as a criterion for determining backwardness, and awarding reservation to a tribe.

¹⁰¹ Government of Nagaland, *Nagaland State Human Development Report*, Kohima, 2004, Pp.25-26.

¹⁰² Ibid., p.24.

Apart from the existing backward tribes who are already covered by the job reservation system, other areas like “Meluri subdivision in Phek, Bhandari in Wokha, Peren in Kohima and Pughoboto in Zunheboto”¹⁰³ have been identified as backward areas by the Government. However, these areas or the tribes living in them are not entitled to reservation because the tribes themselves are designated as ‘advanced tribes’. As such, despite living in areas which are clearly backward in all senses of the term, yet they are ineligible for reservation because the tribe they belong to is listed under the category of ‘advanced tribes’ on the basis of other segments as of the tribe living in more developed areas are deemed to be “educationally and economically” advanced. Such cases show that awarding reservation based on tribe instead of area can also lead to gross injustices to those who are deserving. Thus, allotting reservation tribe wise also has its defects as people who are equally backward in all aspects of life chances may be left out because of the ‘advanced tribe’ tag.

Why are Government Jobs so Important?

Economically, government jobs are considered the best avenue for career aspiration and seen as a prestigious and secured occupation. In the words of former Chief Secretary, Shri R.S.Pandey, “The Government is very visible in Nagaland. As an employer, the Government is perhaps the largest. Nagaland has one of the highest proportions of government employee to civilian population ratio in the country”¹⁰⁴.

This shows that Government is regarded as the major source of employment and further,

The responsibility of providing employment is viewed as an exclusive preserve of the Government. This misconception is on account of its huge workforce and the magnitude of the workforce is primarily due to non existence of private players/enterprises with capacity to provide employment to the educated unemployed youths. With the annual increase in the turnout of graduates from educational institutions and the resultant increase in job seekers, there is a widespread demand for creation of posts within the Government set-up to generate employment.¹⁰⁵

Thus, with increasing number of educated qualified youth each year there is a subsequent increase in competition among all tribes of the State to gain access to government jobs.

Despite the general backwardness of the tribes in Nagaland, education arrived very early, a legacy of the British Missionaries. Education is viewed as an important aspect of life towards

¹⁰³ Ibid., p.26.

¹⁰⁴ Government of Nagaland, *Cost of Engaging and maintaining Government Employment, Directorate of Evaluation*, Kohima, publication No.53, 2008, p.5.

¹⁰⁵ Ibid.

social and economic mobility and for improving the quality of life. This leads to the production of large numbers of educated youths year after year with limited scope for employment as there are few opportunities to venture out either in entrepreneurial activities or in other areas. Thus, the level of unemployed youth increases year by year which results in an unemployment crisis.

Another factor is due to the cultural distinctiveness of a tribal way of life, so that not many attempt to venture out outside the State except for educational purposes. Not many Nagas seek employment outside of Nagaland (though this trend is slowly changing) and those who dare to venture out are not encouraged. Thus there is pressure on the state Government to generate more employment, leading to greater competition for State government jobs among the tribes.

Socially, tribe endogamy regulates the marriages of the Naga tribes and intermarriages among the tribes are not encouraged. Tribals do intermarry but this is not a common trend and many people prefer to marry within the tribe. Intermarriages occur mostly in urban areas where intermingling of different tribes happens through various platforms but the trend is rare in villages where eighty two percent (82 percent according to 2001 census report) of the population resides. In most cases, the first preference for a suitable partner would be sought within the tribe and not outside. As we can see, there is a distinctive tribal identity associated with each tribe which regulates cultural practices and a strong feeling of belongingness and oneness bonds the people of Nagaland towards their own individual tribe. This explains why the demand for equal representation of all tribes in government jobs arises. When one tribe is seen as better represented than tribes with little or no representation, the latter feel deprived resulting in intense competition among the tribes. Thus, government jobs are considered as prized possessions and have become a bone of contention among the different tribes of the state with more tribes demanding to be included in the beneficiaries of reservation policy.

Employment in Government jobs is seen as an indicator of an individual or a tribe's well being which serves as an instrument to measure the living standards of a tribe in Nagaland. Therefore, the rationale behind reservation of Government jobs was to improve the living standard of the backward tribes and to ensure greater representation in the institutions and governance of the state. But, the question of who should be called a backward tribe involves a certain amount of ambiguity as the framers of the Reservation policy in Nagaland had only specified backwardness as "education and economic", whereas, parameters for identifying the "educationally and economically backward" tribes were left to the discretionary powers of

the three Committees¹⁰⁶ that were set up consecutively to examine the reservation policy. The question of who is a backward becomes further complex especially when only some areas are declared 'backward areas' while the benefits of job reservation are not extended to these areas. These areas include the "Meluri subdivision in Phek District, Bhandari in Wokha District, Peren in Kohima District and Pughoboto in Zunheboto District".¹⁰⁷ Though these 'backward areas' are covered by all other schemes and programmes that are available for the development of backward areas (irrespective of backward or advanced tribes) viz. the Backward Regions Grant Fund (BRGF), the Border Area Development Fund (BADF), the Chief Minister's Corpus Fund (CMCF) and the Capacity Building Fund etc. Yet these areas are only called backward but are not eligible for job reservation. So, the next question is what qualifies a backward tribe or an area to become eligible for job reservation and what disqualifies them. We shall attempt to find out the eligibility of a tribe by analyzing the tests that the three Committees have employed to identify the tribes that are eligible for reservation.

Critical Employment Index:

The committees that were set up for examining the policy of job reservation had under taken an extensive study of the socio-economic and educational condition of the backward tribes vis-a-vis the other tribes. They had adopted a formula of fixing a standard criterion called the "Critical Employment Index". The formula is as follows,

If, X is the total indigenous tribal population of Nagaland, and Y is the total number of government employees of indigenous tribes at that point of time, then,

$$\text{Critical Employment Index} = (Y/X) * 100.$$

Example:

It follows then, that if the Employment Index, say, for Konyak Tribe at a particular point of time is desired to be determined, and if at that time, the total population of Zeliang Tribe is X1 and the total number of Zeliang Tribe employed if Y1, then the

$$\text{Employment Index of Zeliang Tribe} = (X1/Y1) * 100.$$

¹⁰⁶ As mentioned earlier, the three Committees that were set up for examination and review of the Job reservation policy were Banuo Committee Report, Kevichusa Committee Report and Temjen Toy Committee Report.

¹⁰⁷ Government of Nagaland, *Nagaland State Human Development Report*, Kohima, 2004, p.26.

Using this formula, the numbers of government employees of the backward tribes vis-à-vis other tribes are determined in order to ascertain the Critical Employment Index. The same formula is used to determine the socio-economic and educational status of the tribes. This employment index is then compared to the socio-economic and educational indicators of the tribes in order to ascertain the eligibility of a tribe to be awarded the benefits of job reservation or to be removed from the reservation. It is also found that low socio-economic and educational indicators of the tribes are closely related to low employment in government jobs which shows that the number of government employees is indicative of a tribe's standard of living. Hence, low socio-economic and educational condition will automatically lead to low employment levels and vice versa. The tribes whose employment index is found to be low or lesser than the Critical Employment Index are considered eligible for reservation which qualifies a tribe for job reservation and the reverse of which will automatically lead to a tribe's disqualification for job reservation.

Area vs. Tribe:

However, such criteria leave out the scope for an area wise system of reservation by focusing on the tribe as a whole and this is where the flaw of the formula emerges. Some areas located within the advanced tribe territory or district may be backward but can be disqualified for a reservation, as the test of backwardness for awarding reservation is done only based on the tribe as a whole and not on the basis of an area. Therefore, those tribes which show high measures of socio-economic and education levels will be automatically disqualified for reservation despite the fact that some areas within their districts or territory are declared to be backward areas. Because the evaluation of backwardness is done only on the basis of the tribe as a whole, these irregular backward areas are neglected. Thus, these areas despite being backward are not entertained as potentially eligible for awarding reservation benefits. The tribe-based criterion for determining the eligibility of awarding job reservation can lead to gross injustices to those backward areas located within the district of an advanced tribe. Thus, the geographical location of an area despite can work against them by disqualifying them from the benefits of job reservation, simply because they belong to certain advanced tribes or belong to backward areas that are situated within the territory of advanced tribes. Thus, it can be safely said that the geographical location of an area serves as one of the basic determining role in qualifying or disqualifying a tribe from the benefits of job reservation.

Ascriptive vs. economic:

Caste based criteria in identifying backward classes have been one of the most controversial issues ever since the Kaka Kalelkar Commission Report. The issue continued to burn after the Mandal Commission and finally landed in the Supreme Court which is made pronouncements in some landmark judgements like M.R. Balaji v. State of Mysore, State of Andhra Pradesh v. P. Sagar, Triloki Nath v. J&K State, A. Peeriakaruppan, etc. v. State of Tamil Nadu, Indra Sawhney and Ors. Vs. Union of India and Ors., etc. The Supreme Court finally ruled that,

Unless 'caste' satisfies the primary test of social backwardness as well as the educational and economic backwardness which are the established and accepted criteria to identify the 'backward class', a caste per se without satisfying the agreed formulae generally cannot fall within the meaning of 'backward class of citizens' under Article 16 (4).¹⁰⁸

Similarly, ascriptive identity like tribe, caste, religion etc should not be the sole basis for determining a group's backwardness. It is only when a group irrespective of caste, tribe or religion, is proven to be backward based on the objective criteria employed to ascertain the group's backwardness, should the benefits of affirmative action awarded. However, the collection of tribe wise information like socio-economic, educational, and employment levels are a necessary exercise in order to assess their levels of backwardness vis-à-vis other tribes, yet evaluation of a group's backwardness based on their ascriptive identity like caste or tribe should not be the only basis for reservation. This can lead to unjustified discrimination and may even perpetuate inequality by technically excluding some sections of people who may deserve reservation but are excluded because of their ascriptive identity; they may belong to a higher caste or advanced tribe or they may belong to religious minorities. Coupling other tests of backwardness along with a tribe-based assessment would be a step closer to the egalitarian ethos of the Constitution.

Eleven indicators of Mandal Commission vs. Critical Employment Index:

The Mandal Commission had employed 11 indicators of social, education and economic, in order to ascertain the backward classes of the country. The 11 indicators are divided under three sub heads; social, education and economic indicators. Separate weightage were given to

¹⁰⁸ <http://legalservicesindia.com/article/article/protective-discrimination-846-1.html>

the indicators, social indicators were given 3 points each, 2 points each to educational indicators and 1 point each to economic indicators. The total score will add up to 22 points, and those selected castes which score 50% (11 points) out of the total score will be eligible for inclusion into the backward classes.

However, in Nagaland, the test applied for ascertaining the backwardness of a tribe was based on the Critical Employment Index and the indicators of socio-economic and educational level of the tribes. Tribes whose employment index is found to be less than the Critical Employment Index are considered eligible to be included in the category of backward tribe and hence awarded reservation benefits.

Secondly, among the 11 indicators of backwardness adopted by the Mandal Commission, economic criteria received the least importance. While social and educational indicators were given 3 and 2 points respectively, economic indicators were given 1 point each only. In contrast, in Nagaland, the very definition of backwardness is “educational and economic” and not “social” as given by the Constitution. Thus, we see that in Nagaland, economic backwardness is given more importance than social backwardness.

However, in both the tests applied for ascertaining backward classes and tribes, there is an implicit assumption that social and educational backwardness are direct consequences of economic backwardness, and likeness that economic backwardness leads to social and educational backwardness. Either way the end result is the same, viz., low employment. Thus, the three main indicators of backwardness whether in the Mandal Report or in Nagaland are considered to be co-related.

