

**EQUALITY AND SOCIAL JUSTICE:
RESERVATION AND REVERSE
DISCRIMINATION**

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DECLARATION

Certified that the dissertation entitled "**Equality and Social Justice Reservation and Reverse Discrimination**", Submitted by the **Amit Kumar Upadhyay** is in Partial fulfillment for the **Master of Philosophy** degree of this university. This dissertation has not been submitted for any degree to any other university and is his own work.

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Dedicated to My Father

Who made me

What I am

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Amit Kumar Upadhyay
Amit Kumar Upadhyay

Introduction

Equality in the sense of equality of opportunities and equality in terms of the rights and privileges of citizenship is rooted in the belief in the equal worth all human beings. The concept of justice is so intimately related to the concept of equality that we cannot conceive of justice without equality. It is widely claimed that there should be equality before law and no discrimination should be made on the basis of caste, colour, creed, sex, place of birth. Similarly, in the economic sphere, there should be equal opportunities for all to enable their personalities to bloom in the full. This study seeks to examine this aspect of justice in the context reservation. Inequality arises out of the imperfections of the social order. Society contains inequality; so it must be reformed and made more equal. Social inequality has been a historical fact. Some people enjoyed all the privileges of life while others could hardly get a square meal a day. The idea of equality was formulated with an eye to removing such social injustice. Therefore equality implies a certain levelling process. Social forces, accordingly, need to be so arranged that each gets his due. Equality integrated with social justice means that the realisation of an individual's best self must be matched by the realisation by others of their best selves. The Indian Constitution sets forth a programme for reconstruction and transformation of a medieval-hierarchical society emphasising inequality into a modern egalitarian society based on

individual achievement and equal opportunity for all regardless of one's caste, race, religion.

Equality is invoked by every theory of justice in one form or the other. Justice demands that politics should operate to produce equality of opportunity, equality of treatment, uniform distribution of goods and services. Equality thus becomes central to the theory of justice. It is desirable because the principle of justice based on equality brings an increasing benefits to all members of society, especially the least favoured.

Many Indian intellectuals like Nehru, Ambedkar, Gandhi, were influenced by the Western ideas of equality and egalitarianism infused in the writings of thinkers such as Rousseau and J.S. Mill. They rejected the hierarchical basis of Hindu orthodoxy and preached the gospel of equality in national movement.

The Constituent Assembly, witnessed a great debate on justice and equality. The Assembly was particularly concerned about the widespread socio-economic disparities that existed in the Indian society and every member wanted to bring equality of opportunity for every one, of the ways of doing this was through of system of positive discrimination for the depressed class.

The members of the Constituent Assembly, being the real leaders of the masses were aware of the socio-economic situation existing in the country and wanted an India which was devoid of such

inequalities. T.Prakasam, member of the Constituent Assembly was of the view that the greatest achievement of the constitution was that it succeeded in removing untouchability and made Harijans feel that they had an equal stake in the country alongside rest of the population.

To bring equality and justice in society, it is necessary to care for the least advantaged. Reservation is thought to be the chief-vehicle of amelioration of the lot of the downtrodden sections of the Indian society. It is a form of "Compensatory discrimination", 'compensatory' because it seeks to compensate the loss suffered by lower castes, and 'discrimination' because it discriminates in their favour against the higher castes. It is believed that reservation would help the vulnerable and exploited section of the Indian Society to come forward and in this way a day will come when a classless and casteless society would be established in India.

However far from becoming a casteless society, India is fast emerging as a house-divided between forwards and backwards, the privileged few who enjoy reservations and the deprived many who are devoid of these benefits. Policy of reservation is creating reverse-discrimination for upper caste and its benefits have gone to those who need it least.

This thesis has been written mainly from theoretical and practical perspective, historical material has been used to evaluate

the effectiveness of legal doctrine in achieving the goals underlying the concept of compensatory discrimination or reservations for Scheduled Castes and Tribes and Other Backward Classes.

This dissertation to explores, the question of Equality Vs Social Justice, how far compensatory discrimination should be allowed so that it does not create reverse discrimination. The objective is to find out that whether or not reservation will infringes the doctrine of 'Equality' given in Art.14 of the Fundamental Rights.

The source material for this dissertation mainly comes from primary and secondary sources. The government documents, seminar, various conference regarding the social justice and reservation, interviews, constitute the primary source. Books, periodicals, News paper articles, and theses constitute the secondary sources.

The dissertation is divided into three chapters.

Chapter One briefly traces the historical-intellectual context of the debate on equality and social justice by summarising the position of several eminent and erudite scholars. It deals with the relationship between equality and social justice. Two notions of equality, i.e. equality of opportunity and preferential opportunity in the constitution for the advancement of the people in social field, are intimately connected with each other. The most radical notion of equality is the equality of results. A programme of equality of results

would seek to transform inequalities at the beginning into social equalities at conclusion. This part of the thesis is theoretical as well as comparative. It argues that the notion of equality accepted in India emphasises groups rather than the individual. In India it is group that counts ; the individual has a secondary place. This section argues that equality as an aspect of justice requires the state to adopt standards which ensure the basic needs are available to every individual in society.

Chapter Two attempts to briefly trace the reservation policy in India. The researcher has tried to show how reservation is an instrument to bring social justice. Reports of Kaka Saheb Kalelkar and Mandal Commission have been analyzed in detail. The content of this chapter also opens the reality of Mandal Commission report and shows that the methods and technique adopted to prepare the report was unauthentic. It also deals with other limits to reservation. It is well known that total reservation can not exceed 50% of the available places. This percentage principle is seen as a technique to balance the claims of merit with the claims for the redressal of historically accumulated backwardness. It also deals with an assessment of the adequacy of representation of 'the backward classes' in services and several constitutional provisions for providing reservation.

The dissertation takes account of major events such as the anti-mandal-agitation and vigorous debates about 'compensatory

discrimination' among the intelligentsia. This chapter concludes with an analysis of the meaning and drawback of the 'Creamy Layer' concept suggested by the Supreme Court.

Chapter Three deals with the practical dimensions of the implementation of the reservation in UP. When Mandal Commission was implemented the state came into national focus. It was the centre of student agitations riots and debates around the issue of reservations.

The Mandal Commission Report played an effective role in counter Advani's Rathyatra politics in the state. Caste-politics has played a dominant role in state politics ever since. Following the mandal agitations, dalits and OBCs have resorted to independent political mobilization affecting adversely the congress party in the state. The congress has historically depended on Brahmins, Muslims and SCs. With SCs going in favour of BSP, and the Brahmins towards the BJP the congress in the state was left high and dry.

Recently Uttar Pradesh Chief Minister Rajnath Singh has demanded reservation for most backward classes within the overall structure of reservation for the Dalits and OBCs.

As a research scholar from UP, the policy of reservation which is the most prominent element of the UP state politics naturally enthused me to work on this topic.

In the very beginning, of this chapter I have depicted ecological and social profile of UP with its demographic composition. This chapter also analyzes this state's experience in the area of compensatory discrimination.

This chapter is written mainly from a historical perspective like rise of OBCs Politics and its demand for reservation. Reports of Mandal Commission and Chhedi Lal Sathi Commission have been subtly examined.

The scope of this chapter, encompasses the analysis of reservation, rise of OBCs politics, in state constitutional policy, decisions of High Court, and Supreme Court, Commission's report and creamy layer's, merit and demerit. Recent debates over reservation within reservation for most backward classes in UP have also been dealt with.

Chapter -1

Equality and Social Justice; Problems and Perspective the Indian Context

Social justice is an overarching concept which reconciles certain other values. Ernest Barker suggests that any notion of Justice involves values of liberty, equality and fraternity. The basis of liberty and fraternity is easily explained : the intrinsic worth of the individual owing to his/her rationality. But how can one explain the need for equality ? Inequality is all too apparent in nature. The modern idea of equality springs from the distinction, Rousseau made between natural and conventional inequality. There is little that can be done about natural inequalities but, conventional inequalities are a creation of society and society can undo it. Extreme social inequality can render meaningless the concept of the intrinsic worth of human being. The idea of equality demands that each individual should get equal opportunities for the maximum advancement of his/her attributes.

As pointed out, the modern idea of equality does not aspire for perfect equality among individuals. It comes down to equality of opportunity for all individuals. However given the inequities that exist in society a formal equality of opportunity will only further perpetuate inequality. Equality among unequals leads to inequality. Clearly, equality demands that socially deprived should receive preferential treatment. Social Justice bears a clear stamp of equality and the familiar formula of Social Justice is treating similars similarly and dissimilars differently stands solidly on the foundation of equality and equitable distribution.

"The principles of Justice are distinguished from other principles of morality of being governed by the ideal of equality"¹ In the contemporary society, social justice is regarded as property of distribution of something. In modern democratic societies, It offers three criteria, i.e. equality, merit and need.² Since many years, with human equality and rights of man having been universally accepted, equality has been a fundamental presumption of the theory of justice.

Social structure in India is heterogeneous and hierarchical. The uniqueness and unequalness of the Indian caste system perpetuated over thousands of year created a multiple layered society which inbred an ideology of oppressor and oppressed. The continuance of systematic inequalitarianism produced a vast multitude of population which remained suppressed, isolated and deprived of society's mainstream facets.

The deprived lives in humiliation socially, suffer economically and are exploited physically. In such a social system, the removal of social inequalities was considered a necessary condition of social justice and an essential adjunct of just society. The scope of social justice is wide and it provides, equal social opportunities for the development of personality to all the people in society, without any discrimination on the basis of caste,

¹ William K.Frankena, "The Concept of Social Justice" in *social justice*, (ed.) by Richard Brandt, Prentice Hall, Englewood Cliffs N.J., 1962, p.17.

² Barbara Godwin, *Using Political Ideals*, John Wiley and Sana, New York, 1982n p. 266-67.

colour, sex or race. No individual should be deprived of the equality of opportunity due to any ascriptive factor, be it caste, colour sex or race.

Justice can be made available only in a social system where the exploitation of man by man is absent, and where privileges of few are not built upon the miseries of the many. In a just society, individual good is important, but more important is the social good of the least advantaged. In India, it justifies unequal allotment of benefits to those who have been the least advantaged. Just character of the state demands that the state provide fair equality of opportunity to the worst off sections of society.

The basic premise of social justice therefore is emancipation of the underprivileged, exploited and oppressed sections of society. It's main aim to liberate mankind from traditional bondages of social and economic exploitation and discrimination. It is concerned with equality of opportunity for every individual for the development of his personality.³

Social Justice in India is a constitutional imperative. It is to be argued that at the time of independence, the Constituent Assembly had a strong feeling of restructuring traditional society as it was engrossed with acute social, economic and political inequalities. The assembly conceived the Constitution of free India not only as a mechanism for governing the country through parliamentary democracy but also an instrument for

³ R.C. Vermani, *An Introduction to Political Theory*, Gitanjali Publishing House New Delhi 1996.

bringing out social change and charter of social justice so that not only political democracy may take root in true sense but social and economic democracies can also be secured in their fullest sense.⁴

The constitutional provisions for providing Social Justice has categorises into three broad categories.

1. Protective - (Abolition of untouchability, disability removal etc.)
2. Developmental - (Educational Schemes, Scholarships, free separate hostels).
3. Preferential - (Legislative, employment, and educational reservation).

Of these, the effective implementation of the first two categories is a pre-condition for actualising the measures of third category.

The Preamble to our Constitution declares that the state has resolved to secure Social Justice to all the citizens of India. According to the Directive Principles of our constitution, the state should promote the welfare of he people by securing a just order by eliminating inequalities in social status and providing equality of facilities and opportunities to all citizens of India.

Accordingly, the constitution contains a number of provisions to ensure, what Marc Galanter, calls the 'Competing Equality'. Article 46 requires the state" to promote with special care the educational and

⁴ Dr. Nil Ratan, "Reservation and Social Justice" - A critical Analysis, *Third World Impact*, January 1999, p-29.

economic interests of the weaker sections of the people and in the particular of the Scheduled Castes (SC) and Schedule Tribes (ST) and protect them from social injustice and all forms of exploitation. Article 15 (4) permits special treatment for backward classes. Article 16 (4) enables the state to make any provision for reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the service of state. To activate these provisions. The constitution under Article 340 envisages a Commission.

In Legal perspective the Supreme Court of India, during the last decade, under the leadership of P.N. Bhagavati and Krishna Aiyer interpreted constitutional provisions in such a manner as to ensure the enjoyment of fundamental rights by poor, underprivileged sections of community and to ensure social justice through the mechanism of Public-Interest Litigation. Only legal method may to success to achieve Social Justice.

There are several areas where social justice faces ample challenge. The plight of adivasis, the scheduled caste, landless labour, and women are some of the areas where this challenge stares in our face.

Human history has been an incessant quest for justice, the same history has witnessed an almost inseparable link between justice and equality. Struggle against slavery, racial discrimination of classes and castes have all been centering equal rights for all men.

Theory of Social Justice largely depends on the correct analysis of the concept of equality. Equality is built into the concept of Justice. Justice requires equality-equal treatment to all.

A new awareness has developed that informs that the rights of an individual should be reasonably restricted in the wider interests of his community. So that the ends of Social Justice are properly achieved.

The concept of Social Justice is very wide term that covers within its fold everything, pertaining to the norm of 'General interest' ranging from the protection of the interests of the minorities to the eradication of poverty and illiteracy. It not merely relates to the observance of the principle of equality before law and independence of judiciary. It also relates to the eradication of gigantic social evils like those of pauperism, disease, unemployment and starvation.⁵

In countries like India, the idea of Social Justice enjoins upon state to make concerted efforts for the improvement of the lot of the downtrodden and weaker sections of the community. Its area widens itself so as to cover the economic domain of people's life.

It also demands harmony and cooperation between labour and capital a substantial minimum wage to the capacity of each industry and other incidental benefits that improve the standard of living of the people.

⁵ Dr. R. Chandra Mohan. "Ideal Social Justice; Way to National Integration" *Third Concept*, February 2001.p. 26.

The ideal of Social Justice envisages to promote the welfare of the people by securing and developing a just social order. Apart from ensuring equality and liberty to the people, it enjoins to bring a social order in which justice - social economic and political-shall inform the institutions of national life.

If justice is giving every one his due, then to deprive someone or some group of men of what is his or their due is denial of justice i.e. injustice.⁶

The struggle for social justice has been to undo this wrong by compensating the victims of such denials and deprivations the Blacks in America and lower castes in India. For example, for restoring equality of rights that has been disturbed by denial of justice, a just society has to make provision for preferential treatments to the members of the victim class.

It is true that in the process of dispensation of preferential justice some members of the non-preferred class will suffer injustice. For instance, reservation policy followed in post-independence India, a candidate belonging to the forward caste despite securing 75% marks may have to lose his chance of admission to a professional course because a scheduled caste candidate having 30% marks obtains the seat since it was reserved for scheduled caste candidates.

⁶P.K. Mohaptra, *Social Justice Philosophical perspective* (ed.), D.K Printworld (p) Ltd. New Delhi, 1999.

This system is inevitable, because the provision of this concession to the **Reserved-caste** candidates is only way available to society correcting the social or moral imbalances and restoring equality of rights and opportunities; the particular student of **Privileged-caste** is not taking admission because his share of admission is imparting social justice. In popular parlance his share in admission in opening the way for social justice.

Preferential Treatment which is prerequisite for Social Justice is only a means to the ideal of equality in the long run and is subservient to this ideal.

'**Prof. Prasad** rightly deplores, that neither our government nor our educational planners nor even the national media is making any effort in this direction. But social justice will be a far cry unless such conditions are created in which everyone deserves what he earns or what benefits he gets'⁷.

In this dissertation theory the equality, propounded by western thinkers would be examined and the cluster of meaning inter lacing each other should be reviewed. It should also be shown that to **Acton and De Tacqueville** expansion of equality was dimanition of freedom as the former tends to levelize and the latter tends to accentuate differences. Further, it should also be pointed out that even in the western context the harsh and grim realities of social life tend to whittle down the formal

⁷ Ibid.

concept of equality and demand that equality i.e. coextensive with social justice. In this context such old masters **Tawney** and **Laski** be discussed, and to continue this aspect of story pluralist theories of justice in post-modern age with particular reference to **Walzer** should also be discussed.

Against this background, the Indian context should be spelt out contemporary thinking of equality and justice in India and should be contrasted with the thinking of this subject in the 19th century in India. The latter was only Euro centric, formal and legal.⁸ There was no doubt an awareness of the depleted condition of the masses, but the thinkers of the Indian Renaissance were so much involved in the debate with the English rulers that they could not think of any other form of equality or justice which did not demand the overpowering presence of the state. But times have changed and India since Independence was to take account of vast misery poverty and social inequality as well as gender bias. It can not just be content with an articulation of formal technical legal system of equality. The constitution first amendment introduced clause 4 to Article 15. As a democratic socialist, the ideal of Nehru is "Social equality in the widest sense and equality of opportunity for every one". The ultimate aim of social justice according to Nehru, is "to put an

⁸ B.N. Ganguli, *Concept of Equality : The Nineteenth Century Indian debate*, Indian Institute of Advanced study (Simla), 1975.

end to differences between the rich and poor, between the people who have opportunities and those who have very few or hand".

Social notion of equality in India, stress on the group rather than Individual. This emphasis fits well into the grooves of the Indian social tradition where, as Nehru said "It is the group that counts; the individual has a secondary place".⁹

Theoretically equality has to account for unequal treatment and that has been defended as the Supreme Court has done in a number of cases, on the principle of reasonable classification the court keeping to itself the option of deciding the meaning of the adjective reasonable. From this stand point follows the policy of what has been defined by Galanter as compensatory discrimination.¹⁰ Compensatory programmes provide the basis for personal achievement and enlarge the beneficiaries' capacity to shape their own lives.¹¹

Reservation is only one of the many dimensions to bring equality. Equality being multidimensional, can only be achieved by devising and implementing more innovative alternative strategies of development and providing more amenities to the depressed class.

Indian society is traditional, birth-based hierarchical society practising untouchability and gender discrimination. It's caste-based

⁹ Jawaharlal Nehru , *The Discovery of India*, Asia Publishing House, Bombay 1961, p. 248.

¹⁰ Marc Galanter, "Pursuing Equality : An assessment of India's Policy of Compensatory discrimination for Disadvantaged Groups" in *'Politics in India'* By Sudipta Kaviraj (ed.) Oxford University Press, Delhi, 1997, p. 187.

¹¹ Ibid, p. 190-91.

stratification lends rigidity to the social structure and prevents normal social-mobility. As a result, an individual's role and status in the society remains fixed and cannot be changed by his action and achievements.

Generations of perpetual discrimination, deprivation and deliberate denial of access to resources and opportunities to realise one's potential had led to the marginalisation and neglect of large sections of Indian populace the scheduled castes, scheduled tribes other backward classes and women generally referred to as weaker sections.

The social and psychological sequel of their marginalization were ample. Socially, these sections were disempowered by being denied access to the societal resources essential for their livelihood and development. Psychologically, there was complete erosion of their self-esteem and self-confidence. In fact, they had developed in themselves an internalised sense of 'worthlessness' and a feeling of 'learned helplessness'. The first and foremost after independence, was to integrate these marginalised sections into main stream of national development and regenerate their lost self-esteem and self-confidence. The ultimate objective was building of an egalitarian social order. This was to be ensured by providing equalities of opportunity and status to all citizens.

Until very recently the equality notion (which is attached to formal equality) did not concern itself with the abolition of group inequalities in the society caused by discriminatory social arrangements. For long it

(equality) remained an individual oriented view of equality by the application of formula that equals must be treated equally, unequals unequally.

But the traditional view that state is concerned only with 'formal equality' and is not concerned to make men equal who are really unequals has undergone radical changes in the recent years. In new approach, social justice demands "**equality of result**" which can be attained only by the mitigation of inequalities of men by positive state action. Social Justice that is the end, can be obtained only by means of Positive Discrimination which as an attempt, to reduce social disparities by creating special opportunities for some in addition to the equal opportunities created for all.¹²

In India attempts to create equality have not been confined to constitutional or legislative measures ; economic planning has been viewed as another major instrument for creation of equality.¹³ It has now been realized that the "claim of equality is in fact a protest against unjust, undeserved and unjustified inequalities. It is symbol of man's revolt against chance, fortuitous disparity, unjust power and crystallized privileges"¹⁴. Broadly the notion of equality represents two ideas, numerical (or formal) equality and proportional equality.

¹² Andre Beteille, "The Gains of Reservation": The Times of India 5 September 1984.

¹³ Andre Beteille, *Equality and Inequality : Theory and Practice*, Oxford University Press, Delhi, 1983.

¹⁴ J.Mathew in State in Kerala S.N.M.Thomas, A.I.R. 1976 S.C 490, 513.

According to numerical or formal equality each individual is to receive numerically identical amount of benefits being distributed of the burdens imposed in the Public Sector. This notion concedes that human being are unequal; It never accepts that all such differences are irrelevant for the purpose of distributing benefits and burdens among the members of the society. The only relevant characteristics are those on the basis of which all recognize men as members of the society and these characteristics are shared equally by all members of society. The principle of 'Proportional equality' demands a differential and separate treatment to those who are unequal. But there should be an identification system for the purpose of deciding who are unequals and why they are unequals. The Principle of proportional equality would involve an appeal to some 'reason' or 'criterion' justifying differential treatment. The standard of proportional equality requires the distribution of benefits according to merit or distribution according to 'need'. Both the merit principle and 'need principle' coexist in the modern world and they have both found a place in the constitution of India. The 'merit principle' consider the individual's merit as the relevant criteria for determining his proper allocation of benefits and burdens. Benefits are distributed according to the contribution an individual makes to the society in terms of goods, services and other activities. The '**need principle**' on the other hand is concerned with encouraging socially useful activities or rewarding perceived social worth. It

recognizes that men are difference in intelligence, motivation, education and in many other respects which affect their ability to contribute to the society but denies the direct relevance of most of these differences as criteria for determining for proper distribution of society's goods. Distribution according to "**need**" is primarily a distribution of benefits; It is distribution of burdens normally only in a negative sense, of withholding from those who do not qualify under the need criteria, the benefits given to those who do qualify.

The exclusion of any man from access to the society's goods and services means a denial of his freedom and equality. By an equal opportunity one should not mean identity of original chance. Men are different in "need, capacity and want" The existence of equality of opportunity depends "not merely on the absence of disabilities but on the presence of abilities. It obtains in so far as, and only in so far as, each member of a community, whatever his birth or occupation or social position, possesses in fact, equal chance of using to the full, his natural endowments of physique of character and of intelligence.¹⁵

The notion of equality of opportunity 'requires not merely that there should be no exclusion from access to goods on grounds other than those which are appropriate or rational for the goods question, but the grounds considered appropriate for the goods should themselves be such

¹⁵ H.R., Towner, *Equality*, George Allen and onwin Ltd. London, (1951).

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that people from all sections of society have an equal chance of satisfying them.

It means that a limited goods should in fact be allocated on the ground which do not 'Priori' exclude any section of those that desire it.

Equality of opportunity will not then have been achieved, because although no one will be excluded merely for being belonging to a historically those belonging to that group and being governed by unfavorable circumstances. The members of these disadvantaged groups will still lack in economic, Psychological and competition for the opportunities in question.