Backwardness is a relative term and has to be seen in relation to the wellbeing or advancement of other tribes or communities. In Nagaland, however, such a stark difference between the tribes does not exist and the difference can be said to be negligible. As the indigenous tribes of Nagaland already fall under the reserved category of Scheduled Tribe guaranteed by the Constitution of India and therefore, in general, they are considered to be the less fortunate sections as compared to the rest of the country. Furthermore, the state provides a separate job reservation policy for the more backward tribes of the State. Both the Scheduled Tribes reservation at the national level and the sub-quota reservation at the state level aim at ensuring justice through equality of opportunity to the disadvantaged sections of the country. The goal is to provide the less fortunate sections of society with an equal level playing field so that they can overcome their structural incapacities and compete with the

more advanced or fortunate sections. Thus, the sub-quota of job reservation provided by the State of Nagaland to the more backward tribes was designed to ensure that the socio-economic condition of these tribes is improved. This, it was hoped, would be achieved by providing them with guaranteed employment in the Government services.

Some tribes have indeed gained positively from the reservation system and have crossed the line of the Critical Employment Index. For example, the Chakhesang Tribe, which has benefited from the reservation policy ever since its inception, has improved to a great extent and its standard of living has improved beyond that of even those considered advanced tribes. This is evident from the socio-economic and educational findings of the Committees that were set up¹⁰⁹ and is also echoed in a statement given by the then Chief Secretary “the Chakhesang people were no longer backward as they have advanced in all spheres of life”.¹¹⁰ This statement invoked a hue and cry from the Chakhesang tribe and eventually the Chief Secretary had to withdraw his statement. However, it is true that except for the Tizu group of Chakhesang Tribe located in erstwhile Tuesang Region, the rest of the areas within the tribe have developed considerably in terms of their standard of living as per the findings of Banuo Committee Report. If so, such tribes need to be taken out of the reservation policy while areas where job reservation benefits have not been extended should be granted the opportunity. This can be done only when the existing reservation policy is reviewed once the 2011 population census gets completed as the Government had promised.

Demand for Review of the Existing Job Reservation Policy:

In the wake of recent events there have been increasing demands from various sections of Naga society to review the existing job reservation system which has not been reviewed ever since its creation in 1977. The Naga Hoho¹¹¹ and Naga Students` Federation (NSF)¹¹² in a separate Memorandum¹¹³ appealed to the Government of Nagaland that the existing job reservation should be reviewed and the concept of ‘creamy layer’ should be introduced into

¹⁰⁹ www.morungexpress.com/letters_to_the_editor.../62859.html.

¹¹⁰ www.morungexpress.com/frontpage/61532.txt.

¹¹¹ Naga Hoho is the apex body of all Naga tribal units excluding the Eastern Nagaland whose apex body is Eastern Nagaland Peoples Organization (ENPO).

¹¹² Naga Students’ Federation is the apex body of all Naga Students’ tribal units with the exception of Eastern Nagaland whose apex body is Eastern Nagaland Students’ Federation (ENSF).

¹¹³ Decided in the Naga Hoho 4th Federal Assembly dated 24/08/2011, Naga Students’ Federation submitted the Memorandum on 18/11/2010.

the reservation policy. They further demand that reservation should be given on the lines of pocket area and not on the existing system of tribe-wise reservation. The Government has assured that such a review will be made once the population census of 2011 is completed which is in line as the process of census data 2011 is yet to be completed.

Today, the very policy which was once seen as bringing equality among the tribes has become a source of division and dissatisfaction among the different tribes. As more tribes contend for a review of the existing reservation policy, the credibility of the criterion used for identifying the backward areas or tribes has come into question. The current demand of 'pocket area wise' allocation of reservations indicates that the tribes who are and have been in the category of 'advanced tribe' are dissatisfied with the way the benefits of reservation are awarded and seek an area wise/pocket wise reservation rather than tribe wise. According to them backwardness is not concentrated in a particular tribe but is spread in 'pockets' across the tribes. Although backwardness tends to be more acute in the areas categorised as 'backward tribes', it is not confined to these areas only. It is not at all difficult to find pockets of backwardness even in those areas categorised as 'advanced tribes'. So what the 'advanced tribes' are fighting for is that the 'pocket area' within their tribe should be recognised and awarded the benefits of reservation by identifying and eliminating those tribes or areas where the benefits of reservation are seen. This can be done by identifying the 'creamy layer' among the backward tribes. However, in order to successfully identify the 'creamy layer', careful and proper definition is required and once the concept of 'creamy layer' is defined, it must be stringently implemented.

The latest development is the demand for separate statehood by the Eastern Nagaland Peoples Organisation (ENPO) for a 'Frontier Nagaland'.¹¹⁴ The demand is seen to be a result of accumulated dissatisfaction over decades of administrative negligence and backwardness which continues to plague the eastern part of Nagaland. The developmental deficit in the area is also reflected in the ineffectiveness of the 25% job reservation set aside for the eastern Nagas since 1977, in order to fight backwardness of the area. However, the current demand shows that reservation system has definitely not helped very much, contributing to the

¹¹⁴ A resolution was adopted on 20/05/2007 at Tuensang Head Quarters on the demand for a full fledged Statehood for a Frontier Nagaland. A memorandum was submitted to the prime minister dated 25/ 11/2010 demanding separate state 'Frontier Nagaland' comprising districts of Mon, Tuensang, Kiphire and Longleng.

persistent dissatisfaction of the eastern Nagas against successive state governments'.¹¹⁵ While reservation is targeted at alleviating some of the problems of backwardness, it does not provide a permanent solution for the eradication of backwardness and the upsurge of this recent demand for separate statehood indicate that welfare measures targeted at uplifting these tribes have failed. It shows that there is a gap between policy and implementation due to lack of effective implementation and poor governance. Social ills like corruption, favouritism, and political manipulation are at play in determining the fate of the reservation policy which results in the deserving being left out while the undeserving continue to enjoy the benefits of such welfare measures. Given the current socio-political and economic scenario, what is urgently required is a comprehensive socio-economic study of each individual tribes and a proper definition of criteria for identifying the backward tribes along with effective definition and implementation of 'creamy layer' as a measure to eliminate the upper crust of the backward tribes who are no longer deserving or do not any longer require reservation for their upliftment.

¹¹⁵ Though not the sole reason for the rise of demand for separate statehood yet a factor that contributed to the continued dissatisfaction and frustration over the lack of infrastructural development and economic backwardness in the region.

CHAPTER THREE:

The Dilemma of 33% Women's reservation in Nagaland

In 1992, the Indian Parliament enacted two Constitutional Amendments, the 73rd and 74th Amendment Acts, with the hope of achieving the democratic principle of local self-governance and of empowering people at the grassroots level. These Acts, envisaged, among other things, the improvement of the status of the weaker sections of society like Scheduled Castes (SC), Scheduled Tribes (ST) and Women. These Acts further sought to secure for these weaker sections- a platform where they could gain an entry into the realm of decision-making from which they had been excluded so far. As such, mandatory reservation of seats was guaranteed in both the Acts for the weaker sections of society.

All states, except the states of Jammu and Kashmir, Nagaland, Meghalaya and Mizoram, went on to accommodate the provisions of both the 73rd and 74th Amendment Acts in line with the principles of democratic decentralization of the country. In Nagaland, however, only the 74th Amendment Act, which relates to urban areas, was implemented. On the other hand, 73rd Amendment Act, which relates to the administration of rural areas, is not applicable to Nagaland because in Nagaland, rural areas are governed by the Nagaland Village and Area Councils Act, 1978, a provision guaranteed under the Article 371A which protects the traditional and customary practices of the land.

However, even the implementation of the 74th Amendment Act in its full form as envisaged in the Constitution is found to be in troubled waters due to the contentious one third reservations of seats for women in the Municipal and Town Councils. While women have begun to explore their potential in the political arena and their participation in elections is - steadily increasing in the rest of the country, women in Nagaland are yet to taste a real breakthrough in terms of decision-making and power-sharing. With the only hope of gaining an entry into politics slipping away from their hands, they are being denied the right to political participation through reservation which has been guaranteed by the Constitution of India. In this chapter, I wish to explore some of the ways in which certain individuals within a group are marginalized and excluded by members of their own community, in this case women in particular. The women in Nagaland are fighting a losing battle against the men folk of their community as the men have invoked customary laws and practices to deny women's

reservation in Municipal Councils as provided by the Constitution under the 74th Amendment Act, 1992.

Following the 74th Amendment Act in 1992, Article 243T, Clause (2) and (3) of the Constitution of India provide for the reservation of one-third of the seats in Municipal Councils for women belonging to the SC and ST groups as well as women in general respectively.

Clause (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

Clause (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.¹¹⁶

The Nagaland Municipal Act and 33% Women's Reservation:

Though the 74th Amendment Act was enacted in 1992, in Nagaland the State Legislative Assembly passed the Nagaland Municipal Act¹¹⁷ only in 2001.¹¹⁸ Therefore, the first State Municipal Elections were held as late as 2004. However, the Nagaland Municipal Act, 2001¹¹⁹, was a modified version of the Nagaland state as it did not incorporate all the provisions mandated in the 74th Amendment Act. The State Government omitted several provisions of the parent Act and created its own version as per the convenience of the Government. Among the clauses which were omitted was that pertaining to the 1/3 reservation of seats for women as provided under section 243 T of the parent Act. Thus, the Government undermined the intent of the 74th Amendment Act. In 2005, the Government further decided to modify the Act. To this end, it initiated an amendment of the Nagaland Municipal Act, 2001, in the State Legislative Assembly. The Amendment, however, did not include the constitutionally mandated 1/3 of women's reservation; it instead provided for only one woman representative in the Municipal Councils. The provisions of this Amendment Act also entitled the nominated members with the power of voting and

¹¹⁶ The Constitution (Seventy Fourth Amendment) Act, 1992.

¹¹⁷ Nagaland Municipal Act, 2001.

¹¹⁸ The Nagaland Municipal Act, 2001, was first initiated in Nagaland under the regime of Congress Government. However, in 2003 (Democratic Alliance of Nagaland) DAN party came to power and endorsed the Act and implemented it but without the constitutionally mandated 1/3 of the seats reserved for women.

¹¹⁹ Henceforth, referred to as the Act, 2001.

envisaged a withdrawal of such power from the ex-officio members of the Municipal Councils. This was found to be in contradiction to the Article 243R of the Indian Constitution, which specifically prohibits nominated members from exercising the power to vote and allows the same power from ex-officio members, by the Governor who sent it back to the state Government on this ground. The Government further decided in the State Legislative Assembly that the number of nominated members should be increased to one for every three elected members even though the parent legislation provides for only one government-nominated member for every five elected members.¹²⁰

With the above modification, the State Legislative Assembly passed the Act as the Nagaland Municipal (First Amendment) Act, 2005. However, when the bill was sent to the then Governor seeking for his approval as per Article 200 of the Constitution of India, the Governor sent back the bill for reconsideration saying that “Nominated members cannot have the power to vote as laid down in Article 243-R of the Constitution” and added that “with regard to the ex-officio members, the Department of Law and Justice has opined that the Constitution does not intend to disentitle them from voting”. Moreover, “The Bill does not address a major lacuna in the parent legislation. The Nagaland Municipal (First Amendment) Act, 2005, fails to make provision for reservation of seats for women” noting that “municipalities should function better with a fair representation of women”.¹²¹ He maintained that Article 243-T of the Constitution makes incorporation of provisions for reservation of not less than one-third of the total number of seats to be filled by direct election in every municipality that is mandatory for women. In contrast, the Act provides for a single woman representative. Therefore, the bill was sent back for reconsideration. Under the circumstances, the Government was left with no option but to incorporate all the provisions of the parent Act and along with it included the 1/3 women’s reservation in the Municipalities as envisaged in the Constitution.

The turn of events indicated that the Government had no intention of incorporating the constitutionally mandated 1/3 seats reserved for women in the Municipalities but was compelled to incorporate it. This is obvious from the statement made by the Nagaland Chief Minister, regarding the constitutionally mandated 1/3 women’s reservation, to quote him,

¹²⁰ Nagalim News, accessed on 04.07.2012, accessed from <http://www.nagalim.nl/news/00000106.htm>.

¹²¹ Ibid.

It is my view that as long as we want to have municipal bodies in our towns and cities in accordance with the relevant Act, reservation for women cannot be done away with. It needs to be clearly understood that ULBs and reservation for women come in one package, and cannot be separated now in view of the constitutional provisions already mentioned before.¹²²

Thus, left with no choice the Government had to necessarily amend the Act as per the Constitutional provision in order to avoid further embarrassment for violating the constitutional provisions especially as it had already conducted the first Municipal election without following the proper constitutional measures. It was the then Governor Shyamal Datta's rejection of the bill that exposed the government and necessitated incorporation of the constitutional provisions. When the Chief Minister was asked in the Assembly debates regarding the omission of the women's reservation and the violation of the Constitutional provisions, he justified the action by saying that "this was the first time that the municipalities had been formed, such errors should be condoned".¹²³ Therefore, in a bid to save the government from embarrassment, the Act was amended as per the Constitutional provisions. Thus, in 2006, the Nagaland Municipal Act, 2001 was finally amended and 33% women's reservation was inserted in the Nagaland Municipal (First Amendment) Act, 2006, under section 23A,

Clause (1) Seats in every Municipality shall be reserved for the Scheduled Castes, the Scheduled Tribes and women, including women from the Scheduled Castes and the Scheduled Tribes, in accordance with the provisions contained in clauses (1) to (3) of article 243-T of the Constitution.¹²⁴

However, the provision of 1/3 women's reservation under the Nagaland Municipal (First Amendment) Act, 2006¹²⁵ remained only on paper for more than two years, though it is given in section 23A, clause (2) and (3) that

Clause (2): Within 90 days from the commencement of this Amendment Act, the Government shall notify in the official gazette the number of seats in every Municipality that ought to have been reserved for the categories of persons included in clause (1) in the first elections to the Municipalities held in the State in December, 2004 and

¹²² W.P. (C) No. 147 (K) 2011.

¹²³ The Telegraph, accessed on 04.07.2012, accessed from

http://www.telegraphindia.com/1050818/asp/northeast/story_5124080.asp. Dated 18/08/2012

¹²⁴ Nagaland Municipal (First Amendment) Act, 2006.

¹²⁵ Henceforth, referred to as the Amended Act, 2006.

Clause (3): Within 180 days from the commencement of this Amendment Act, the Government shall notify in the official gazette the allotment of seats to be reserved for the categories of persons included in clause (1) by rotation to different wards in a Municipality.¹²⁶

The state however, did not reserve any seats for women and allowed the male council members to continue in their positions till 2010¹²⁷ even after the expiration of their term by setting up ad hoc bodies, thereby further demonstrate their reluctance to implement the 1/3 women's reservation as provided in the Amended Act of 2006.

In 2009, the Government notified the conduct of fresh elections to the Municipalities as well as the wards to be reserved for women¹²⁸ and accordingly, 81 seats out of 229 seats in Municipal Councils and Town Committees were reserved for women. However, the notification for reservation of 33% for women was not welcomed as opposition from many groups emerged. Some of the groups that were against the women's reservation included the Forum for Municipal and Town Councils, The Naga Hoho, Eastern Nagaland Peoples Organisation (ENPO), Kohima Village Council and all tribal units.¹²⁹

According to them, the amended Act -was contrary to article 371A¹³⁰ as it went against the customary practices of the Nagas. As per the Naga customary tradition, women were never

¹²⁶ *Nagaland, Act, Op.Cit.*

¹²⁷ The term of office is for 5 years and accordingly the tenure of the Municipal Councils was supposed to end by 19.12.2009 and 9.3.2010 prior to Amendment. However, as per the new provision given under Nagaland Municipal (First Amendment) Act, 2006, the male members who were elected from the wards (now) reserved for women were to vacate their office within 180 days which should have been by 30.8.06 i.e. by end February 2007. Section 23A, clause "(4) All members not belonging to the Scheduled Castes and the Scheduled Tribes who were directly elected from those wards in the Municipalities which have become reserved for the Scheduled Castes and the Scheduled Tribes, and all male members who were directly elected from those wards in the Municipalities which have become reserved for women, including women belonging to the Scheduled Castes and the Scheduled Tribes, under clauses (1) to (3) of article 243-T of the Constitution, shall be deemed to have vacated their seats upon notification of the reservation of seats under clause 3".

¹²⁸ Vide notification NO.UDD/MAC-7/2009, dated the 17th November 2009 and 16.11.09 respectively.

¹²⁹ The Forum for Municipal and Town Councils submitted a representation against the notified women's reservation, dated 30.11.2009. The Naga Hoho; the apex body of all Nagaland tribal units and ENPO; the apex body of Eastern Naga tribes, in a joint representation to the Chief Minister of Nagaland inter alia expressed its opposition to 33% women's reservation dated 12. 12.2009.

¹³⁰ Article 371(A) of the Constitution of India provides that (a) No Act of Parliament in respect of-

- (i) religious or social practices of the Nagas,
- (ii) Naga customary law and procedure,
- (iii) administration of civil and criminal justice involving decisions according to Naga customary law,

part of decision-making bodies and membership in all tribal organizations was exclusive to male members. Therefore, the Act cannot be implemented in the State and imposing the Act upon the Nagas would, according to Naga men, amount to a violation of 371A.¹³¹ The groups that were against the women's reservation argued that no socially discriminatory practices exist in Nagaland and women are treated on equal status with men, hence "Nagaland does not need women's reservation",¹³² unlike other states of the country. According to them, in the past, the Nagas have lived together peacefully without any discrimination and the leaders were elected on the basis of their capabilities and personal charisma. Therefore, the implementation of the reservation would destroy the fabric of Naga society by dividing men and women. They further argued that the constitutional laws that are applicable in other states of the country may not be applicable in Nagaland as the nature of governance in Nagaland is unique. This is because women in Nagaland are independent and considered equal to men and are not discriminated against.

Furthermore, Article 371A provides that no Act of the parliament can be imposed upon the state unless approved by the State Legislative Assembly. Some have also questioned the capabilities of women to serve as public leaders as they feel that if a person is capable, he or she will be elected to power irrespective of their sex. Therefore, the imposition of the women's reservation is seen as "irrelevant, undemocratic and contradicting the Naga customary laws and goes against the aspiration of the Naga people to run their own society and people by their own system of governance".¹³³ An example of the extreme form of argument against the reservation comes from the Kohima Village Council (KVC). In a representation to the chief minister dated March 14, 2012, they termed the women's reservation as "discrimination against Naga men folk since it is tantamount to depriving the democratic rights of the men folks in their own ancestral land, which was earned from time immemorial through bloodshed".¹³⁴

Shall apply to the state of Nagaland unless the Legislative Assembly of Nagaland by a Resolution so decides.

¹³¹ At the outset, it must be mentioned that the members of Forum for Municipal and Town Councils as well as the Naga Hoho, ENPO and all other Tribal Hohos (Union) except those women Hohos, are males.

¹³² Nagalim News, accessed on 02.07.2012, accessed from <http://www.nagalim.nl/news/00001252.htm>.

¹³³ The Morung Express, accessed on 02.05.2012, accessed from http://www.morungexpress.com/letters_to_the_editor_public_discourse/78079.html.

¹³⁴ The Sentinel, Accessed on 15.03.2012, accessed from

Therefore, the groups that was against the reservation for women submitted several representations to the government to scrap it and threatened to launched protests and demonstrations if elections were held with the proposed women's reservation. Many issued threats to stop the proceedings of the election and prevent the peaceful conduct of the election. The final straw came when, in 2008, the first attempt to conduct the Municipal Town Council election in Mokokchung District was frustrated. The Mokokchung Municipal Town Council election was supposed to be the first election in the state after the amendment in September.¹³⁵ However, the attempt remained unsuccessful due to protests from the male section of the district represented by Ao Senden; an apex tribal body of the Ao tribe, against the 33% women's reservation. When women of the area spearheaded by Watsu Mongdang,¹³⁶ demanded the implementation of women's reservation and decided to contest in the upcoming Municipal Council election of Mokokchung, they were barred from filing their nomination papers by the men¹³⁷ and Watsu Mongdang was suspended by the Ao Senden.¹³⁸ Thus, due to protests from various sections of men,¹³⁹ the election was called off and re-scheduled to October. This further got suspended as the men folk did not relent and asserted their stand in opposition to the women's reservation in all Ao areas. Eventually, the first Municipal election of the state after the amendment and the incorporated women's reservation could not be held.

Thus, on 16th December, 2009, the Government fearing that the peaceful environment of the state might be jeopardised if they went ahead with the reservation, decided through a cabinet

<http://www.sentinelassam.com/northeast/story.php?sec=2&subsec=9&id=110441&dtP=2012-04-29&ppr=1>.

¹³⁵ Mokokchung is a district in Nagaland. It was supposed to conduct the first ever Municipal election of the State after the amendment with 33% women's reservation in September, 2008.

¹³⁶ An apex body of Ao women submitted a representation urging the State to implement the 33% women's reservation in Municipal election, Mokokchung.

¹³⁷ The All Wards Union Mokokchung (AWUM) and the four land owning villages of Mokokchung Town had barricaded the DC's office so that no women could file nomination, accessed on 29.04.2012, accessed from epao.net/ge.asp?heading=10&src=310711.

¹³⁸ The Morung Express, accessed on 02.05.2012, accessed from www.morungexpress.com/frontpage/77043.html.

¹³⁹ In a letter addressed to Naga Hoho (apex body of the Nagas), the Ao Senden reminded that a resolution was taken on 02/17/1012 by a General Conference of the Ao Senden to stand against the policy of 33% women's reservation as it is against the spirit of their customary practices. Accessed on 06.05.2012, accessed from www.morungexpress.com/frontpage/77908.txt.

decision that the Municipal elections which were due on January, 2010 would be suspended indefinitely. To quote the Government notification:-

The Cabinet felt that in view of the delicate situation in the State, and the ongoing reconciliation and peace process in the State, there is a need to maintain harmony in the society. As the Municipal and Town Council elections have the potential to create tensions and undesirable situations in the State, and further as the Committee of Secretaries appointed to look into the short comings of the present Municipal Act and to suggest remedial measures, is yet to submit its report to the Government, the Cabinet decided to postpone indefinitely the Municipal & Town Council elections due in January, 2010. The Cabinet further decided that in view of the non existence of any provisions in the Nagaland Municipal Act, 2001 for extension of the tenure of any Municipal / Town Council, the State Advisory Councils to run the affairs of the Councils till elections are held, or till further order.¹⁴⁰

Thus, taking advantage of Section 83 (1) of the Act,¹⁴¹ the Municipal and Town Councils were dissolved and temporary Executive Officials were appointed to look after the affairs of Municipalities and Town Councils until such time as elections were held.¹⁴² Therefore, the provision for 33% Women's reservation in Municipal election continued to remain merely on paper and did not get implemented.

This was seen by women's group as a ploy to avoid the implementation of constitutionally mandated reserved seats for women. The women's groups included the Naga Mothers' Association (NMA), the Nagaland Women Commission (NWC), the Naga Women Hoho, Dimapur (NWHD), the Eastern Nagaland Women Organization (ENWO), the Watsu Mongtang -and various units of tribal women organizations.¹⁴³ The women's groups later came together to form the Joint Action Committee on Women's reservation (JACWR)¹⁴⁴ in order to fight for the 1/3 reservation of seats for women in the Municipal Councils as

¹⁴⁰ Notification Dated 16.12.09.

¹⁴¹ Section 83(1) of the Act provides that "Notwithstanding anything contained in this Act, where due to certain special, emergent or unforeseen circumstances, election to a Municipality cannot be held or completed before the expiry of its duration specified in section 10 or before the expiry of a period of six months of its dissolution, the Government may, by notification appoint a Government officer to be known as Administrator to exercise, perform and discharge the power, duties and functions of a Municipality subject to such directions as may be given in this behalf by the Government."

¹⁴² Notification Dated 11.01.2010.

¹⁴³ Several women NGO's and tribal women organizations like the Naga Mothers' Association, Nagaland Women Commission (NWC), Naga Women Hoho, Dimapur (NWHD), Eastern Nagaland Women Organization (ENWO), Watsu Mongtang and various units of tribal women organizations demanded the implementation of Constitutionally mandated 33% women reservation.