This is perhaps the intellectual justification for giving compensatory treatment to those whose unequal environment contributes to inequality because of the past failure to ensure equality of opportunity to these deprived groups, society can move towards genuine equality or equality in fact be discriminating positively in their favour.

Human beings are unequal not due to innate inferiority or superiority but due to unequal environment into which they are born and must live. If the inequalities in their environment are removal people will be able to find their real potential. Thus viewed "equality" is necessary as aspect of distributive justice. While legal or formal equality simply insists on the uniform standard and the absence of any discrimination in the words of law, equal in fact or substantive equality requires a "differential treatment in order to attain a result which

establishes an equilibrium between different situations". Equality in fact, thus necessarily implies the notion of end-equality or equality in result. It involves an "**equilibrium creating**" or "**equilibrium oriented**" protective discrimination.¹⁶

"Equilibrium in human terms emerges from the release of the handicapped and the Primitive from persistent social disadvantage by determined creative and Canny legal maneuvers of the state, not by hortative declaration of arid equality".

The framers of the Indian constitution were aware of the Political, social and economic inequalities which existed in the country due to historical reasons and were anxious to remove these inequalities by positive state action. They were conscious of the miserable and worst conditions of the backward groups who had remained far behind and segregated from national and social life and had continued to be socially oppressed and economically exploited for centuries due to various types of disabilities. They believed that in a caste-ridden society like ours where due to "the historical reasons certain castes and classes were for decades socially oppressed, economically condemned to live the life of penury and to take to education set out for each caste and class by the society" a doctrinaire insist on formal equality would in fact aggravate and perpetuate inequality. It became imperative, therefore, to adopt a

¹⁶ K.P.K. Shetty, *Fundamental Rights and Socio-Economic justice in the Indian Constitution* (1969).

policy of "compensatory" or 'protective discrimination' as an equalizer to those who were made too weak to compete with the advanced sections of the society in the race of life. Consonant with its resolve in the preamble to secure to all citizens: "justice, social, economic and political, equality of status and opportunity," the constitution guarantees to every person a right to "equality before the law and equal protection of laws". In order to give effect to general right to equality under Article 14, the constitution secures to all citizens a freedom from discrimination on grounds of religion, race and caste.¹⁷ In the specific application of these equality guarantee; the state is further forbidden to discriminate against any citizen on grounds of place of birth, residence descent, class language and sex. Untouchability has been abolished and the citizens are protected against discrimination even on the part of private persons and institutions. The constitution secures political equality to all citizens by providing special privileges to the politically powerless groups in the legislative bodies such as the scheduled castes, scheduled tribes.¹⁸ Reservations in the legislatures for these desperate groups is in the spirit of real equality of opportunity to these people who are lacking in Political Consciousness and political experience.

¹⁷ Subhash C. Kashyap, *our constitution, An Introduction to India's Constitution and Constitutional Law*, National Book Trust, India, 1994.

¹⁸ See. Article 330,332,333,334 in *Indian Constitution*.

Social and economic equality is intended to be achieved by the state in pursuance of the directive principles of the state policy contained in chapter IV of the constitution, which command the state to remove existing socio-economic inequalities by special measures.¹⁹ All these provisions are intended to promote the constitutional scheme to secure 'equality : These provisions set forth a programme for the reconstruction and transformation of Indian by a firm commitment to raise the sunken status of the pathetically neglected and disadvantaged section of our society, for instance **Art. 46,15(4)** etc. Therefore, on the one hand, the constitution "forbid discrimination on grounds of race, caste or religion etc so that the old iniquitous situation may not be continued, on the other hand it permits these very criteria for correcting evil consequences following from their past misuse."²⁰ This view stands supported by the cases decided by the Supreme Court according to which the state is authorised to use caste as an index of social and educational backwardness for making preferences of course, subject to the rider that caste, cannot be the sole or dominant test like poverty, occupation, place of habitation etc. A suggestion made by Ambedkar in the Drafting Committee for the addition of a proviso to Article 13(2) (article 8(2) of the Draft) is a reflection of the anxiety of the framers to the incorporation of

¹⁹ See Articles 38,39,41,43,45 and 46: *Indian Constitution*.

²⁰ Marc Galanter, "Protective Discrimination for Backward classed in India" 3 *Journal of Indian Law Institute*, 1961, pp.39-55.

the notion of positive or affirmative equality in the constitutional scheme. The following was the suggested proviso:

"Provided that nothing in this clause shall prevent the state from making any law for the removal of inequality, disparity disadvantage or discrimination arising out of any existing law"²¹

The Drafting Committee had suggested the inclusion of this proviso for the following reason:

"The Proviso has been added to enable the state to make laws removing existing discrimination in a sense, because they will operate only against those who hitherto enjoyed an undue advantage. It is obvious that laws of this character should not be prohibited."

Had this proviso been adopted, there would have been then no need to have provisions like articles **15 (4) or 16 (4)**. All classification conferring preferential treatment to the backward groups could have been upheld under 14 on satisfying the rational basis test. It might have been anticipated that article 46 itself was broad enough to authorize the state to adopt a system of reservation in favour of backward classes to promote their educational and economic interests even without violating the equalitarian guarantees or the constitution. It is the submission that even article 16(4) was incorporated in chapter III by way of abundant caution because although article 46 covered general development

²¹ See Draft Constitution of India 1948 prepared by Drafting Committee of the Constituent Assembly.

programme of the state, there was no specific provision in chapter IV obligating the state to provide adequate representation to the backward classes in services. The other reason for the express mention of the protective clauses was that the framers "did not wish to leave this positive notion of equality as an aspect of justice to the vicissitudes of judicial attitudes which had been thick with formal equality. They derived to mark treatment to the backward classes of citizens could be given by making a proper classification under Article 14 itself even without the explicit mention of protective clauses in Art 15 and 16. For instance, if a government measure to implement article 46 directive is taken and favoured treatment is disadvantage or discrimination arising out of any existing law."

The Directive Principles enshrine the constitutional goal to achieve the "ideal of equality" which "has come to symbolize the whole complex set of aspirations for the rights of man to which the Indian constitution is dedicated".

In this wider sense "equality" is for all human societies " a **Directive Principle**" rather than a "**fundamental right**."

Thus, if a legislative classification to be tested for formal equality is able to invoke "higher equality" as the very "object" to which it claim "to be rationally related" then the courts "not only can but should accede to such claim in the interest of "equality" itself". In other words if the decisions involving "Right to Equality" are able to ascend to the

paramount value of "Social equality" sought to be achieved by a beneficial measure, then the courts can uphold a legislative classification if design to promote "actual equality" because such classification will minimize rather than accentuate inequality.

It is notable that the view of "equality" discussed above was adopted by a court in *Om Prakash Vs State of Punjab* a case decided earlier to *Champakam* and the first Amendment introducing article 15(4). In *Om-Prakash* reservation of system in favour of the scheduled caste in education institutions was upheld on the ground that Article 46 must be taken as an exception to Article 29(2)....." and that the state was authorized to adopt a system of reservation by making a proper classification to promote the educational and economic interest of the weaker section.

In India, the individual is not as important as the group. It is through group memberships and not category affiliations that the reservation programme for Social Justice in India gets its impetus.

Considering, welfare of the group, India launched into Preferential Policies right away with the stroke of the constitutional for the moment it became a republic.²²

Social Justice in India is not really about protecting cultures but about raising the status of hitherto disprivileged people so that they can

²² Dipankar Gupta. *Interrogating Caste : understanding hierarchy and difference in Indian Society*. Penguin Books, New Delhi 2000, p.106-7.

compete as equals and indeed be able to fight more effectively for rights guaranteed in the constitution.²³

All social values - liberty and opportunity, income and wealth, and the base of self-respect-are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.

This Principle and other Principles of justice which are special case of it are the guideline for the design of the institution of the society which confer right and assign responsibilities to its people. These are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association A society satisfying these principles of justice comes as close as the society of the said hypothetical situation.

Equal justice is an aspect of social justice, the salvation of the very weak and down-trodden and the methodology for leveling them up to a real, not the formal equality being the accent.

Fazl Ali J. describes equality as a "concrete and constructive" concept and Article 14 being "genus of universal application of which article 16 being the species."

To Fazal Ali J. equality of opportunity under Article 16(1) means a fair opportunity to all sections by removing the handicaps suffered by a particular section of society. Both Articles 14 and 16 forbid only hostile

²³ Ibid., p. 110

discrimination and not reasonable classification. The idea of classification is implicit in the idea of equality. Both articles 14 and 16 are intended to achieve actual by boosting up the backward classes by giving them "concession, facilities, removing handicaps and making suitable reservations so that they may compete with the more advanced sections of society."

The supreme court's approach in applying the "rational basis test" for the protective discrimination involves two steps. First, the court finds out the object of the legislation. The object of such legislation may be either to reward competence or to create a favoured group. If the object of the legislation is to favour competence, the classification must be rationally related to the object of competence, merit and efficiency.

If the object of the law is not to give the same opportunity to each individual on the basis of his competence but to give favoured treatment to certain groups, then the court will undertake to examine whether the object of the law is to achieve "social equality". If the aim of the law is neither to achieve 'actual' equality nor to secure best talents, the law will be held as lacking a reasonable basis.²⁴

The second step of the "**reasonable basis test**" is to determine whether the classification bears a rational relation to the object for which it is made. A classification based solely on race, religion or castes will

²⁴ Dr. Parmanand Singh, *Equality, Reservation and Discrimination in India*, Deep and Deep Publication 1982.

not satisfy the "**rational basis test**". If on the other hand, the differential for preferences is based upon "backwardness" it will be viewed as intelligible differential. In the state-employment preference area the classification must further be shown to be based upon the severe under representation of the beneficiary groups in the state services.

The supreme court's approach in Thomas is to see whether a classification further 'actual equality. In determining the validity of the purpose of legislation the court will interpret equality' with the help of the Directive Principles which lay down the constitution the end result of a classification rather on the means to achieve equality.

'Social equality or equality with social justice demands a substantive interpretation, as the force behind the social change. This concept of equality was put forward as a goal of socialism. Social equality only demands the reduction of inequality, according to the prevalent concept of social justice.²⁵ It insists of a progressive extension of social benefits to the weaker and underprivileged sections.

This leads up to a transition from formal to substantive equality from negative to positive equality, from static to dynamic equality. It stress on a progressive equalization of opportunities.

The term of social justice in broad sense comprehends the recollection of both material and moral advantages of social life. It denotes a progressive concept and model of development. In popular

²⁵ O.P. Gauba, *An Introduction to Political theory*, Mac Millan Publication, 1981.

parlance, the term 'social justice' is usually applied to comprehend all three aspects of justice in society-social, economic and political. Of these, the economic aspect is most crucial because economic disparities and injustice are bound to erode the foundation of legal and political justice.

In a nut shell, the term social justice, implies a reordering of social life in such a manner that the material and moral benefits of social planning are not concerned by a tiny privileged class but accrue to the masses to ensure the uplift of the lower, weaker and under privileged section. The idea of substantive justice (also called social justice or distributive justice) corresponds to the philosophy of socialism. It holds that test of justice in society consists in ascertaining whether the poor and the underprivileged have adequate opportunity to improve their lot. It demands that opportunities of self-development should be progressively extended to the underprivileged and disadvantaged section of society justice (social justice) is primarily problem of moral philosophy. As a concept it can be used as a guide to public policy. The question of justice arises under two conditions (a) in a scarcity situation-when foods, services, opportunities are to scarce to satisfy all contestants and in open society-where allocation of various benefits is not tied to fixed status of various individuals but they are true to demand a fair share.

On some reasonable ground, In India, the academic discourses on social justice and equality issues are becoming more commonplace now, than ever before. The reasons for the resurgence of interest in the subject lie in the fast changing political milieu where under the proclamations are made on issues concerning the development of the disadvantaged sections of society. These proclamations are not new; they had been there since independence. What is new today is that every political party, irrespective of its ideology want to project itself as the most potent protector for the poor, not always for genuine reasons, but for increasing its influence in the arena of caste politics.

Equality is a leveling process. A corollary of the leveling process of equality is that no individual shall enjoy special privileges. It is multi-dimensional concept and one dimension of it is a, social equality which connotes equality of status. It breaks social barriers based on class or caste, sex or racial distinctions. It also implies the absence of special privileges and discrimination between men based on the enjoyment of special privileges.

It is very difficult to achieve social equality in a traditional society like the Indian one with all its complex social ramifications and sense in spite of the several legal and administrative measure taken by the government of India, the social gap between the harijans and the caste Hindus still persists owing to the lack of education and other economic difficulties faced by the harijans. However Benn and Peters are of the

view that social equality can be achieved provided appropriate and adequate opportunities are equally given to all. They would enable the least able and the most able to get an equal start in the race for success in life. Each person would have an equal opportunity according to his difference in need and talent so that he can develop his personality. Since men are born with quite different capacities they should be given an equal chance to bring out what is best in them.

In India, there are several areas where the challenge of Social Justice is to be met. The Worst Plight of SCs, STs, landless labour, and women has tarnished our social system and governmental machinery. Lust for power and Lust for money are the main causes of injustice to the above classes. Hence the question is whether social processes would be adequate to meet the challenge. Some social scientists have expressed an opinion that Social and Economic Justice would remain a dream in a Parliamentary system of government and unless this is replaced by another system, Social Justice would continue to remain a dream in India.

Chapter - II

Reservation an Instrument for Social Justice

'Reservation in the simple sense, is an instrument for undoing historical social inequality and achieving substantive, rather than formal, equality in our society. Reservation Policy is essentially a humanitarian instrument.¹

Indian society is an egalitarian not only by fact but also by design, in these circumstances and under such a rigid system of inequities, reservation policy is too mild and inadequate an instrument to bring about substantive equality. Thus reservations are at best only a very small but right step in the right direction. To remove the stigma of inferiority and to lift the weight of discrimination from depressed class a system of concession and reservation has been used.²

The policy of reservation in India was quite firmly established during the decades of the British rule but such a policy was designed more to redress communal inequalities in the representation in public services rather than a social engineering device to redress the rooted socio-economic inequalities of the disadvantaged section of the society because of past societal discrimination. The British India government had introduced special provisions and concessions for the educational advancement of backward class people which was later converted into caste reservations for jobs.

¹ Dr. Sagar Preet, *Reservation for Backward Classes-A Perspective*, Ashtam Prakashan Delhi, 1997.

² N.R. Madhva Menon, *Social Justice and Social Process in India*, Indian Academy of Social Sciences India, 1998.

'The government of India Act, 1919 recognised the first time in Indian history the existence of depressed classes and recognised their claim for political representation. The government of India Act, 1919 provided for communal representations for Muslims, Sikhs, Anglo-Indians, Indian Christians, Depressed Classes, Aborigines.'³

Among the 14 non-official members nominated by the Governor-General to the Central Legislative Assembly, one was the representative of the depressed classes. In the provincial Legislature the depressed classes were represented by four nominations in the central provinces, two in Bombay, two in Bihar and one each in Bengal and the United Provinces.⁴

It was in 1928, that the Government of Bombay set up a committee under the chairmanship of O.A.B. Starte to identify Backward classes and recommend special provisions for their advancement.

Dr. B.R. Ambedkar submitted a memorandum to the Simon Commission for the safeguards and protection of the scheduled castes.

The convening of a Round Table Conference in London in 1930 was indeed important in the political history of India. It marked "the beginning of the claims of the untouchables in the arena of the

³ Bipan Chandra, *India's Struggle for Independence*, Penguin Publication, 1988.

⁴ B.L., Grover, *A new look at Modern Indian History*, S. Chand and Company Ltd., New Delhi, 1983.

devolution of the political power from the British rulers to the Indian natives."⁵

Through the Communal Award of Ramsay Macdonald, Depressed classes first obtained reservation in political right.

The government of India Act 1935 also provided reservation to scheduled caste. Ever since 1925 the scheme of reservation applied to Indian Civil Services, class II and subordinate services under the administrative control of the Government of India with the exception of certain services for which high technical qualifications were necessary.

First time in 1942 the Government of India decided to fix a certain percentage of jobs for the Depressed classes in order to give them necessary stimulus to equip themselves with better qualification in order to become eligible for post and services.

The founding fathers of the Indian Constitution were determined that social justice should be achieved peacefully and within the framework of the constitution. Accordingly, the preamble proclaimed the determination to achieve the dignity and worth of the human person in a broad scheme of social justice and national unity. 'Untouchability, the bane of Indian social system, was abolished and its practice was required to be erected into a crime.'⁶ Special provision

⁵ S.N. Sen, *History of the freedom movement in India*, New Age International Pvt. Limited, 1987.

⁶ Article 17, *Constitution of India*.

was made for the protection of scheduled castes and scheduled Tribes.⁷ These groups were eligible for a special representation in legislatures.⁸

The Indian constitutional policy of compensatory discrimination was very much a consequence of Ambedkar's dramatization of the deprivations and disadvantages suffered by the untouchables and his endless efforts to ameliorate their socio-economic conditions. The foundation of this policy was laid after Gandhi's historic fast at Poona in the face of Ambedkar's demand for the establishment of a separate electorate for untouchables.⁹ Gandhi saw untouchability as an "excrement" or an "appendix in the body of Hinduism which had to be removed leaving the rest of the caste system intact and purified. Gandhi attacked untouchability and not caste. Ambedkar attacked the caste system and wanted the destruction of the caste-system. He demanded political safeguards and political power for the untouchables and won a separate electorate for them. Gandhi opposed this separateness and declared fast unto-death to force the revision of electoral award. Congress blamed Ambedkar as a tool of British plot to divide and rule. The negotiation came out as the 'Poona Pact' under which Ambedkar yielded up the separate electorate and

⁷ Ibid., Articles. 45, 338.

⁸ Ibid., Articles 330, 332.

⁹ Karuna Ahmed, "Towards Equality" *Economic and Political Weekly*, Vol. XIII, No.2, Jan. 1978, p.69.

accepted in its place a system of reservation for untouchables under a joint electorate with a caste Hindu majority."¹⁰

On 13th December 1946, Nehru moved a resolution in constituent assembly which was a statement of policy and an introduction to the Philosophy underlying the Indian constitution.

Clause 5 of the Resolution recited :

"Wherein shall be guaranteed and secured to all people of India Justice, Social, Economic and Political and equality of status, of opportunity."

Clause 6 provided :

"Wherein adequate safeguard shall be provided for minorities, backward and tribal areas and depressed and other backward classes"

The objective resolution was welcomed by every community represented in the Constituent Assembly which assured to protect the interests of minorities and backward classes.

Nehru told the Constituent Assembly that he disliked any kind of reservations more particularly in services and he favoured giving the backward communities special education and training to bring them upto a higher level. Congress Party was not in favour of providing any reservation for any group in Public Services. The

¹⁰ H.R. Isacs, *India's Ex-untouchables* 36-39 (1965), Ambedkar, *what Congress and Gandhi have done to the untouchable* 111 (1949), Dr. D. Keer, *Dr. Ambedkar's life and mission* 204-216 (1962).

Constituent Assembly set up committee on the Fundamental Rights and minorities containing due representation of all minorities in India. Some members of the committee opposed reservation for any community. The committee recommended the setting up a statutory commission to investigate into the condition of socially and educationally backward classes.¹¹

In Constituent Assembly Ambedkar insisted that a policy of preferential treatment was imperative for scheduled caste Socio-Economic mobility.

Patel as a Chairman of Advisory Committee strongly reacted to any proposal for reservation in services for any minority community. The Constituent Assembly reconsidered the entire report of the Advisory Committee from 30th December 1948 and ultimately withdrew the reservation given to the religious minorities i.e. Muslims, Christians, Sikhs and both in Legislatures and public services reservation only in favour of the Scheduled Castes and Scheduled Tribes and other backward classes were retained.¹²

The Constituent Assembly was not totally in favour of reservation on the communal basis.

Patel pacified the Sikh demand for reservation in services. The Congress party in the constituent assembly had successfully resisted

¹¹ K.L. Chanchreek and Saroj Prasad, *Mandal Commission Report, Myth and Reality*, H.K. Publishers and Distributors. 1991.

¹² Article 300 of the Draft Constitution.

any attempt on the part of the minorities to press for communal reservation in services. What emerged ultimately was an unequivocal constitutional policy providing for reservation of appointments and posts for the backward classes including Scheduled Castes and Tribes.¹³

The whole issue of reservation in constituent assembly was debated and the policy was conceived by the makers of our constitution in the context of minority rights. The policy then conceived had two fold objective. One, to protect the interests and rights of those religious and other minorities who were likely to be affected adversely by change in the balance of power after independence. Accordingly, reservation for Muslims, Sikhs, Christian, Anglo-Indians were discussed and recommended by the minority rights sub-committee of the constituent assembly. Two, to extend special privilege to the depressed castes, tribal population and other backward classes to help them overcome their social disabilities and backwardness and thus enable them to participate in the 'national mainstream' with full citizenship rights.

After the commencement of the Indian constitution, the government of India reviewed its policy regarding communal representation in services. Consonant with the Indian constitutional

¹³ This policy was reflected in Article 10 (3) of the Draft constitution, New Article 16 (4).

policy of withdrawing preferential job policies for minorities, the government of India cancelled all their previous orders and issued fresh instructions.

According to these instructions the existing reservation of 12.5% of vacancies filled by direct recruitment in favour of the scheduled castes was continued in case of recruitment to posts and services made on all India basis by open competition where recruitment was made by open competition the reservation was made to the extent of 6.5% as before. With regard to Scheduled Tribes 5% Vacancies were reserved both in recruitment by open competition and otherwise then by open competition. There was no provision for reservation in promotion. The violent protest against government policy for reservation for the minority in the past indicates that certain sections of our society consider preferential treatment to the minority, unfair.¹⁴

A member of the minority is preferred in admission to educational institution and employment over a more qualified member of the non-minority. By reservation a number of seats in educational institutions and jobs for the minority, the state or an institution of the state denies the members of non-minority equal access to those goods.

¹⁴ P.K., Mohapatra, *Social Justice, Philosophical Perspective* (ed.), D.K. Print World (P) Ltd., New Delhi, 1999.

The formal principle appears to be violated when a member of the minority is accepted or hired over a member of the non-minority where both equally qualify. The principle also seems to be ignored while keeping exclusively a number of jobs for the minority. The state has an obligation to see that principle is not violated. Reservation policy transgresses this principle according to the perception of the non-minority. The discontent ensues primarily from such a perception.

On the other hand, the minority has been victim of centuries of exploitation and segregation in the form of untouchability. Social goods cultural goods and material wealth has been largely inaccessible to its members while the non-minority benefited from their miseries. An unfair amount of goods of several kind accumulated with the latter. In nutshell there is an unfair distribution of wealth in society. The state policy of preferential treatment just takes away this injustice. If the minority is not given an edge, then the injustice suffered will not be mitigated. Preferential treatment striving to improve the lot of the minority, may cause discontent to the non-receiving group. The misperception that the minority is an inferior group and the derision that some one is a quota man ensues from such a discontent.

In South India, as early as the 1918 the Mysore government noted the preponderance of Brahmins in state services and desired

that other underrepresented communities should be adequately represented in services. That year the government appointed a committee headed by Miller.