¹⁴⁴ Initially various women organizations were fighting as individual units but later on joined to form the Joint Action Committee on Women Reservation (JACWR).

mandated in the 74th Amendment Act and the Nagaland Municipal (First Amendment) Act, 2006. The elusive actions of the government prompted the women's groups to file a Public Interest Litigation (PIL)¹⁴⁵ in the Guwahati High Court against the Government of Nagaland, under the banner of the Naga Mothers' Association,¹⁴⁶ seeking the immediate conduct of the Municipal election with implementation of 33% women's reservation as provided in the Nagaland Municipal (First Amendment) Act, 2006 and as per the notification issued on 16th December, 2009.

On 10th October, 2011, the High Court passed a Judgment in favor of 33% women's reservation and directed the State to immediately hold elections with the provisions of women's reservation on or before 20th January, 2012. In response to this, the State Government filed a Civil Miscellaneous Case in the Guwahati High Court¹⁴⁷ seeking more time for the implementation of the direction given on 10th October 2012. The appeal was granted and the State Government was directed to hold the Municipal election with 33% women's reservation latest by 30th April, 2012.¹⁴⁸ In consonance with the High Court judgement, the State Government issued an order on 15th March, 2012, notifying that,

In supersession of this department's notification no. MAC/Home-9/2006 dated 16/11/2009 and notification no. MAC/Home-9/2006 (A) dated 18/01/2012 and in accordance with Articles 243 T of the Constitution of India read with Section 23 A of the Nagaland Municipal Act 2001 (Amended), the Governor of Nagaland is pleased to order that no less than 1/3 of the total seats in respect of the three municipal councils and 16 town councils shall be reserved for women during the ensuing elections to the municipal and town councils.¹⁴⁹

The notification however sparked a series of protest from different sections of the state particularly the male section. The Forum for Municipal and Town Councils, the Naga Hoho, Eastern Naga Peoples Organisation (ENPO) and almost all tribal units submitted representations to the Government seeking to revoke the proposed women's reservation and threatened to stop the peaceful conduct of elections if women's reservation was not scrapped. In some places, leaders of tribal women organisations were forced to withdraw their

¹⁴⁵ Writ Petition (civil) 147 (K) of 2011.

¹⁴⁶ Naga Mothers' Association (NMA) is a women body functioning as the apex body of 9 tribal women units.

¹⁴⁷ Vide Civil Miscellaneous Case No. 121 (K) of 2011 and Civil Miscellaneous Case No. 122 (K) of 2011.

¹⁴⁸ Vide Court order Dated 30th November, 2011.

¹⁴⁹ Accessed on 15.06.2012, accessed from

<http://zolengthe.net/2012/03/16/nagaland-governor-declares-33-women-reservation/>

signatures attached to the Joint Action Committee on Women`s Reservation (JACWR), who is spearheading the demand for women`s reservation. The JACWR in a representation to the Chief Minister on 19th March 2012¹⁵⁰ demanded the implementation of the constitutionally mandated 1/3 of reservation for women.

The issue of 33% women`s reservation in the Municipal election was further discussed at the March 2012 Budget session of the Nagaland State Assembly, and considering the series of oppositions and protests from various sections of the State, a resolution was passed referring to the Nagaland Municipal (First Amendment) Act, 2006 in general and the controversial 33% reservation for women in particular. It was decided that the Act should be referred to a Select Committee for review and for re-examination and its report should be submitted within six months time. Further, the Select Committee was supposed to examine whether Article 371A supersedes the Constitutional provisions of 74th Amendment and examine the legality of the existing contradiction between 74th Amendment Act and Article 371A. Thus, the State Assembly unanimously decided that “all statutory processes towards conducting the municipal and town councils to be resumed after appropriate decisions have been taken by the government after the report is submitted to the committee”.¹⁵¹

After having unanimously passed the resolution to suspend all proceedings to the municipal elections, the State of Nagaland filed another Miscellaneous Case in Guwahati High Court pleading for further extension of the implementation of the Act till the report of the Select Committee is submitted. However, on April 24th 2012, the Court dismissed the plea of the State was dismissed and directed the State Government to complete the entire process of overdue Municipal and Town Council elections within a month from the date of the judgment.¹⁵² Despite the High Court order, the state could not proceed with the election as the male dominated civil organizations and the tribal organizational units did not relent and stood by their decision to stand in opposition against the women`s reservation. The very

¹⁵⁰ the North East Today, accessed on 06.04.2012, accessed from

<http://www.northeasttoday.in/our-states/nagaland/jacwr-reiterate-on-33pc-women-reservation-in-nagaland/#more-27193>.

¹⁵¹ The Morung Express, accessed on 07.06.2012, accessed from

<http://www.morungexpress.com/frontpage/78148.html>.

¹⁵² Civil Miscellaneous Case No. 39 (K) of 2012.

house which has amended and passed the Amended Act, 2006, incorporating the 33% women's reservation has now suspended the conduct of elections to the Municipalities.

During the Assembly debates, Nagaland Chief Minister Neiphiu Rio said that "being representatives of the people, the concern of the public opinion should be taken",¹⁵³ therefore, the decision was taken as per the demand of the people. Unfortunately, the "public opinion" that he was referring to was biased, as it comprised only the opinions of the male folk only while the opinions of the women folk were not taken into consideration. There is an underlined assumption that women do not have a voice and are incapable of deciding for themselves, and hence decisions must be taken for them by men. It appears as though the State Government belongs to the men folk and they have to decide what rights women should be given and what rights can be denied. Here, democracy of the people, by the people and for the people becomes democracy of the men, by the men and for the men and women.

Ironically, on the cabinet decision to suspend the Municipal election, the Naga Hoho lauded the State Government by saying that

We feel that the house has exhibited their maturity in the interest of people at large and also towards safeguarding the age old Naga traditional values that have been practiced since time immemorial. The people have been relieved by the House's decision to suspend the Municipal elections which otherwise would have created a lot of storm.¹⁵⁴

Time and again "the people" refers to Naga men only and the women are either forgotten or excluded from the definition of "the people".

The decision of the State Assembly to refer the Amended Act, 2006, to a Select Committee in order to examine the race between the 74th Amendment Act and Article 371A is inherently faulty as following the Naga tradition of governance, no such practices of Municipal election existed. The divide between rural and urban governance is a non-existent phenomenon. Earlier, the mode of governance was based on village republics designed to govern small, simple and homogeneous communities. However, with the change in times and modernization, urbanization and the impact of Globalization, the nature of governance has

¹⁵³ The Morung Express, accessed on 05.05.2012, accessed from

<http://www.morungexpress.com/frontpage/78148.html>.

¹⁵⁴ Nagaland Post, accessed on 02.05.2012, accessed from

<http://www.nagalandpost.com/ChannelNews/State/StateNews.aspx?news=TkVXUzEwMDAxNjIxNw%3D%3D-f9ICh5DmEx4%3D>.

changed. There is a transition from the simple homogeneous village republic to complex forms of urban governance. The Nagaland Municipal Act is one such example of an urban form of governance. Therefore, drawing reference to customary practices as an excuse to deny full implementation of the 74th Amendment is irrelevant and inconsistent with the change in time. If a modern form of governance has to be applied in Nagaland, it should be implemented in its full form without further complicating it by dragging the age-old customary practices some of which have become inconsistent and irrelevant in the present context. Besides, any law if it no longer uphold the principle of equality and perpetuates inequality must be modified or discarded, if justice has to be achieved in society.

The State Assembly justified the suspension of the Municipal elections by stating that if the Act is implemented in its present form, without the consensus of men folk, the peace of the land would be jeopardized as they might disturb the proceedings of the election. In view of the ongoing peace process of the state with the National Government, the state Government cannot afford to risk a breakdown of law and order in the state as this might interfere with the ongoing peace talks. However, this was a one-sided picture, given as an excuse for the non-implementation of the High Court's direction. Moreover, in the High Court judgment, it is clearly stated that,

The circumstances which weighed upon the Cabinet to postpone the elections cannot be said to be exceptional circumstances or special, emergent and unforeseen circumstances which alone can distract the authorities concerned from holding elections. Issue of reservation of seats for women in Municipal Councils and Town Councils and the ongoing peace process in the state have if at all , a tenuous link.¹⁵⁵

The other side of the picture reveals a stark lack of political will despite the fact that the chief minister had expressed his willingness to implement women's reservation. To quote him, "I as an individual will be the happiest person if the reservation bill is passed in Parliament and implemented in our state".¹⁵⁶ Yet, the State government also admitted that it was a mistake in introducing the women's reservation in the Nagaland Municipal (First Amendment) Act, 2006 in the first place -which was enacted "out of ignorance, without sufficient discussions with the Naga civil societies".¹⁵⁷ Thus, the State Legislative Assembly decided to postpone

¹⁵⁵ the Morung Express, accessed on 02.04.2012, accessed from

<http://www.morungexpress.com/frontpage/78110.html>. Accessed on 05/07/2012.

¹⁵⁶ Accessed on 05.07.2012, accessed from

<http://www.mydimapur.com/content/view/518/2/>.

¹⁵⁷ The Morung Express, accessed on 15.06.2012, accessed from

the Municipal election which was scheduled to be held in the month of April until appropriate actions were taken. The very house which passed the Act has now turned its back to the Act and has made men folk a scapegoat for not implementing the 33% women's reservation in the State Municipal Election.

The Dilemma of 33% Women's reservation in Nagaland:

The insertion of the women's reservation in the Nagaland Municipal (First Amendment) Act, 2006, was neither the result of an initiative by the women nor a conscious effort by the state to induct women in the decision-making bodies or to increase their political participation. It came in the form of a Constitutional provision guaranteed under 74th Amendment Act, to strengthen the Municipalities as well as to empower the weaker sections and women by providing them a platform for greater political participation. But the issue came up only when the governor sent back the bill passed by the State Legislative assembly for re-consideration and prompted them to incorporate all the provisions of the parent legislation. From then on, it became a tug of war between the Naga men represented by different tribal organisations with its apex body in the office of the Naga Hoho and Eastern Nagaland Peoples Organisation (ENPO)¹⁵⁸ versus the Naga women represented by various tribal women organisations and women associations like Naga Mothers' Association, Naga Women Commission, Eastern Naga Women Organisation, Watsu Mongdang and Naga Women Hoho, Dimapur, these women organisations later joined together and formed the Joint Action Committee on Women's Reservation (JACWR) to fight for the 33% women's reservation as mandated by the Constitution of India.

According to the men folk, Naga society has traditionally been an egalitarian society with no discrimination and everyone is on an equal footing in this society. Women as such have never been treated unequally. Comparing the status of women in Nagaland with the mainland, the male argued that there are no discriminatory practices like Sati, caste, untouchability, etc as compared to the rest of the country and therefore women cannot be said to be discriminated

<http://www.morungexpress.com/frontpage/78072.html>.

¹⁵⁸ The men folk under the banner ship of the Naga Hoho and the ENPO submitted a combined representation to the Chief Minister of the State stating their unanimous decision against the 33% Women's reservation in Municipal/ Town Council, basing on the fact that the Act itself is beyond the perimeter of Art. 371 (A) of Indian Constitution, while the political parties in India are yet to introduce such Bills in the Parliament. They further stated that the Act is harmful to the sanctity of traditional land holding system and Naga customary laws.

against. Therefore, special reservation for women would undermine the already egalitarian character of the land.

The above arguments that Naga men have used to justify the denial of women's reservation points to an underlying assumption that men have the right to speak on behalf of women. Men have argued that women in Nagaland are not discriminated and are treated on equal footing with men but the question arises as to whether Naga women feel the same too. Have any of these men ever wondered whether women feel discriminated? Discrimination can exist in all sorts of form, ranging from the mildest form of language construction to harsh forms of violence and sometimes even denial of basic human rights. Discrimination is also perpetuated in the socialization process from the different manner in which a girl and a boy child are socialized. For example, while the boy child may get away with being naughty and rebellious, in contrast, the girl child is moulded to be submissive. Denial of reservation for women in the Municipalities is tantamount to denying women from entering the political arena as the infrastructural technicalities work to incapacitate women. Hence, invoking customary laws to deny women political rights is a form of discrimination.

The egalitarian character of Naga society as advanced by the male sections of the state is further flawed as the State Government already reserves 37% in Government Jobs for the more backward tribes of the state. This shows that there is inequality among the tribes of the state. In fact, there arises a contradiction; on the one hand the advanced tribes are contending for inclusion in the job reservation policy, while on the other hand, the demand for women's reservation is being denied on the grounds that it will erode the egalitarian character of Naga society. So the question which arises is why women are being subjected to uphold the egalitarian character of their community. If Naga society was an egalitarian society with no discrimination, why was job reservation for more backward tribes introduced in the first place. If the tribes are being given reservation on account of their backwardness why women should be denied their right to political participation on the grounds of upholding the traditional egalitarian character of the community? The lack of a single women representative in the State Legislative Assembly is indicative enough of the stark political injustice meted out to women in Nagaland. Why was the same argument of erosion of the egalitarian character of the state not applied to while the reservation policy was made? This reveals the deep rooted patriarchal biasness against women. Perhaps a time has come where a new question needs to be asked by the Naga men. Instead of assuming that women are not discriminated in Nagaland and instead of harping on the age old tune of equality between the

sexes in Nagaland, the new question should be do women feel the same? It is time to question the age old impression that women enjoy equal status with men. The gravity of denying political rights to women should be realized and addressed at the earliest before it causes serious harm to the growth and empowerment of women in terms of their political participation and decision making. To proclaim to be a democratic society a change in attitude is required.

According to Naga men, Article 371A supersedes all laws in Nagaland, therefore imposition of reservation for women or in other words, inclusion of women in decision-making bodies, stands contrary to the customary laws and practices of the land and will invoke an infringement of article 371(A)¹⁵⁹ which safeguards the tribal law, traditional institutions and practices of the Nagas. Therefore, the men folk stood in firm opposition to the implementation of the Act with women's reservation inter alia. Thus, customary law was invoked by men to deny reservation for women.

Thus, there is a conflict of nature between the traditional law of the Nagas and the modern law of the Constitution. This has increased confusion and ambiguity about the validity and precedence of the two. However, rather than asking which law is more valid or which precedes the other, the ultimate test of validity and precedence should be in asking whether the law in question is in consonance with the egalitarian spirit of the Constitution.

Further, provisions under the Article 371A (IV) ensures that no act of parliament shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland so decides. Unfortunately, there is not a single women representative in the state Assembly who can fight for the rights of the Naga women, therefore, the decisions taken are biased against women. With no women representatives to fight for the demands of the women, the decisions that are taken result in insensitivity towards the needs of women. Article 371A further protects the ownership and transfer of land and its resources. Naga men have been the sole inheritors of ancestral land since time immemorial, which has given them the notion that they are the sole owners of the state and that women do not have any rights over land ownership and its resources. This might be one of the reasons why they argue that it is their right to decide what to share with women and what to keep as an exclusive reserve of men. This is exactly the reason why they are unwilling to allow women to share in the role of state governance.

¹⁵⁹ It may be recalled here that Nagaland is protected by a special law of the Constitution guaranteed under Article 371(A) to safeguard the tribal law, traditional institutions and practices of the Nagas.

They further argue that there are no laws which prohibit women from contesting elections and women can freely stand for election if they have resources and are capable. Certainly, no laws exist to deny women from entering politics or contesting in elections and any woman can win the elections if she is capable enough. However, this argument is lame because there is no platform where they can make a start and explore their potential as a politician. They have never been allowed to venture out of the traditional construction of the role of women and are therefore unable to compete with men who already have an edge in the field of politics. The reality is that structural positions in society have worked to incapacitate women and made the political arena unfavourable for women. Unless women are given reservations, they cannot on their own realize their dreams of getting elected. Therefore, reservation is a necessity. If democratic principles have to be upheld, they have to come through the equal representation of women in politics which can be done by including women in the ambit of the state governance. Thus, a conducive environment has to be created so that women can shed their age-long inhibitions and come forward to participate equally with men on the political front.

It is a fact that Naga Women have no inheritance rights to land or property and no access to land resources as per the customary law of the land, nor are they ever a part of any decision making bodies. Despite 49 years of statehood Nagaland is yet to see a single woman member in the State Legislative Assembly. Women constitute 48.2% out of the total population of the state with a female literacy rate of 76.69% while male literacy rate stands at 83.29% and the current Municipal election will only affect 28.97% of the urban population of the State (2011 census). Despite a high female literacy rate, the status of the women in the decision-making bodies and political institutions has remained unchanged.

Traditionally women never had any access to property rights or political rights, given this back drop, one cannot help but wonder the egalitarian character that the male folk of Naga community are harping as a justification for denying women of reservation in political participation. Since article 371A is invoked to justify almost every demand for women reservation as against the customary practices of the land, an inevitable question arises as to whether 371A protects unequal political participation of men and women in the land of the Nagas.

The reluctant attitude shown by the male section of the State reveals that there is a deep prejudice against women in the state. Thus, the non implementation of women reservation can only mean one thing i.e. patriarchal tyranny of men against women expressed in the

form of denial for political rights. The persistent demand of the women in Nagaland however shows their willingness for active political participation and involvement in decision-making bodies. The only political participation by women so far had been limited to voting for the men in the State, sometimes campaigning for them in case a family member or close associate stands for elections conducted by the state. But now, as the opportunity arose for them to participate as candidates, their only chance of political participation has been denied before they could even have first taste of participation in politics and decision-making bodies. Ironically, when the wards to be reserved for women were announced and the date for Municipal elections was scheduled to be held in the month of April 2012, men in the state vehemently opposed and demonstrated. A series of protests and representations to the State Government threatened to disturb the law and order of the state if election were to be conducted with women's reservation, thus, forcing the state to suspend state Municipal elections altogether.

That the Government had employed delaying tactics is evident from the analysis which indicates that there is a lack of political will and a deliberate attempt by the Government to frustrate the implementation of the 33% women's reservation. The very manner in which women's reservation was introduced in the state assembly indicates that it was never the honest intention of the Government to implement this reservation. The State Government tried to skirt the issue of women's reservation and attempted to introduce only the Municipal Act, hoping to get away with it. But it was the timely intervention of the Governor, who refused to give his assent unless all the necessary constitutional provisions were inserted in the Amendment which included the 1/3 reservation for women. The government was left with no choice but to insert the women's reservation in the Act in order to save itself from embarrassment, especially when they had already conducted the first Municipal election in the state without the constitutionally mandated women's reservation thereby violating the provisions of the Constitution. This reveals the double-faced character of the Government: officially, they may claim to be in support of the women's reservation but in reality, they have deliberately subverted the implementation of women's reservation in the Municipalities.

So long as the women reservation remain only in paper it was passed in the State Legislative Assembly without any contention but when attempts were made to transform the law into practice voices of dissensions were raised from the male sections of the State. Applying the law into actual practice would mean challenging the age old preserves of traditional male dominance in decision making arenas which had so far existed unquestioned. Thus, the

women's reservation was out rightly rejected by the male folk as inapplicable and undesirable in Naga society.

However, now that the clause has been inserted, it is only fair that appropriate measures should be taken in consultation with civil society in general and women in particular so that a common platform is forged where the needs and demands of both women and men are met within the ambit of the Government. However, balancing the demands of the two contending sides has proved to be an uphill task, and a readymade solution may not be available unless Government comes up with appropriate measures to secure a way out of the dilemma.

Reserving seats for women in the Municipal Council which will only affect 28.97% of the urban population of the State (2011 census) cannot divide Naga society or any society into men and women. This is especially so because women do not form a separate community from men. Women alongside men bear the same identity of the group or belong to the same group that men belong to and they are faced with the same problems that the men in their group or community or locality faced. Women do not lie concentrated in a particular area geographically bounded and confined only to themselves. Therefore, if women within a group are found to be denied their political rights by the male members of their own group the only solution that can bring about equality between men and women would be to ensure their political rights are secured to them even if it means reserving separate seats for them. The political rights of women cannot be denied on the argument that reserving separate seats for women would divide the society into men and women. Thus, the argument that women's reservation would erode the egalitarian character of democracy is unjustifiable and tantamount to denying women's political rights as without reservation women are unable to break through the structural difficulties that binds them from participating equally with men. As Ghosh and Lama-Rewal argued,

affirmative action policies have been considered on several continents as the only way to break the 'glass ceiling' that seems to restrict women's proportion in national parliaments to a world average of 14 per cent in 2001, and women's quotas have been adopted on all continents in the last decade.¹⁶⁰

Thus, women's reservation is an essential step towards maintaining the egalitarian ethos of the country and not the reverse of it.

¹⁶⁰ Archana Ghosh and Stephanie Tawa Lama-Rewal, *Democratization in Progress: Women and Local Politics in Urban India*, 2005, p.7.

Since the Constitution had already recognized the political handicap of women in general and had provided a reservation for them in the local bodies of rural and urban governance, it is only fair that the state of Nagaland recognizes the special political needs of women and act upon it in line with the larger goal of equality and justice as envisaged in the Constitution. Thus, integrating women's perspective in decision making and formulating policies is an important step in adherence to democratic principles of equality and to ensure gender equality would entail inclusion of women in the administration and governance.

Local sites are considered as the most convenient and easily accessible for women to join politics as a beginner. Ghosh and Lama-Rewal had summarised in three points the reason why it is essential to encourage women to join local level politics:

1. The local government agenda is the closest to women's sphere of life and easier to combine with their other (domestic) responsibilities.
2. Local politics is important to women because they know their community well and are aware of issues like water, sanitation, electricity, waste, disposal, etc., which affect the immediate neighborhood.
3. Local government can serve as a training ground for women local leaders and be a springboard to regional and national politics.¹⁶¹

Thus, in order to ensure substantive and meaningful political equality to women, they should be secured a space within areas that are best suited and accessible for them in order to make them started till the time they are able to stand on their own feet to fight for their rights and needs.

Role of Women in Naga society:

The contention between reservation of seats for women and erosion of traditional customary practices can be better understood if we examine the traditional structure and customary practices of Naga society and the role of Naga women as traditionally practiced. Naga society is a patrilineal, patrilocal and patriarchal society and, like all other patriarchal societies is governed by the notion of male superiority. Roles are defined along gender lines and divisions of labour are determined accordingly. Traditionally, women have always been confined to the private sphere while men's domain is seen as the public. According to Toshimenla Jamir,

While the public and political sphere remains a male domain, women are responsible for looking after the domestic affairs where they are indeed the 'mistresses' of the house. This is often interpreted as 'freedom' by many outsiders. The flipside however,

¹⁶¹Ghosh and Lama- Rewal, *Democratization, Progress, politics*, Op.Cit., 2005, p.7.

is that such a social arrangement severely restricts the mobility of women in the public/political and social spheres rendering them politically incapable and even ignorant of many civic issues that concern them.¹⁶²

Thus, there is a strict structuring of roles along gender lines; women governed the private sphere whereas men governed the public sphere.

Outside the home, women have always been confined to performing a single role i.e. that of a peacemaker. According to Shimray,

A woman was like an ‘ambassador’ who would volunteer to act as a mediator between the warring villages. Such women enjoyed full diplomatic immunity and protection. She was called the peacemaker, the bearer of the torch of peace of the Naga inter-village head-hunting wars. The women would boldly enter the battle fields, intervene in the fighting and stop the fight between two enemy villages. Women’s role and intervention in issues of conflict is very important¹⁶³.

This role of peacemaker has passed on over the generations and has continued till date through the platforms of various women organisations. They continue to fight against violence in society and stand against social ills such as alcoholism, sexual harassment, domestic violence, robbery etc.

Apart from preserving tradition, which is only an excuse to prevent the introduction of women’s reservation, there clearly are socio-economic factors at play. Despite the popular notion that women in tribal society enjoy greater freedom and are more empowered than the rest of the women, the reality speaks a different truth. According to Nongbri,

Tribal women’s greater economic independence and freedom of movement compared to their counterparts in non tribal societies cannot be disputed but it is naive to equate this with superior social status, a closer look would show that gender inequality is not alien to tribal societies but it is obscured by their poor economic conditions which forces men and women to co operate and share in joint economic activities¹⁶⁴.