The Millar committee proceeded on the assumption that the expression backward classes meant castes and communities including Muslims who were not adequately represented in the services. The committee defined the term 'Backward classes' to include all the communities except Brahmins. Thus the Mysore and Madras government followed a policy of job reservation as a result of the revolt by non-Brahmins against Brahmin domination in Public Services. In South, reservation policy implemented first due to non-Brahminical movement. The Governments of Andhra and Kerala also pursued a policy of caste-quota for reservation in government jobs. Any reservation for the backward - classes did not appear in North Indian states mainly due to lack of any organized movement on the part of the backward groups to press for such demand as non-Brahmin movement had done in the southern provinces. The demand for reservation in North arose from Bihar. Several socialist in North demanded for reservation.

Ram Manohar Lohia as staunch supporter of reservation for OBCs made claim that the policies of the government had not benefited the backward castes. He included Ahirs, Chamars etc. all in backward castes and claimed for 60% reservation in all jobs and

positions are reserved for their population and preferential opportunity given to them.¹⁵

Other socialist like Jay Prakash Narayan also advocated Protective Discrimination for backward classes.

One thing is clear from the above analysis. It is that the underlying purpose of compensatory discrimination was to counterbalance the disadvantaged suffered by certain classes for past wrongs suffered by them because of unequal social structure of the India society.

Marc Galanter is external observer sympathetic to compensatory discrimination. He believes "Persistent and cumulative caste related inequalities need to be corrected through compensatory discrimination in the interest of securing substantive equality."¹⁶

Backward classes (BCs) comprises SCs, STs and other backward classes (OBCs). Preferences for SCs and STs are constitutionally guaranteed or permitted and include.

- (a) reservation in Parliament, state Legislatures and other bodies, such as panchyat raj institution.
- (b) Reservation in educational institutions, in government employment and in benefits from government schemes.

¹⁵ Ram Manohar Lohia, *The Caste system* 'Navohind Publication, Hyderabad 1964.p. 124-125.

¹⁶ Marc Galanter, *Competing Equalities : Law and Backward classes in India*, Oxford University Press, 1991.

- (c) Special welfare programmes.
- (d) Protection against exploitation and victimisation.

On the face of it, this wide array of measure might suggest that a great deal has been or is being done for SCs and STs as spontaneous reparation for their exploitation by caste Hindus.¹⁷

The SCs have all along been recognised as the most disadvantaged of the backward classes ; Preferential Policies in their favour have been comprehensive and in existence for a long period; they have been supplemented with electoral, employment, and educational reservation; SCs are only one third or one-half in number compared to OBCs, and Politically, they are much better mobilised. If despite all these factors, ameliorative efforts even in their case, have fallen so far short of expectations surely too much cannot be expected from such measures for remedying the backwardness of the OBCs.¹⁸

No, doubt reservation is essential to scheduled caste to prop up their social status, but efficiency and Preferential Treatment both should be balanced. In some services like, defence, department of space, Judiciary services etc we should give preference to merit over reservation. Merit is not fetish of the elite, but an essential ingredient in every field of life.¹⁹

¹⁷ Ibid.

¹⁸ S. Guhan, "Comprehending Equalities", *Economic and Political Weekly*, August 1-8, 1992 p. 1657.

¹⁹ A.M. Shah. "Job Reservation and Efficiency" *Economic and Political weekly*, July20, 1991 p. 1732.

The criteria of 'Compensatory discrimination' is bone of contention, some scholars stress on economic criteria and some caste as criteria.

Ghanshyam Shah expresses his opposition to caste based reservation. He suggests that "it is not difficult to combine caste / social group and class criteria" what he means by this is a system of reservations "for the persons belonging to poor strata of the low castes / social groups of different religions", with

- (a) Determination of 'caste'/social group' status in subregional contexts not caste-cluster at the state level.
- (b) Descheduling "inbuilt in the reservation scheme"

Shah emphasises that reservation must be so arranged as to benefit the poor strata.²⁰

Reservation are part of a much larger policy package. it includes a series of legislation, ameliorative programmes and Preferential schemes, designed to benefit the weaker sections of society. Reservation as policy has evolved over a long period of time and has been administered by the central as well as the state governments. The present policy derive their legal status and legitimacy from the Indian constitutions.

²⁰ Upendra Baxi, "caste, class and reservations," *Economic and Political weekly*, Vol.xx, No 10. March 9, 1985 p. 426.

Reservations, along with other measures of protection and upliftment of the weaker sections of society, should thus be viewed as an instrument of a larger policy of the state addressed to a long-term goal of creating a civil society through extending effective citizenship rights to the vast sections of the population who have been historically deprived and marginalized.²¹

The beneficiaries of the reservations comprise three types of Communities : ex-untouchables designated as Scheduled Castes (SC) the spatially and culturally isolated Communities of tribals derigated as the Scheduled Tribes (ST) and the vaguely defined category of the socially and educationally backward classes citizens called OBC.

The OBC is a category consisting of a wide array of groups in need of Preferential Treatment, but it does not have any centrally identifiable, systemic characteristics such as social segregation or spatial isolation found respectively in the case of SCs and STs.

For the other backward classes there is no provision for legislative reservation, nor reservations in government Jobs and educational seats, in their case are mandated by the constitution. Instead the matter of reservation for the OBCs in these two areas is left to the discretion of the state governments.

²¹ D.L. Sheth. "Reservation Policy Revisited" in *Democracy, Difference and Social Justice* (ed.), by Gurpreet Mahajan, Oxford University Press, Delhi, 1998.

After mandal commission recommendation, there are provisions of reservation for the other backward classes in central government services. Constitutional provision in their case are only enabling and not mandatory. Before the Mandal Commission implementation, no reservation for OBCs exist in West Bengal, Orissa, Assam, states of North-East, Rajasthan or in the union Territory. It is due to electoral pressure, the states of North India and Gujarat and Maharashtra have began to extend the benefits of reservation to other backward classes.

The story of South Indian states is quite different. There reservations for the other backward classes have existed in one form or the other for over half a century. The extent of reservations there has reached the point of saturation, covering almost their proportional strength in the population.²²

In compliance with the Directive Principles of the constitution, it is obligatory to take significant measures for the advancement of the people who are subjected to discrimination and suffered for ages in the past. Government of India has thus taken several steps to improve the living conditions of the weaker section of society. Important amongst them is the reservation for SC and ST in civil posts and services in government departments, autonomous institutions, statutory and Semi-government bodies and public-sector

²² Ibid., p. 493.

undertakings etc. Here it is significant to make a reference to Article, 46 of the constitution which states that

"The state will promote with special care the educational and economic Interests of the weaker sections of the people and in particular of the SC and ST and shall protect them from social injustice and all forms of exploitation."²³

The basic purpose for providing reservation in employment is not simply to give jobs to some persons of the communities (which are looked upon as inferior) and increase their representation in the services but to uplift the people socially and educationally so as to enable them to make their place in the society. In the absence of the legitimate protection it would not be possible for certain communities and Tribes to compete successfully with the more fortunate brothers and sisters in the matter of admission in various courses of study and securing public employment. It was under this background that provision for reservations for SC and ST have been made with the same end in view, reservations were also made in Representation of people's act.

It is argued that the individual claim for equality is based on the notion that the distribution of goods and services should be on the basis of 'competence', 'merit', or 'desert'. But these arguments based

²³ B.D. Purohit, and S.D. Purohit, *Handbook of Reservation for Scheduled Caste and Tribes*. Jainsons Publication, New Delhi, Year 1990.

upon the principle of rewarding effort and competence can be countered by defining 'merit' itself as a system of social needs. The individualistic claim for equality can be countered by group's claim for equality. Where there is need for rapid and substantial integration of races, one's race can be part of one's own merit. Merit can be understood by past performance and potential achievement but if past performance has been disadvantaged by racial prejudice, penury or segregation, an evaluation of potential seems much appropriate. Potential as used here might include reference to the need of society and the society might need favoured treatment to the disadvantaged group.

The preferential policies may be justified on the ground of 'compensating the disadvantaged groups for the past discrimination suffered by them. The 'compensation' argument required counter balancing benefits provided to those individuals who have been wrongfully injured which will serve to bring them up to the level of wealth and welfare that they would have if they had not been disadvantaged.²⁴

The compensatory justice is concerned not only with elimination of existing inequalities but also 'compensating' the unequals for injustice and discriminations. The compensatory justice

²⁴ These arguments are analysed in Nickel, *Preferential Policies in Hiring and Admissions: A Jurisprudential Approach* 75 *Columbia Law Review*, 537, 1975.

argument carries with it the connotation of remedial action to right a wrong already committed.

The distributive justice arguments focuses mainly on the need to promote the redistribution of income and other important benefits and to reduce the inequalities created by the existing distributive system. Those who have been disadvantaged by the existing distributional system should be given more benefits by altering the ways of distribution.

The preferential policies may also be justified on the grounds of utility. The underlying assumption of the utilitarian arguments that the social benefit from greater utilization of potential, the greater freedom and rationality resulting for both the favoured groups and the excluded ones, will be far more than the social costs involved in the compensatory treatment. The policies to increase the chances for the disadvantaged groups in education, employment, housing is one of the means of promoting public welfare and equality overall. The utilitarians will justify preferential treatment on the ground of its long range effects on the better utilization of human resources and talents. The advanced sections of the society as well as the disadvantaged ones, both will be the ultimate beneficiaries of such policies. Discrimination and the prejudice which deny freedom to one group weaken the whole society. Social justice demands that those concentrated at lower levels of income, education and employment

should be enabled to achieve upward mobility. It is submitted that any preferential policy be justified respectively by compensatory, redistribute and utilitarian arguments.

It has three sets of policy goals. First to extirpate social and religious disabilities of certain specified groups suffering disabilities on account of their social segregation and spatial and cultural isolation, namely the scheduled castes and Scheduled Tribes. Second, to facilitate and promote equal participation with others, of all socially disabled and disadvantaged groups in organized sectors of the country's economic and political life. This is to be gained through provisions for preferential treatment in education, in government employment, reservation of seats in parliament, state legislatures and local bodies and through other ameliorative measures and schemes designed to improve their life chances. Third to protect, if necessary through legislative action and executive orders all these groups, also explained in the constitution as weaker sections of society, or simply the backward classes, from all forms of social injustice and exploitations.

To overcome the effects of years of segregation and subordination framers of Indian constitution envisaged a system of reservations, as part of its policy of positive Discrimination. Since

reservations for SC and ST were provided by the constitution their legal status and validity could not be questioned.²⁵

Reservations are no doubt a path for vehicle of social justice. James W. Nickel maintains that the subjects of affirmative action are 'victim' of discrimination. Paul W. Taylor on the other hand, asserts that race and gender become relevant categories according to the Principles of compensatory Justice, but Reservations were assumed to be non-permanent measures devised mainly to ensure equality of opportunity. However, since long time they have supposed the form of permanent and non-retractable concession. But we have to search out the conditions in which compensatory discrimination can be justified.

'Commencing with the Rawlsian assumption that a constitutional democracy must be concerned with the fate of the least advantaged sections of the society, we argue that policies of positive Discrimination must be devised in a way that they enhance the principle of Fraternity.²⁶

'Positive Discrimination benefits the society as a whole rather than any section of people. By allowing people to acquire 'socially useful assets' it adds to the common pool of talents, and this is to the

²⁵ Excerpted from the *report of the Backward classes commission* headed by Kaka Kalelkar, Government of India Publication, 30 March, 1955.

²⁶ Dipankar Gupta "Positive Discrimination and the Question of Fraternity: Contrasting Ambedkar and Mandal on Reservations", in *Economic and Political Weekly*, Vol.32, no.31, 1991.

advantage of the entire society. Positive discrimination is therefore aimed at imperative the broadest possible base to citizenship and fraternity by making it possible for everyone to acquire those skills that a liberal democratic market oriented society values. For accomplishing this, it is necessary to remove condition of object scarcity so that there skills could be acquired by the entire society. Those who have a certain kind of socially useful asset but mobilize to take advantage of affirmative action to convert them into another kind of socially useful asset have no claim to protective discrimination or reservations. As one kind of socially useful asset can be used to gain another, there is no justification for providing reservations for such sections or communities.