Sometimes, economic contributions by women along with their male counterparts in tribal society are misunderstood as freedom of movement and equality with their male counterpart but the fact lies in economic scarcity which necessitates both males and females to jointly contribute in order to survive.

¹⁶² Toshimenla Jamir, Engendering Public space in Naga society: Tradition and Modernity in *Indian Folk Life*, Serial No.33, July 2009, p.18.

¹⁶³U A Shimray, Equality as Tradition: Women’s Role in Naga Society in *Economic and Political Weekly*, Vol. 37, No. 5, Feb. 2002, p.375.

¹⁶⁴ Sumi Krishna, Gender, Tribe and Community of natural resources in North-East India in *Indian Journal of Gender Studies*, Vol.8, No.2, Sep. 2001, p.315.

Historically, the system of governance among the Nagas was characterised by the rule of Chieftanship in which only a male can become a chief and his subordinates are always men. Even during public gatherings, only male members were eligible for participation and women never ventured out or interfered with the affairs of the men. Over the years, Village Councils began to replace the traditional system of Chieftanship, but even then women could or were never allowed to participate in any of the meetings or decision-making body. There is continuity in this trend even today, as is evident from the zero percentage of women's representatives in the State Legislative Assembly or the lower level political bodies like Village councils etc. The trend has once again manifested in the current opposition to women's reservation in the Municipal Town Councils election by Naga men.

It is worth mentioning that even in the Village Councils,¹⁶⁵ the same law i.e. Article 371A has been invoked to deny women their political rights. This happened in one of the villages of Nagaland called Chedema under Kohima District. When the Village Council for the period 2006-2010 expired, the State Government directed all the villages of the State to elect the new Village Councils for the next tenure 2011-2016. Following this, the Gaon Burahs (G.Bs), Khel representatives, clan representatives, a representative from each clan and senior citizens of Chedema Village got together and unanimously elected the Chairman and Secretary of the Village Councils Members.¹⁶⁶ However, some male members of the village demanded the inclusion of women representatives in the Village Councils and further demanded the re-election to the Village Councils with the vote of a women representative. However, the demand was not entertained by the Village Councils on the grounds that, "under the existing Act/Law, women and society members have no right of voting"¹⁶⁷ and the issue eventually ended up in the Guwahati High Court. The petitioners who were against the representation of women in the Village Council, argued that

Article 371A of the Constitution of India provides special provisions with respect to the State of Nagaland, especially providing safeguards to religious or social practices of the Nagas customary law and procedure. Under the Nagaland Village Council Act, 1978 (VC Act in short), a Village Council constituted under the law in force from time to time should administer justice within the village limit in accordance with prevailing customary practices and usages as accepted by the canons of justice

¹⁶⁵ As mentioned earlier, in the rural areas Nagaland is administered by the Nagaland Village and Area Councils Act, 1978 and every Village has its own Village Councils and Village Development Boards which looks after the affairs of the village.

¹⁶⁶ The meeting was held on 1.2.2011.

¹⁶⁷ Writ Petition (C) No.126 (K) of 2011.

established and the law in this respect as enforced from time to time. The Village Council Act provides no reservation for woman to represent as a woman to the Village Council and as such no woman representative from the NGOs or societies can claim reservation in the Village Council.¹⁶⁸

The Court refused to interfere in the demand for women's reservation on the grounds that, since the provisions of Article 371A do not specify the share of participation in local governance between Naga men and women, and the fact that the Article has been given to preserve the identity of the Naga people, the matter should be left to the state. It ruled as follows:

The court is to interpret the present law and examine the legality and validity of the impugned action of the respondents and it cannot import something which is not provided in the statute. If the respondents sincerely desire to give due representation of woman in the Village Council it could be done only through befitting amendment to the existing 1978, Act. It is the function of the State Legislature but the initiative must be taken by the respondent authorities. For this there should be a political will of the legislators and the Government. Till such time comes, the court cannot allow the respondents to give right of representation to woman vis-à-vis right to vote in the Village Council except in accordance with the existing law and procedure.¹⁶⁹

Thus, yet again, Naga women lost another chance of political participation at the Village Councils. Article 371A has been used time and again by Naga men to retain their traditional hold on decision-making and political institutions, and to exclude women from participation in the governance of the state. In several states of the country, due to the provisions of 73rd and 74th Amendment Act, 1/3 of the seats are reserved for women and women enjoy some representation in the political arena. In contrast, the state of Nagaland does not recognise the claim of women for political right. Whenever, any demand of reservation for women emerges, be it in the Municipal Act or the Village Council Act, either from the men's or the women's section, it is immediately put to silence by invoking customary laws and practices of the land tantamount to violation of Article 371A. Thus, the men of the State have repeatedly and endlessly used the provisions of Article 371A to justify their denial of the political rights of women and to exclude them from the ambit of politics.

These examples show that the paternalistic role that men used to play in the past in protecting their women and family from war enemies, providing for their needs etc had turn into a tyrannical role. Under the garb of paternity, the Naga men had began to subjugate their women, by denying them to express their political needs.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

Though there have been some women who have contested in state general elections, they have never been voted to power, a major reason for which lies in the structural dynamics that works to incapacitate them, such as lack of resources like money, political connections, lack of people's confidence in them and a male-dominated political arena. These are some of the factors which prevent women from entering the arena of politics. In a male dominated political scenario, it becomes absolutely impenetrable for women to make a place for themselves and this is where the need for special reservation arises. Reservation will at least provide women a platform whereby they are given an opportunity to contest along with their male counterparts. This has been the rationale behind every reservation: to overcome the structural obstacles that may stand in the way of any individual to compete with others on a level field and the same should inspire the framing of any affirmative law not just in Nagaland but in any land or state.

CONCLUSION

Legislation is one of the main instruments by which social change in society is sought to be effected, directly and sometimes indirectly. The Constitution's introduction of the reservation policy is precisely such a direct intervention towards positive social change. Though positive social change is desired to be achieved through legislation yet a gap often emerges between the formulation of laws and its implementation. There can be many reasons which lead to the emergence of this gap. A basic commonsensical understanding points to the practicality of the process of legislation and execution at two levels. At the first level, the gap between legislation and execution emerges because the agencies which enact laws are different from the agencies which execute them. At the second, the law-making agencies, by virtue of the autonomy and power vested in them, enact laws assumed to be for the welfare of the concerned. But, many a times, it happens that the ideal values envisaged by the law making bodies are not in consonance with the ideal values of the concerned subjects.

In the former case, the gap arises when there is inconsistency between the envisaged vision of the law and the end result. In most cases the end result either deviates from the envisaged vision and ends up achieving just the opposite or a series of unintended consequences may ensue. We have seen that the Nagaland example of the job reservation system and the reservation policy at the national level is no different. The framers of the Constitution had envisaged equality of all as the common value of the country and had instituted a reservation policy to provide equal opportunity to all by giving special attention to the weaker sections of the society. In consonance with this, the state of Nagaland had formulated a reservation policy for the more backward tribes of the state hoping to bring about equality between the tribes by providing a level platform for them. But going by the current scenario and the increasing demands for inclusion into the ambit of reservation policy by the tribes who are considered to be advanced, along with the demand for a definition of creamy layer, -indicates that all is not well with the reservation policy. It has become a bone of contention between the backward tribes and advanced tribes, with the backward tribes refusing to be taken out from the backward tribes list in spite of manifest improvements in their socio-economic condition. The advanced tribes too are not satisfied with the existing system of reservation and therefore their demand is to exclude the creamy layer of the backward tribes and include the backward *areas* of the advanced tribes. Given this backdrop, it can be said that the reservation policy has achieved just the opposite of what the framers of the policy had

envisaged: it has become a breeding ground for inequality rather than promoting equality. Besides, it has further created a rift between the advanced and the backward tribes. This is a clear deviation from the pristine conception of equality and has led to the emergence of an unintended consequence i.e. backlash from the advanced communities.

In the latter case, the gap emerges when the ideal value of the law-enacting agency are not consistent with the ideal value of the concerned subjects. The demand for 1/3 women's reservation in the Nagaland Municipal Council Act by the Naga women provide us with an example to analyse the above assertion. Here, misconception of ideal value happens at two layers. At the top layer, the Constitution through the 74th Amendment Act introduced 1/3 women's reservation in the Municipal Councils with the democratic principle of gender equality as the underlined ideal value. Unfortunately, in Nagaland, the conception of democratic equality does not seem to include gender equality as women are excluded from the purview of citizens capable of contributing to the governance of democratic institutions like Village and Municipal bodies. Women are denied their right to political participation as against the erosion of traditional values. When it comes to the job reservation system of Nagaland, the State Government is more than happy to follow the Constitutional democratic principle of equal opportunity to all and allot reservation to more and more backward tribes as shown in the second chapter. In contrast, the Naga women's demand for equitable representation in the Municipal Council has met with tremendous resistance from the male section with the argument that it goes against the customary practices of the community. This indicates that the Naga men prefer preservation of tradition and customary practices of the land as more important than following the values of gender equality and social justice envisaged in the Constitution. Thus, the Constitutional norm of gender equality has remained a distant dream for the women of Nagaland as translation of the Municipal Council Act into actual practice is being filtered and manipulated as per the community's or rather men's conception of equality.

At the second layer, the misconception of ideal value is situated within the male dominated law-making agency's conception of equality which is inconsistent with the women's conception of equality. In spite of the fact that women of the state feel discriminated and excluded from the decision making bodies and demand equitable representation in the Municipal Council, yet the male section of the state who dominate the law-making bodies are adamant to rectify the inequality meted out to the women and thus refuse to grant the demand of the Naga women. The demand from the Naga women for political representation through

reservation in the Nagaland Municipal Elections can be contextualized within the question of who can authentically claim to represent a given group. Who represents whom best? Here, Naga men assume a paternalistic role of deciding what is desirable and who should be granted which right irrespective of the wishes of the Naga women. Thus, due to incoherence between the ideal values of the law making agency and the concerned subjects', a gap emerges between legislation and execution of law.

Nagaland state government's job reservation policy and the attempt to introduce the women's reservation are aimed towards achieving social justice in line with democratic principles of inclusion and equality for all. Both cases are examples of state's intervention by invoking legislation in order to bring about positive social change. However, following from the above analysis, it is evident that legislation by itself cannot bring about positive social change unless concerted effort is applied to implementing the laws that are formulated, taking care that the gap which arises as a result of legislation and execution incoherence is sufficiently addressed.

So far the discussion has been on how legislation can fail to bring about the desired end due to lack of proper mechanisms to check the gap that emerges between the legislative and implementation processes. The next part of the discussion will address the same question of how legislation can fail to bring about the desired social change but the form of the question will change. So far the question has been focussed on the technicality of the policy measures, now the question will shift to that of policy framing. What happens when certain sections of people are unnecessarily excluded or discriminated against because of the rigidity of the policy framework? Sometimes the framework of policy formulation and definition in itself can exclude certain section of people from its ambit. This question is explored by firstly examining the recent Muslim minority demand for sub-quota within the larger OBCs quota and secondly by focussing on the debate of whether women should be accorded the status of a backward equated to that of the status of SCs, STs and OBCs.

Muslim minority sub-quota:

Drawing from the various examples of the country we see that there is a close connection between reservation policy and politics. Ever since the inception of reservation policy, politicians have used it as political largesse to garner vote by arousing communal identity. The potential of accumulating a vote bank through the promise of reservation has been rightly recognised and this has led to the politicisation of the reservation policy. Time and again, we

have seen political parties use reservation policy to lure minority votes. The most recent example surfaces from the UPA coalition Government's offer to the Muslim minorities to reserve 4.5% seats within the 27% OBCs quota, in order to gain the votes of the vast Muslim population in the state of Uttar Pradesh (UP).

On 22nd December 2011, through an office memorandum, the Central Government announced a 4.5% Muslim sub quotas within the 27% OBCs quota including for the prized Central Educational Institutions. The sub-quota was carved out in January 2011 as per the provisions of the National Minorities Act of 1992¹⁷⁰. The Andhra Pradesh High Court however quashed the 4.5 per cent sub-quota for minorities within the OBC quota on the grounds that reservations cannot be based purely on religious grounds. The Central Government challenged this order and asked the Supreme Court to stay the verdict of the Andhra Pradesh High Court arguing that the socio-economic status of the Muslims in Sachar Committee Report, Ranganath Mishra Commission and Mandal Commission Reports,¹⁷¹ all point to the backwardness of the Muslim minorities. However, the Supreme Court refused to grant the stay order and upheld the judgement of the Andhra Pradesh High Court. Earlier, the Andhra Pradesh Government had tried to introduce the sub-quota for Muslim minority at least three times in the year 2004, 2005 and 2007 consecutively but the Andhra High Court had repeatedly struck down the minority sub-quota on the ground that the demand was based purely on religious reason and therefore goes against the secular character of the Constitution.

There is doubt that the socio-economic and educational conditions of the Muslims in India are far below the national average measure as per the reports of several committees that were set up to analyze the socio-economic and educational conditions of the minority communities in India. The following include some of the committees that were set up: the Sachar Committee, the Ranganath Mishra Commission, the Human Resource Development (HRD) Ministry reports and the Andhra Pradesh Backward Classes Commission Report. The findings of all these reports have repeatedly established the fact that the socio-economic and educational status of Muslim religious community is far below that of other religious communities. The literacy rate of the Muslims constitutes 59.1% as per 2001 census which is

¹⁷⁰Rajeev Dhavan, India today, accessed on 06.27.2012, accessed from

<http://indiatoday.intoday.in/story/sub-quota-for-minorities-justice-madan-lokur-andhra-high-court/1/198977.html>.

¹⁷¹ India Today, accessed on 16.07.2012, accessed from <http://indiatoday.intoday.in/story/centre-submits-relevant-material-minorities/1/200276.html>.

below the National average of 64.8%. They are not only educationally backward but are insignificantly and disproportionately represented in the government services and their economic condition is no better.

In spite of the established fact that the Muslims constitute a backward minority, they could not be granted a sub-quota because the court does not recognise religion as an intelligible criterion for ascertaining the backwardness of a community. A community, no matter how backward or lacking, cannot be granted reservation purely on the basis of the community's backwardness. Claims not accompanied by other objective tests like socio-economic and educational tests are not entertained as a criterion for identification of backwardness. Further, Muslims as a religious community are not homogeneous but a heterogeneous group, and not all Muslims are backward. Therefore, the only way through which the Muslim minority could have legitimately claim for a sub quota within the 27% OBC quota was, as Rajeev Dhawan argued,- more backwardness¹⁷². Only by arguing or proving that they are more backward than the rest of the Other Backward Classes (OBCs), could the Muslim minorities have obtained their demand for sub-quota.

The Supreme Court provides for a sub-categorisation of backward classes only on the basis of more backwardness. Kaka Kalelkar Commission Report had recommended the division of the Backward Classes into two categories; backward and most backward. Sub-categorisation is also practised in states like Karnataka, Tamil Nadu, Andhra Pradesh etc. Similarly, in order to be granted a sub-quota within the OBC quota, the Muslim minorities must prove that they are more backward than the rest of the Other Backward Classes and therefore require special attention.

A second factor which obscured the gravity of the backwardness of the Muslim communities was because the sub-quotas were promised ahead of the upcoming Uttar Pradesh State Assembly's election. This was viewed suspiciously by many as the Congress Party's strategy to lure the vast Muslim population in Uttar Pradesh (UP) and rather than endorsing the sub-quota, it was dismissed as electoral politics. However, it is an established fact supported by a series of reports indicating that the socio-economic and educational conditions of the Muslims in India are indeed more backward than the rest of the backward classes. Therefore,

¹⁷² Rajeev Dhavan, India today. Accessed on 06.27.2012, accessed from

<http://indiatoday.intoday.in/story/sub-quota-for-minorities-justice-madan-lokur-andhra-high-court/1/198977.html>.

dismissing the sub-quota as another electoral tactic will lead to serious injustice meted out to the Muslim minorities simply because they belong to a religious community, as the Constitution does not recognize religion or caste as valid and objective criteria for determining backwardness of a group.

The same argument was put forward when the issue of caste as a criterion for identifying backwardness was being considered in the both the Backward Classes Commissions. Identification of backwardness based on the ascriptive criterion of caste has been one of the most contentious issues ever since the report of the first Backward Classes Commission. Both the Kalelkar and Mandal Commission Reports considered that caste being so entrenched in the social fabric of India, it cannot be done away with and completely ignoring caste as a criterion for identification of backward classes would amount to ignoring the ground realities of social division and social structure. The Supreme Court in many landmark judgements like *Indra Sawhney V Union of India*, *M. R. Balaji and others V State of Mysore*, *Ashok Kumar Thakur V Union of India* etc, ruled that even though caste constitute a class of citizens, it should not be the only determining factor for identifying a backward class, and that unless socio-economic and educational factors support the backwardness claim of a community, it cannot be called a backward class.

The usage of caste unaccompanied by other factors for ascertaining a group's backwardness led to the rejection of the Kaka Kalelkar's Commission Report in 1953 and all the major criticism levelled towards the Mandal Commission was precisely because of the same reason. Eventually, the use of caste accompanied by other factors of social and educational backwardness began to be allowed as a criterion for tests of backwardness in keeping with the ground realities of the social structure and division in India. Today, if the Supreme Court has struck down the 4.5 percent sub quotas for Muslim minorities, it is only maintaining the secular ethos of the Constitution. Therefore, the acid test for backwardness irrespective of religious or caste communities should be the socio-economic and educational backwardness of a community.

India as a welfare state has consistently addressed the needs of the minority communities like SCs, STs and OBCs through various affirmative actions, but Muslims as a religious community continues to remain backward and excluded from the measures that are formulated for the upliftment of the backward communities. This is because the Constitution does not recognize ascriptive factors like caste, religion, sex etc as the only intelligible criteria for proof of backwardness, other factors like social, educational and economic criteria

have to accompany the claim of backwardness by any group. Therefore, Muslims as a religious community despite being backward cannot be granted sub-quotas on the communal basis only.

Women: category or community?

The issue that women constitute half of the country's backward and therefore should be given an equal status with the weaker sections like the SCs, STs and OBCs is an ongoing debate. However, the problem which arises in equating the status of women with the other backward communities is that they do not form a separate community consisting only of women. Therefore, in spite of forming half of the country's backward their status cannot be treated on par with the status of SCs, STs, and OBCs. Further, women do not form a homogeneous community; they are divided on diverse lines of caste, class, tribe, religion, ethnicity etc. Not all women enjoy the same status; not all women are advanced or backward. Therefore, the argument that women should be given equal status with the SCs, STs and OBCs stands defeated because they do not form a community, they belong to a *category*¹⁷³ and hence they cannot be legitimately included in the list of backward classes as per the provision of the Constitution.

Kaka Kalelkar, the chairman of the first Backward Classes Commission argued that women constitute the most neglected lot of the country's sections of people and therefore recommended that women living under deplorable conditions of socio-economic and educational status should be included in the category of backward and special attention must be given to them for their upliftment.

Women in India have lived under great social handicaps and they should be given special help in education so that they can come up to the level of men and they should be given all opportunities in public service by giving them equality of status...women should have a share in the political life of the country¹⁷⁴.

But the problem with Kalelkar's recommendation as already pointed out, arises in relation to the backwardness argument. Women do not form a community as they cannot be separated from men and form a separate community of their own. Therefore, in spite of the fact that women constitute a major chunk of the country's backward they cannot be granted the benefits that the other backward groups are entitled to. Since the Constitution recognized the

¹⁷³ Government of India, *Towards Equality: Report of the Committee on the Status of Women in India*, 1974, p. 304.

¹⁷⁴ Maheshwari Shriram, *Mandal Commission Revisited: Reservation Bureaucracy In India*, 1995, pp. 56, 81.

socially and educational backward classes only on the basis of a group or a community and as women do not form a community they cannot be legitimately granted the benefits of reservation. This is one of the most commonly used arguments against the reservation of seats for women in the educational institutions and government services as well as in the national and state assemblies.

Ghosh and Lama-Rewal shares the opinion of Kalelkar that women should be treated as a backward group because, “The main justification for using affirmative action policies such as electoral reservations is largely the same for women as for SCs and STs, these social categories have been historically deprived of their right to fully participate in political life”¹⁷⁵. Affirmative action, like reservation policy, has always been formulated for the weaker sections of SCs, STs and OBCs, both at the state level and national level. On the other hand, women despite having been excluded and discriminated against socially, economically and politically and forming half of the country’s backward, enough attention has not been given to them to sufficiently address their needs and demands. Thus, the Committee on the Status of Women¹⁷⁶ that was appointed by the Government of India in 1974 wrote,

We found that sex inequality cannot in reality be differentiated from the variety of social, economic and cultural inequalities in Indian society... Though women do not numerically constitute a minority, they are beginning to acquire the features of a minority community by the three recognised dimensions of inequality: Inequality of class (economic situation), status (social position) and political power. If this trend is allowed to continue the large masses of women in India may well emerge as the only surviving minority continuously exposed to injustice.¹⁷⁷

Thus, even though they constitute half of country’s backward population, they cannot in practice be granted backward status simply because they do not form a community and are deemed to belong to a category which is not a homogeneous entity but heterogeneous. Being heterogeneous they cannot be technically included in the definition of “backward classes” and therefore cannot be granted the status of a backward community like the SCs, STs and OBCs. Thus, a policy has to be formulated specifically to address the needs of the women which focus on the upliftment of women in general irrespective of caste, class and tribe or ethnicity.

¹⁷⁵ Archana Ghosh, Stephanie Tawa Lama- Rewal, *Democratization in Progress: Women and Local Politics in Urban India*, 2005, p.5.

¹⁷⁶ Government of India, *Towards Equality: Report of the Committee on the Status of Women in India*

¹⁷⁷ *Ibid.*, p.3.

Women as a heterogeneous category belong to different classes, castes, religious groups, tribes, etc and their status and positions in society depend not only on their social positions within their community but also on the location of the group that they belong to in the social hierarchy. Such is the structural location of women that those women who belong to a group that is socially and educationally backward and occupy the lowest rung in the social hierarchy of society will be doubly disadvantaged; as a member of a backward or disadvantaged group, and also as a discriminated and excluded section of the group.

Both men and women derive their identity from groups and communities. Therefore, the inequalities faced by women have to be weighed vis-a-vis the status and social position of the groups that they belong to. Unequal social structure and social positioning of a group affect the status of women in society more strongly than men because even within a group women are the neglected lot. Alongside the different dimensions of inequalities that women suffer as a member of a disadvantaged social group situated within a particular social hierarchy, women suffer from another dimension of inequality within their group; the inequalities faced as a woman. The unequal gender roles that society assigns to women prevent them from functioning as an equal entity with men, thereby subordinating them as inferior to men; physically, intellectually, economically and socially. Therefore, women require special attention if not as a community but as a category of people that has been hitherto historically wronged and excluded from the arenas to which men have historically enjoyed exclusive access.

There are some problems which confront only women and not the male members of their group. Therefore, along with the problems of their group or community they face extra challenges which are exclusive to women only. For example, women have to juggle between family and public life, they are faced with multiplicity of roles, private and public roles; cultural constraints also work against women's participation in areas of governance and decision making. Therefore, the special needs of women should be recognised and addressed so that they can walk confidently through the challenges of life that confront them as women on a daily basis.

In spite of their heterogeneous character, some inequalities are specific to women only because of their gender and not because of the group they belong to. These unique inequalities that women face because of their gender and not because of any other reason should be addressed specifically. There are certain areas to which women in general are denied access irrespective of their class, caste and tribe. For example, political institutions worldwide have

remained the preserve of men ever since the division of society between the ruler and the ruled. Some constraints affect women in general irrespective of their caste, class and tribe, which prevent them from effectively exercising their political rights. One of the most pervasive and rigid constraint has been the force of tradition which continues to work against the participation of women in politics. No better example can be invoke than the Nagaland scenario where the male section of the State had invoke Article 371A to deny women their political rights.