It must be stressed that reservation policy can be beneficial only when it expenses resources from the collective pool for those who have no socially valuable asset what so ever.²⁷

In order to abolish the age old evil of social discrimination and to enthuse a sense of respectability by eliminating the sense of high and low position in society, which is the direct negation of democracy, the government of India wanted to determine the criteria to be adopted for the identification of the socially and educationally backward classes, so that by giving them every kind of insentive the age old discrimination meted out to them may be eradicated.

²⁷ Ibid., p.521.

In fact, government of India wanted to do something special for the economically socially and educationally backward classes. In 1951, on the eve of debate of the amendment of Article 15, the then Prime Minister Pandit Jawaharlal Nehru said :-

"We want to put an end to..... all those infinite divisions that have grown up in our social life we may call them by any name you like, the caste system or religious divisions, etc. There are of course economic divisions but we realise them and we try to deal with them... but in the structure that has grown up... with its vast number of fissures or divisions."²⁸

Keeping this view and taking into considerations Art. 340 of the constitution the President of India appointed the first Backward classes Commission under the chairmanship of Shri Kaka Saheb Kalelkar, M.P. on January 29th, 1953.²⁹ Shri Arunangshu De was the secretary of the commission. This commission comprised eight members.

The commission submitted its report on March 30, 1955. The objects and the terms of the reference of the commission were to determine the criteria to be adopted in identification of socially and educationally backward classes and setting out also their approximate

²⁸ *Parliamentary Debates*, Vol.XII-XIII (Part II) col. 9616.

²⁹ *Vide the Ministry of Home Affairs Notification No. 70/53.*

numbers and their territorial distribution, to investigate the conditions of all such socially and educationally backward classes.

"The backwardness with which the commission is expected to deal is much more special. For one thing, the commission can not recognize individual backwardness however, widespread. For its purpose, the backwardness must be collective."³⁰ The commission was also suggested to remove inequalities related with castes. It is therefore, the desire and will of the Indian nation to do away with the hierarchy of caste and of its consequent social discrimination, and prepare the ground for complete social equality."³¹ The commission had to take into account the lowliness by birth as an Important factor in the identification. It recommended that all facts about the caste should be noted and classified in a scientific manner. It therefore, advised that 1961 census be remodelled and reorganised so as to get the required information.

The commission was not infavour of listing of all muslims as socially and educationally backward. The caste was so prominent in plural society of India, that the Indian Christian Community also could not separate itself from this evil, though the Christianity has

³⁰ N.D. Majumdar, "The Backward Classes Commission and its work in Social Welfare in India", issued by *Planning Commission*, 1960, p.219.

³¹ Kaka Kalelkar, "Backwardness, Caste and the Question for Reservation" in '*Democracy Difference and Social Justice*' by Gurpreet Mahajan (ed.) Oxford University Press Delhi, 1998.

consistently refuse to recognize caste. The commission found to its dismay that in certain remote parts of south India where scheduled castes have been converted into Christianity were subjected to the caste practice in Christianity also. The commission enlisted such communities in the list of other backward classes.

It also recommended that the communities or groups who were treated as untouchables among the Sikhs should be included in the list of scheduled castes as and such of the communities among the Gurkhas found in Uttar Pradesh, Bihar and West Bengal and who were educationally and socially backward should also be included in the list of other backward classes.

The commission showed special sympathy for the women and recommended that women as a whole should be regarded as backward as the women, in India, have lived under great social hardships. It also recommended that the "Suppression of Immoral Traffic Act" should be made more reformatory than Punitive: The commission had prepared a list of 2399 backward groups after 2 years of hard working and recommended several measures for their economic, educational, social, cultural and political advancement. It was estimated by the commission that about 70% of Indian population was backward and that is why, the commission was of the

view that out of 2399 castes only 913 castes accounted for an estimated population (about 32% of the total population of India).³²

'The commission emphasized that the economic backwardness had also to be kept in view in order to find out the ability of the community to take advantage of the available opportunities as also the recent trends in its advancement.³³

The commission also went into the root causes which were responsible for the educational backwardness of the socially and educationally backward classes. It therefore, recommended that the government must give full help to promote education among the backward classes. For this achievement non-communal Hostels should be established and the cost of boarding and lodging for the poorer sections of the backward classes should be borne by the government. For university education certain percentage of seats should be reserved for the qualified students of backward classes and liberal scholarship should be given to the proper among them. The commission was of the view that a reservation of 70% of seats in all sciences, engineering, medicine, agricultural, veterinary and other technical and technological institutions should be made for the qualified students of backward classes till such times as accommodation is provided for all the students eligible for admission.

³² Jitendra Misra, *Equality Versus Justice: The Problem of Reservation for Backward Classes*. Deep and Deep Publication, 1996, p.54.

³³ *Committees and Commissions in India*, 1953, p.255.

The commission also suggested that a new ministry for the advancement of Backward classes should be created both at the centre and in the states to handle in an effective manner the problem for the advancement of the Backward classes and also to prevent anti-social element from fostering disruptive tendencies among the backward classes by exploiting discontentment among them. The commission's report was laid on the table of both houses of parliament on September 3, 1956. The minister of Home- Affairs had expressed his dissent voice with the criteria and conclusions of the commission.³⁴ According to Hon'ble Home Minister the stress on the caste displayed the danger of separatism,³⁵ and the caste system was undeniably the greatest hindrances in the way of our progress towards an egalitarian society, and the recognition of specified caste as backward may serve to maintain and perpetuate the existing distinctions on the basis of caste.³⁶

According to him the commission's standard other than caste were obviously Vague.

The commission failed to find positive and workable criteria and the very expansiveness of the commission's list undermined its fulness because every one, barring a few exceptions, has thus to be

³⁴ Government of India, Ministry of Home Affairs, Memorandum of the *Report of the Backward Classes Commission* 1956,p. 3-4.

³⁵ Ibid., p.3.

³⁶ Ibid.

regarded as backward, the really needy would be swamped by the multitude and hardly receive any special attention'.³⁷

The minister was of the view that the further investigations should be undertaken to make good the deficiencies that have been noticed in the findings of the commission and the problem is solved with due regard to the requirements of Art. 340 of the constitution.³⁸ The ministry of Home Affairs requested the state governments to undertake adhoc surveys to determine the number of Backward classes and in the mean time to give all reasonable facilities to the Backward classes in accordance with their existing list and also to such others who in their opinion deserve to be considered as socially and educationally backward in the existing circumstances.³⁹ The report of the First Backward classes commission was finally discussed in Parliament in 1965. The central government once again rejected the caste criteria in determination of backwardness as it was just opposite to the first principle of social justice and constitution also.⁴⁰ 'The Report would instigate the caste system. The Central Government once again endorsed the economic criteria and applauded those states which had adopted this very criteria.'⁴¹

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Lok Sabha Debates, Series 3, Vol.48, Nov. 25, 1965.*

⁴¹ Ibid.

The commission's work was not satisfactory in making the list of backward classes because it even included in the list of backward classes those communities about whom it had no data at all and gave them the benefit of doubt. The commission's caste classification were divisive and unfitting. It applied its criteria in a causal manner. It is true that at the last minute of submission of the report the chairman, Kaka Saheb Kalelkar did not accept the caste factor as a determinative test.

It seems that commission was a house divided. The members were divided on the issue whether our constitution permitted organization of the state policy on the basis of caste rather than class as a criterion of backwardness.

Thus we obtained that the First Backward classes commission could not provide us a practicable criterion towards identification of Backward classes. It was not only house divided but it also presented a philosophical rather than an equitable and practical solution of the problem. It is vivid therefore, that the first Backward classes commission could not achieve the objects and aim for which it was formed. The politics of backwardisation was shelved for some times but the failure of the commission to reach an equitable conclusion with regard to the problem heralded a new political climate that prospered the same thing which was repudiated and termed a repugnant to democracy and inimical to the creation of a casteless

and classless society by the chairman of the commission.⁴² The first Backward classes commission failed to identify the huge mass of millions of people clamouring for special treatment. Number of state governments set up their own Commission or Committees for defining their criteria for backwardness and drew up lists of such Communities. These Commission defined backwardness as their own way. After the debacle of Congress in 1977, for the first time, the Lok Sabha witnessed a change in the Social Composition of its members. The Brahmins who used to constitute 35 to 47% of total membership of the Lok Sabha, now found that they were no longer so predominant. They were barely 25% of the new Lok Sabha 1977. The backward castes increased their strength at the expense of Brahmins. This emboldened them to demand the implementation of the recommendations of the Kalelkar Commission as prominent in the Janata Party election Manifesto of 1977. The government of India however, thought it expedient to order to fresh investigation into the conditions of backward classes and appointed as Backward class Commission under the chairmanship of B.P.Mandal On 20th December 1978. It started its work on March 21, 1979 the report was finished by the 12th December 1980.

⁴² Jitendra Mishra, *Equality Versus Justice : The problem of Reservation for Backward Class*, Deep and Deep Publication, 1996.

The terms of reference of the Backward classes Commission 1980 were

- (i) To determine the criteria for defining the socially and educationally Backward Classes.
- (ii) To recommend to steps be taken for the advancement of the socially and educationally Backward Classes of citizens so identified .
- (iii) To examine the desirability or otherwise of making provisions for reservation of appointment or posts in favour of such Backward Classes of citizen which are not adequately represented in public services and posts in connection with the affairs of the union or of any state.⁴³

The commission noted that though caste was a valid criteria of backwardness, it could not be the single criteria for measuring it. To decide the indices of backwardness, a dozen castes well known for their social and Educational backwardness were chosen, various indicators churned out and finally some selected for determining backwardness. These were of three kinds. Each of the indicators were given a weightage i.e. social indicators - 3 points, Educational - 2 points and Economic - 1 point, all totalling 22 points. Any caste whose overall weightage was more than 11 points was classified as socially and educationally backward for that state. On the basis of

⁴³ *Report of the Mandal Commission 1980, Volume I, p.VII.*

these indicators and surveys, 3743 castes were declared as backward. The entire population of Hindu and non-Hindu backward castes added up to 52% of the country's population according to the report. It proposed the following overall scheme of reservation for the OBCs.:

- (i) Candidate belonging to these classes recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27 %.
- (ii) Reservation should also be made applicable to promotion at all levels.
- (iii) Reserved quota remaining unfulfilled should be carried forward for a period of three years and deserved there after.
- (iv) Relaxation in the upper age limit for direct recruitment should be extended to candidate of the backward classes as in the case of Scheduled Castes and Scheduled Tribes.
- (v) A roster system for each category of posts should be adopted by the authorities concerned as in the case of Scheduled Castes and Scheduled Tribes.⁴⁴

Due to political upheavals which beset the first non-congress Government at centre and the Assembly and Lok Sabha elections which followed in quick succession, the Mandal Report was submitted only in December 1980 to Indira Gandhi. Mrs. Gandhi neither shelved the report nor did she accept it. Rather, she discreetly set it aside and

⁴⁴ *Mandal Commission Report*, n.7,p.58.

the opposition also equally judiciously let it remain on the shelf for the reason that they also felt uneasy handling it.

The Janata Dal election manifesto of 1989 specifically mentioned the implementation of the Mandal Commission Report as a priority of the party. However, when Prime Minister V.P. Singh in a Suo Moto statement in parliament on 7th August, 1990 proclaimed the government's decision to implement the Mandal Report, most people were taken by surprise.

What is prominent also is that V.P. Singh decided to begin implementing the Mandal Commission's recommendations by reserving 27% of the central government and Central Public sector jobs for the OBCs and not the other steps - literacy drives, special educational measures assistance to become entrepreneurs, professionals and to ply their traditional crafts were successfully - prescribed to overcome the social and educational and other backwardness of the OBCs. Nor did he include measures like land reforms. It was blamed on V.P. Singh that he proclaimed the report of the Mandal Commission, due to his political compulsions. In an article in the 'Indian Express' of August 22, 1990⁴⁵ Neerja Choudhari mentioned three factors which influenced the timing of V.P. Singh's decision. The first was the mammoth rally staged in Delhi on 9th

⁴⁵ Neeraja Chowdhury, "Decision to implement Mandal Report : Political Parties in a fix", *Indian Express*, Delhi edition, August 22, 1990.

August, 1990 by Devilal, Deputy PM and the minister for Agriculture in V.P. Singh's government to assert his strength in the wake of his removal from the union cabinet on August 1. By proclaiming his valuable decisions on reservation, V.P. Singh wanted to wipe out the backward castes from Devilal and delink them from Jats who constituted Charan Singh sole power base which Devilal was trying to bag. It was part therefore several moves and counter moves in the game of power-politics within the party. The second factor and the most prominent factor was that the reservation announcement was meant to neutralise the RSS-BJP-VHP campaign for a Lord Rama temple and the site of the Babri Masque at Ayodhya. The third factor was, according to Choudhary, V.P. Singh's desire to convey his readiness to go for a mid-term poll if it came to that. He wanted to take on his adversaries in the party to go to the hustings if there was no otherway. The announcement aired the massive and wide spread protest. There was violence in Bihar, U.P. Himachal Pradesh, Haryana, Punjab, the Union Territories of Delhi and Chandigarh, Rajasthan, MP, Gujarat and Orissa and Protests on a lower scale and intensity in AP and Karnataka. About 100 persons were killed in police firing and the violence. Government's property including railways, Postal and Telephones and state transport corporation buses suffered huge damage. The most tragic incident was self-

immolation by several young students. According to one estimate the number of these attempts exceeded 150 by October, 1990.⁴⁶

The agitation was centred in Urban India involving students from upper and middle class families. It was teemed with casteist and anti SC/ST symbols and slogans and backed by the media especially the elite English Press which often assaulted the very idea of positive Discrimination including reservations.

A national consensus on the issue of reservation for the OBC can only be an unclear possibility because of the historical trends and political impulses that have shaped the policy. A survey of the major developments in the reservation policy vividly shows that the southern states have higher quotas of reservation for the OBC primarily due to the social movements that shaped the policy. As regards the efforts to centralised the policy i.e. through the setting up the First Backward classes commission and the second Backward classes commission, not much success has been achieved. While the Kaka Saheb Kalelkar Report was not accepted for implementation in toto, the government order announcing the partial implementation of the Mandal Commission Report had provoked widespread agitation and protest: To give proper effect to the recommendations of the Mandal Commission, it is imperative that adequate statutory provisions are

⁴⁶ Karlekar Hiranmay, "In the Mirror of Mandal, Social Justice, Caste, Class and the individual," Delhi Ajanta, 1992, p.2.

made by government to amend the existing enactments, rules, procedures, etc. to the extent they are not consonance with the same. The Mandal Commission seems to have started functioning with the presumption that social backwardness in the Indian society is solely linked with caste and social backwardness was direct result of this hypothesis, Mandal Commission has taken us many steps backward. The first Backward classes commission headed by Kaka Saheb Kalelkar listed 2399 castes as backward in the country in the year 1955 and Mandal Commission has given the list of other Backward castes numbering 3743. This means between the year 1955 to 1980 there has been a tremendous increase in the number of other backward castes to the extent of at least 1344. Now it can be anybody's guess how many more backward castes have come into being and have attained the status to be included in the list of other Backward Castes between 1980 to 1991.⁴⁷

The Mandal Commission Report seems to be based on conjectures alone. The research methodology which Mandal Commission adopted was highly deficient and unreliable. The Commission did not surveyed even 1% of India's total population. It covered only two villages and one Urban block in each district. It received not more than 1872 replies from the whole country. Even the

⁴⁷ Sukhdev Khanna, *Reservation and its Implications*; Jain Law Agency, Year 1994, p.64.

commission admitted, this survey has no pretensions to being a piece of academic research. Throughout this survey our approach has been conditioned by practical considerations realities of field conditions, constraints of resources and trained manpower and paucity of time. All these factors obviously militate against the requirements of a technically sophisticated and academically satisfying operation. According to Roy-Burman's observations, the research base sought to be provided by Mandal is totally spurious and unreliable. The fact is that the Mandal Commission Report is, at best, an unreliable document. Its compilation of backward castes is very much on the higher side, and is based on no consistent principles. Its computation of total population's 52 percent as the population of the backward castes is absolutely speculative the census of India eschews caste in its enumeration. B.K. Roy Burman headed the Technical Committee and chaired the Research Planning Panel for the Mandal Commission. He says that the Report is totally without scientific basis. It exaggerates the number of 'other Backward Classes', ignores every suggestions that the experts associated with it made 'we were used' observed Roy Burman, whose name figures in the Preface to the Report, along with two other social scientists. Prof. Yogender Singh, the third expert of Commission has denounced the Commission finding.

In exclusive interview, Prof. Singh told about the Mandal Commission report "It will only ignite dissensions in the society and reinforce casteism."⁴⁸

'Caste was not a satisfactory measure of backwardness. We were more inclined to consider occupations as a measure or perhaps, a mix of the two' B.K. Roy Burman says.⁴⁹

The experts did not know whether their survey design was being used. They were not consulted. The experts wanted 151 tables to be made for the purpose of calculation and illustration. But Mandal arbitrarily reduced this number to just 31. 'The commission was in a hurry to wind up its proceedings. The government had changed and it was, perhaps, not feeling very secure about its future, says Roy-Burman.

Burman finds Mandal's projection on the 1931 data unscientific. There has been so much social mobility since then. But there is another more serious objection Roy - Burman says that many of the castes specified in the 1931 census are just synonymous. In other words the same caste has been mentioned separately, according to its name, the name of the community, the name of the occupation, etc. There is lot of duplication. It will just multiply the number of

⁴⁸ Yogendra Singh, *The Indian Express*' 2nd September 1990.

⁴⁹ Shriram Maheshwari, *The Mandal Commission and Mandalization; A critique*, concept publishing co., year 1991, p.37.

castes that are now called 'other Backward classes'. But none of these views were heard by the man whose report is now law.⁵⁰

The case study of the Mandal Commission and its triumph raises few issues for which a cultural society should find satisfactory answers. The Mandal Commission Report has vertically divided the society in India. What is more, the cleavages thus created are neither temporary nor shortlived. The issue is about the extent to which a government in a democracy could go in the matter of making Public Politics. In India, the V.P. Government has shown stubbornly inflexible attitude on the Mandal Report even though the opposition to it is widespread and stiff. A government elected for a five-year term has little moral right to fetter and handicap the society indefinitely by its myopic actions.

Clearly, reservation had provided some scope for Dalits and Adivasis, but the "other backward" communities, 52% of the total Indian population, were hopelessly behind. The opposition to reservation clothed itself in Marxist dress, saying that reservation should be based if anything on "Economic backwardness" that is to say, on "class as an economic category." The principle of "compensatory discrimination" is meant to be applicable to "ethnic" (or non-class) social groups or communities which have been, for various historical reasons, systematically excluded from wealth and

⁵⁰ *Indian Express*, August 31, 1990.

positions of power in society. This does not apply to the processes of simple class stratification. In Indra Sawhney's case the Supreme Court in 1992 not only limited overall reservation to 50 percent but also inserted an Economic exclusion clause under the name of "creamy layer". The term itself was a clever innovation implying that by "skimming off the cream" a rather healthier glass of milk could be made available. The term "creamy layer" was used both to refer to the slightly better off economically among the backward castes (luckily this could not be applied to the Dalits and Adivasis) and to better off Jatis among them. But "creamy layer" clause were actually not enforced rigorously, it has simply added to the burden of bribery upon those hoping for employment for their children and has provided another source of under the table income for the local level officials who provide the certificates. Thus the reservation system was instituted not so much on the basis of constitution as on that of the decades-old-elite resistance to restructuring public-employment.

Chapter - III

Operational Dimension of Social Justice: The Case of Uttar Pradesh

Uttar Pradesh, the melting pot of traditional and modern values and ethos has since independence been striving to achieve socio economic transformation through a range of public policies and programmes aimed at redressing the existing inequalities. But time and again the state has become engulfed in caste tensions and violence negating the earlier gains. The existing social stagnation within the state has the come in the way of the amelioration of the backward castes.

The caste structure in UP is marked by the presence of three large blocks of castes. The Upper Castes constitute about 20% of the population, the Scheduled Castes form about 30% of the population while the remaining population consists of a number of castes referred to as the 'Other Backward Classes'. The proportion of Scheduled Tribes is quite insignificant (0.9%). Muslims form about 16% of the population.

The category of OBC is extremely heterogeneous. Though in ritual terms the OBCs occupy a position below the Upper Castes, in economic terms the OBCs are not uniformly underprivileged. There are castes recognised as OBCs which are land owning, numerically strong and politically influential. These include castes like Yadavs, Kurmis and Koeris.¹ Yadavas are the 'dominant castes' in Bundelkhand and East UP; Kurmis in central UP. In Western UP, Jats

¹ Atul Kohli, *Democracy and Discontent ; India's Growing Crisis of Governability*, Cambridge University Press Cambridge, 1990.p. 208.

are in a similar position. Even though they are numerically weak when compared to the SCs, they are in a position to dominate scene thanks to their economic strength and political resourcefulness.² The aforesaid castes constitute an elite within the OBCs.³

When compared to other parts of India, the proportion of Upper Castes in UP is very high. The Upper Castes in UP have been traditionally landowning. They have a significant presence in the services of the state. Historically, they have dominated the political scene as well.

Caste structure in UP contrasts starkly when compared to the caste structure in the Southern states. In nearly all the Southern states, the proportion of the Upper Castes is very small. The category designated as OBCs is numerically strong and have benefitted from all democratic upsurges and reform measures these have inspired. However in UP, Upper Castes could - thanks to their numerical strength - sideline the intermediate castes.

Backward caste movement, in UP which is directly linked to the OBC politics of contemporary times began in the pre-independence era itself. It involved projecting a caste identity which was non brahmin and non 'untouchable' and a class identity which was peasant.

² Dipankar Gupta, *Interrogating Caste : Understanding Hierarchy and Difference in India*, Penguin Books India (p) Ltd. New Delhi, 2000, p. 154-55.

³ Ibid.

The beginning of backward caste politics in UP could be traced back to the decision of Baba Ramchandra to break with the Congress and move away from the mainstream of the national movement. He established the Pratapgarh based Kurmi Kshatriya Sabha in 1920.⁴ This move inspired other backward castes in UP to begin a similar process political mobilization independent of the Brahman dominated Congress. All-India Yadav Mahasabha was established in 1923. In 1922 an Ahir Conference was held in Lucknow, followed by an 'Ahir Mahotsav' in Allahabd in 1923. The annual meetings of these associations were marked by anti upper caste rhetoric directed against Thakurs, Kayasthas, Baniyas and Brahmins.⁵ Gradually a pan Backward Caste consciousness developed in UP and demands were made for reservations in services.

This backward caste movement found its most subtle spokesman in Ram Manohar Lohia. In the 1960s, OBCs accepted Ram Manohar Lohia as their leader. Lohia demanded 60% reservation for OBCs on the basis that backward castes mainly peasants have the potential of inspiring progressive change in India. The actual politics of backward castes found its champion in Charan Singh⁶ who formed the first non- Congress government in UP under

⁴ Majid H. Siddiqui, *Agrarian Unrest in Northern India ; The United Provinces 1918-22*, Vikas Publishing House, Delhi 1978.