A second common constraint which arises as a result of their heterogeneity could be the lack of strong spokespersons to advocate their rights and needs as women in general. Ghosh and Lama-Rewal argued that one of the reasons why there is scarcity of leader or spokespersons who can actively fight and campaign for the rights of women in general is because political parties do not consider women as a constituency like the SCs, STs and OBCs. Women do not form a community, therefore identity politics cannot be mobilized to garner the votes of women in general, -and as they do not form a potential vote banks they end losing out on politicians who can act as an advocate of their rights. Thus, political parties do not show much interest in lobbying for the demands of women's reservation as they realise the futility of investing in women as potential vote banks because women cannot be mobilised on the basis of gender identity. To quote Ghosh and Lama-Rewal, "gender is irrelevant as a political category because it does not ground an identity, and therefore has a very limited mobilizing potential. To put it more plainly, as long as women cannot be made into a vote bank, women's interests will only be paid lip service by parties".¹⁷⁸ Thus, in the absence of strong political parties lobbying for them, women lose out their battle for reservation each time the issue comes up for discussion in the parliament, as has been seen in the case of the Women's Reservation Bill.

Opponents of reservation for women argued that since women do not form a homogeneous entity, any reservation for women will only end up benefitting the upper crust of women category, causing further discrimination and under representation of the poor and deprived sections of women. This is precisely the reason why the demand for Women's Reservation Bill (WRB) or the Constitution (108th Amendment) Bill, in the Parliament and Legislative Assemblies has remained stalled ever since its introduction in 1996. Though it has been passed by the Rajya Sabha, the Bill remains to be passed in the Lok Sabha. Opponents are

¹⁷⁸ Ghosh and Lama- Rewal, *Democratization, Progres*, Op. Cit., p. 139.

against the Bill in its present form as, they argue, it will lead to further injustices within the women's groups which do not form a homogeneous entity, and so according to them, the Dalits, OBCs, and minorities' women will be swamped by the upper crust of the women category.

When the bill was passed in the Rajya Sabha on March 2010, a women's rights advocate Brinda Karat of the Communist Party of India (Marxist), stated, "The bill will change the culture of the country because women today are still caught in a cultural prison. We have to fight stereotypes every day".¹⁷⁹ This statement sounded like an appeal to women in general to unite despite their diversities as their differences plays against them. Because of their differences they are unable to combine forces as a community and press for a particular demand which divides them and prevents them from mobilising themselves into a powerful union of an All India Character.

However, the argument that women do not form a heterogeneous community and therefore cannot be given reservation is not convincing because no group or community in society can legitimately claim to be homogeneous. All other backward groups like the SCs, STs and OBCs are also not homogeneous entities. Within a group there will always be some who are more advanced and dominant than the rest and there are also people who are more backward than the rest. The divide is not just between the much better off and the less well off, the division extends to sub-groups like sexual collectivities, women, the physically challenged etc. Therefore, the demand for a special women's reservation in light of their backwardness cannot be brushed aside simply by arguing that because of their heterogeneous character they cannot be granted a reservation. Besides, there are measures like creamy layer that can be designed to filter the upper crust of women from the rest of them.

The above two analyses of the Muslim minority demand for a sub-quota and the women's demand for recognition of their backward status explains how the very framework of policy definition and formulation can exclude and include certain sections of people from fully enjoying the rights and benefits of citizens. The exclusion and inclusion of certain sections of people as a result of the misframing of policy measures can be linked to the broader concept of backwardness. Backwardness is recognised only as a characteristic of a group and not as an individual phenomenon, though socio-economic and educational backwardness are experienced at an individual level on a daily basis. Therefore, the process of defining

¹⁷⁹ Accessed on 18.07.2012, accessed from <http://feminist.org/news/newsbyte/uswirestory.asp?id=13398>.

backwardness on the basis of a group's identity rather than an individual's identity often leads to the exclusion of some individuals who may be backward in the real sense of the term but are excluded from the definition of backwardness simply because they do not adequately meet the criteria of a group. This draws our attention to the dilemma between group rights and individual rights.

Group rights or individual rights?

Kaka Kalelkar, the Chairman of the first Backward Classes Commission in a letter to the President wrote,

We feel that the investigation into the backwardness in the nation and of the people ought not to have been confined to finding out such sections of the people or such classes, castes, communities or tribes as are backward. We have come to the conclusion that this group investigation is repugnant to the spirit of democracy. In a democracy, it is always the individual (not even the family) which is the unit.¹⁸⁰

Many dangers lurk behind recognizing backward classes on the basis of a community's identity. Besides constituting an erosion of the secular character of the Constitution it will heighten differences in society by promoting communalism. Thus, instead of promoting unity among the diverse groups, it will only lead to disintegration among them resulting in polarization of communities along communal lines. This has the potential to destroy the peaceful co-existence of diverse communities in society. Flowing directly from this, a second danger, -which emerges from the recognition of backward classes on the basis of a group's identity, is communal politics. We have seen how the UPA Coalition Government had attempted to lure voters from the Muslim community by promising them a sub-quota within the 27% OBCs quota. The promise came just before the impending Uttar Pradesh state assembly election as part of the electoral strategy that the Congress party had devised to harness the votes of the vast Muslim population in the state. Such forms of electoral politics by political parties will awaken the identity consciousness of the diverse communities which will unnecessarily divide society on communal lines. If the misuse of the reservation system by political parties is allowed to continue unchecked, it will lead to a third danger which arises as a result of group based test of backwardness i.e. backlash. If ascriptive factors like caste, religion and tribe are allowed to be considered as a criterion for test of backwardness, it will only lead to further fragmentation and sub-categorisation of the OBC quota. More and more groups will emerge demanding for a share in the OBC quota, and before we realise the gravity of the situation, we would be flooded with innumerable demands from diverse sub-

¹⁸⁰ Maheshwari, *mandal, reservation, bureaucracy*, Op. Cit., p.13.

groups. This will lead to a situation where different policy measures have to be formulated to meet the demands of each of these communities and will thus further fragment the society into several mini-groups. They may create further inequalities in society but if equality is sought to be achieved, the causes of inequality should be addressed. This will require a firm resolve to construct the nation where growth of the nation on the lines of democratic principles must not be retarded by factors like caste, religion, tribe etc.

Group-based tests of backwardness further lead to the exclusion of certain individuals who may be backward but do not qualify to be called a group, or whose groupness is not recognised by the society as a legitimate group identity, for example women, sexual collectivities, the physically challenged etc. Such individuals, because of their natural endowments may have remained excluded and discriminated hitherto. Therefore, they require special attention but because they fail to fulfil the criteria required to be called a group, they are not considered as eligible for the grant of benefits associated with backwardness. As such they continue to remain outside the domain of the mainstream society and their condition aggravates with time. Such individuals are most affected when they belong to a backward group which occupy the lowest rung in society. They become doubly disadvantaged: as members of a backward group and as excluded individuals within the group. Thus, those individuals who are most desirous of the benefits of affirmative measures become the most excluded in society, thereby perpetuating further inequalities in society as inequality is structured within layers of social positioning. The demand for the recognition of women as a backward group as analysed above is a case in point of how deserving individuals are excluded in society simply because they fail to adequately fulfil the criteria of a group required for identification of backwardness.

This is one of the reasons why the demand for sub-quota emerges as the individual is not entertained as a legitimate unit to be granted the status of a backward and therefore, the only possible channel through which individuals can legitimately claim for recognition is through their group. However, groups in themselves are not homogeneous and in every group individuals who form a minority are the ones who get excluded most often. But as individuals are not recognised as a unit, they have to search for an alternative whereby they can legitimately claim for a share in the benefits that are provided to their group in lieu of their group's backwardness. The easiest alternative through which they can lay claim to an equal share in the benefits accruing to their group is by forming another sub-group. This is perhaps

the reason why sub-group emerge and the demand for a fragmentation of sub-quotas increases in society.

Perhaps the fragmentation of society into sub-groups can be averted if, as Kalelkar had suggested, the individual is taken as the unit. If backwardness had been addressed through the unit of individual and not through the unit of a group, perhaps the situation would not have arisen whereby the excluded individuals have to form a sub-group in order to lay claim to equal share in the re-distributional policies of the state. If the individual is taken as the unit, he or she would no longer have to take the identity of his or her group to claim for such rights. This can further act as a mechanism to stall the awakening of identity consciousness and identity politics which emerges as a result of group based test for identification of backwardness.

In India, almost every other state has a policy of sub-quotas. States like Karnataka, Tamil Nadu, Andhra Pradesh, Bihar, Uttar Pradesh and Nagaland have designed measures to address the needs of the diverse sub-groups within their state. At the national level, the Women's Reservation Bill in parliament and legislative assembly has been stalled in the Lok Sabha only because of the demand for a sub-quota by the minorities, Dalits and OBCs. The Muslim minorities demand for a 4.5% within the 27% OBCs quota provide us with the most recent example. Given this backdrop of increasing demand for sub-quotas in almost every state and even at the national level, one cannot help but wonder if group-based identification of backwardness for award of reservation policy is indeed the solution to adequately address the vast backward population of the country.

The Ranganath Mishra Commission that was appointed to analyse the socio-economic conditions of the minorities stated that the group-based test of backwardness as was undertaken in the identification of socially and educationally backward classes is inherently faulty as it was not based on objective criteria. Therefore, it recommended that the same model that was adopted in preparing list of Below Poverty Line (BPL) should be adopted in preparing an objective list of socially and educationally backward. This test for identification of backwardness should be undertaken on the basis of household or family as the unit according to Ranganath Commission's Report. Taking the individual or the household as the unit creates a direct channel between the individual and the state whereby the individual no longer has to approach the state via the medium of group's identity to lay claim to a share of the country's resources. Such an approach will further narrow down the exclusions which arises as a result of belonging to an advanced community. A person may belong to an

advanced community but may be individually backward. Therefore, if backwardness is assessed only through the group's socio-economic and educational status, such individuals by virtue of being a member of an advanced community stands excluded just because they belong to a group that is considered to be advanced in all senses of the term in spite of the fact that they are individually backward. Thus, if the individual is taken as the unit of focus, the exclusion that emerges as a result of belonging to an advanced group stands cancelled.

For Bhikhu Parekh the question of inequality and social justice can be better addressed if instead of over-emphasising backwardness, more attention is given to structural inequalities like poverty and providing better quality of education.¹⁸¹ Such kinds of affirmative action will reduce the problem which arises from a group-based assessment of backwardness. The individual or the household will become the unit of focus in the attempt to tackle the questions of inequality and social justice. Perhaps a time has come where a shift in approach is necessitated in order to adequately address the question of equality and social justice. A shift must be initiated from an over-emphasis on backwardness to other affirmative measure like poverty alleviation, right to food, free education etc. This will automatically bring a shift of focus from a group-based to individual-based strategy for implementation of such welfare measures or affirmative actions'. The criteria for identifying backwardness need to go beyond the existing policy which will not only accommodate the diverse needs and demands of the groups but also cater to the needs of those individuals who are the most deserving in society.

Reservation policy as an instrument of social welfare measures focusing on equal resource allocation and participation in society needs to be contextualized in relation to the challenges of formal and substantive equality, taking into account the different social positioning of individuals and groupings within society. Reservation policies in themselves do not automatically guarantee equality and social justice as envisaged by the welfare state. Unless the substantive social positioning of the groups is recognized, policy measures like reservation will only lead to heightened inequalities and discrimination in society. Without recognizing and addressing social inequalities like gender, ethnic groups and minorities it is meaningless to talk about economic justice because it will only end up benefitting the powerful and advantaged groups. Thus, the democratic principles of justice and equality can be better achieved if mechanisms are devised for the effective recognition and representation of the needs and demands of the unequal social groupings in society.

¹⁸¹ Bhikhu Parekh, *Limits of the Indian Political Imagination*, In V. R. Mehta and Thomas, (eds.), *Political Ideas in Modern India*, New delhi, 2006, p.

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