⁵ Zoya Hasan, *Quest for Power : Oppositional Movement and Post Congress Politics in Uttar Pradesh*, Oxford University Press Delhi 1998, p.-128.

⁶ Zoya Hasan, *op. cit.*, No. 5.

the banner of Samyukta Vidhayak Dal. This political formation was dominated by the backward castes. This marked the shift of the political centre of gravity in UP away from the Congress and Brahmins towards the backward castes.

After the success of backward caste politics in 1967, Charan Singh consolidated the OBCs as an important political bloc. Although the Congress and non Congress governments kept alternating, the terrain and terms of UP politics had decisively schanged.⁷ Charan Singh's Bharatiya Kranti Dal (BKD) became influential. He could even demand Congress Chief Minister C.B. Gupta to give adequate representation to the backward castes in his ministry.⁸ The consolidation of Backward Caste as a political entity was more pronounced in the eastern districts of Azamgarh, Ballia, Banaras, Gazipur, Barabanki and Faizabad.⁹

In the 1970s and 1980s these processes were taken further by the Lok Dal and Janata Dal which appealed with considerable success to those groups which were not parts of the Congress coalition. Lok Dal, concentrated in Western UP and Janata Dal focussed its efforts in eastern UP.¹⁰

⁷ Subhash Kashyap, *Politics of Power, Defection and State Politics in India*, Delhi 1974.

⁸ Stanley A. Kochanek, *The Congress Party of India : The Dynamics One-Party Democracy*, Princeton University Press, 1968, p. 426.

⁹ Terence Byres, "Charan Singh (1902-87), An Assessment" *Journal of Peasant Studies* Vol. 15, pp. 139-89, 1988.

¹⁰ *Ibid.*, p.137.

The story of the rise of the OBCs in UP is the story of the gradual politicization of cultivating peasantry which has been discovering that the economic interests they have in common exceed the caste and regional differences which have hitherto divided them.¹¹

Although the independent political mobilization of the backward castes in UP visibly succeeded in 1967 and has been gaining strength since then, their agenda could not be implemented largely because the Congress Party stood out as a political formation which did not have to rely on the backward castes. The Congress drew its support from the Upper Castes, Muslims and Dalits.

However the whole Congress strategy began to come apart in the 1980s with the Dalits deserting the Congress and resorting to an independent political mobilization under the banner of the BSP.¹² This resulted in consolidating Backward Caste politics even further. Congress now had to find an alternate mobilizational strategy. Congress was compelled to seek support from sections of the OBCs.

Within this background, one can take a closer look at the efforts to implement the policies of reservation for the backward castes in UP.

On 31st October 1975 the most Backward classes commission was constituted under the chairmanship of **Chhedi Lal Sathi** in Uttar

¹¹Gould Harold, *Modern Class System in India in his Politics and Caste*, Vol.3, Delhi : Chanakya Publication in 1990, p. 402.

¹² Kanchan Chandra, "Mobilizing the excluded" *Seminar*, August 1999, p. 46.

Pradesh to consider the conditions of the "most backward classes of citizens" as distinguished from the "backward classes" and to suggest measures for improving their Conditions." Commission started its work on 23 November 1975 and gave its report in 1977.¹³ The Commission recommended the classification of Backward classes into three categories and prescribed separate quotas in government services for each of the three categories.

Table 1
Recommendations of the Sathi Commission

Name of Category	Percentage of reservation
1. List "A" comprising those who are landless labourers, unskilled workers, non-artisan, and domestic servants	17%
2. List "B" Comprising marginal and small cultivators	10%
3. List "C" Muslim Backward classes	2.5%
Total	29.5%

Source : Mandal Commission, Report, Vol. I& II, p. 10.

The first list (List "A") contained thirty-six backward castes with little land or without land; the second had eighteen agriculturist castes like Yadavas, the Gujjars, the Kurmis etc. and the third was exclusively for the backward classes from the Muslim Community. The commission used poverty, illiteracy, housing, occupation, caste,

¹³ Chhedi Lal Sathi Committee Report, p. 107.

social inequality and representation in government service, industry , and commerce as yard stick for measuring backwardness¹⁴.

The Sathi commission identified disadvantaged groups on caste and class basis. The commission recommended a compartmentalized scheme of reservations of 29.5 percent for the MBCs.

'The Janata government headed by Ram Naresh Yadav largely accepted the recommendations of the commission. He reserved 15 percent of government posts for OBCs on the recommendation of the Most Backward Class Commission appointed by the previous Congress(I) government. With the reservation of 15 percent of jobs for the backward classes, the total reservation for different social groups reached 50 percent.¹⁵ The reservation policy then came up before the Allahabad High Court. The petitioners alleged that many of the so-called backward castes like the Ahirs (the yadavas) and the Kurmis were not economically and socially backward: It was pointed out that many of the castes involved were land owning, economically prosperous and educationally well off.¹⁶ Further the petitioners insisted that all that the Sathi commission had done was to enlarge the list of the "**Most backward classes**" identified by the **Kaka**

¹⁴ *Mandal Commission Report* , n.9, p. 10.

¹⁵ Zoya Hasan, "wanted new Reservation critique" *The Hindu*, January 7, 1990.

¹⁶ *Chhotey Lal Vs. State of Uttar Pradesh (AIR 1979 Allahabad)*, p. 139.

Kalekar Commission.¹⁷ 'The order was subsequently struck down by the Allahabd High Court on grounds that the OBCs were not properly identified.¹⁸ The Uttar Pradesh government appealed against the ruling in the Supreme Court which granted a stay of the Allahabad High Court Judgement from 1977 to 1987. Consequently the Janata government was able to extend the benefits of reservation to the OBCs. Nevertheless this move led to a political crisis in the Janata coalition. The issue of reservation generated considerable hostility and resentment in Uttar Pradesh. It provoked a wave of protest; riots broke out in the eastern Districts. Two issues figured prominently in these agitation one was the broader issue of preferential treatment to the socially deprived and second was extension of reservation for OBCs.

Mulayam Singh Yadav Spearheaded a campaign for the implementation of Mandal Commission recommendations in UP. The state government under him promulgated an ordinance providing for 15 percent reservations in government service for the OBCs in July 1989.¹⁹

Following the implementation of the report UP witnessed violent agitations in over 26 districts, particularly in Allahabad, Lucknow and Meerut. It began in a small way in Allahabad but then spread rapidly

¹⁷ Ibid.

¹⁸ Ibid. P. 154.

¹⁹ *The Sunday Observer*, 2 September, 1990.

like a bush fire to the rest of Uttar Pradesh.²⁰ In Uttar Pradesh the storm raised by the Mandal was the culmination of the deepening socio-economic crisis facing the state and the lack of political will on the part of ruling parties to tackle the issues of equity and justice except at a populist level. At least 17 of the state's 63 districts were affected by the protest. Eastern and central UP with a high concentration of Brahmins as well as OBCs were the strongholds of anti-mandal fervour.²¹ For all practical purposes, the state administration failed to curb the rising tide of anti-reservation agitation which had taken a violent form in state. 16 students lost their lives in the violence. The agitators in UP demands the unconditional withdrawal of the Mandal Report. To make things worse state government officers and employees also decided to join hands with the anti-reservationists.²² They began their agitation with a hunger-strike on October 5. While the anti-mandal stir had been unrelenting in almost the entire western Uttar Pradesh region-some districts of eastern UP and a few places in the hills were also been badly affected by violence and arson. In Varanasi, which was the worst affected of all eastern U.P. towns pitched battles were been fought between the police and students of Banaras Hindu University. According to a student leader, the anti-mandal agitation in the state

²⁰ *India Today* (special issue) December 25, 2000, p-80.

²¹ *Hindu* (Madras), 12 August 1990.

²² *Deccan Herald*, 30 September 1990.

has drawn Brahmin, Thakur, Bania, Kayastha, and Muslim students in its main fold moves are afoot he said, to include Sikh students in their strategy which for obvious reasons would land militancy to their agitation.²³ Several parties like Congress and BJP gave their tacit support to the agitation. The attempts at immolation by young students as a mark of protest against the policy of reservation for the backward classes sent shock waves through the entire political spectrum.²⁴ Macabre events of the anti-reservation agitation brought out the truth in Karl Marx's admission that while universal suffrage may give the right to govern, it does not always give the power to do so, in other words, the blaze of self immolation demonstrated the gulf that yawns between a seemingly modern parliamentary party and what has been called the "collective sub conscious" of the Indian Nation.²⁵

The formation of the Arakshan Virodhi Sangharsh Samiti and the Mandal Ayog Virodhi Sangharsh Samiti added fuel to the agitation of Upper Castes students in colleges. The students attached to the Samiti came out on to the street, to garner the support of doctors, teachers and bureaucrats. They wanted an end to all reservations, including reservation for the scheduled castes. News papers

²³ Ibid.

²⁴ *News Time* (Hyderabad) 26 September - 1990.

²⁵ *The Statesman*, 30 September 1990.

supported the agitations. The agitators received support from students of professional colleges as well. It spread to almost all parts of Uttar Pradesh like Banaras, Lucknow, Gorakhpur, Allahabad, Meerut, Mathura, Agra, Ghaziabad, Muradabad. The most vehement protest came from the university of Gorakhpur, Banaras and Allahabad. Indian Institute of Technology in Kanpur also supported the agitation. In central Uttar Pradesh, Arakshan Virodhi Abhiyan Samiti, and Sawarn Liberation Front (SLF) were active. Arakshan Virodhi Abhiyan Samiti launched its agitation from Gorakhpur and had several demands like, abolition of all types of reservation, open merit competition should prevail and removal of reservation in promotion.²⁶ All the students who took part in the agitations were from the Upper Castes.

'Mahendra Singh Tikait, the maverick BKU leader, was vehemently anti- Mandal and after tangling with him over the farmers agitation in July, the UP chief minister was cautious as no reservations had been made for Jats. But due to fear of vote bank Uttar Pradesh government planned to include Jats in the list of OBCs and announced some more concessions for farmers. Due to this incident a new political alignment developed between Mulayam and Ajit Singh. The apparent reason for this new found understanding

²⁶ Interview, Dinesh Chandra Tripathi (President, Arakshan Virodhi Abhiyan Samiti), 10 May 2001.

was to cut Mahendra Singh Tikait to size and scuttle the growing nexus of Mr. Tikait, Mr. Devi Lal and Mr. Vishvendra Singh.²⁷

The Times of India correspondent in Lucknow, Purnima S. Tripathy reported that the reservation issue was being viewed in Lucknow as a totally political move triggered by vote considerations and was detrimental to the healthy growth of society. Most felt that it would increase caste tensions as the general category would rise against those who had been covered by reservation. The frequently repeated assertions were to the effect that despite reservations the Scheduled Castes and Scheduled Tribes had not really progressed much and that the benefits were being cornered by a small section of society for generation after generation, while others amongst them had received nothing .

Chaudhary Charan Singh who recognised the significance of OBCs in politics opposed reservation and considered it a "vicious principle".²⁸ Jai-Prakash Narayan even criticized the present form of reservation and wanted OBCs to be identified on the basis of economic criteria.²⁹ Tata Institute of Social Studies conducted comparable study in Tamilnadu, Karnataka, Bihar and Uttar Pradesh on the people's reaction to the Mandal Commission report. In Uttar Pradesh, with a sizeable 20 percent of the population classified as

²⁷ *Times of India* (New Delhi), 25 September, 1990.

²⁸ *Indian Express* (New Delhi) 14 September 1990.

²⁹ *Tribune* (Chandigarh) 9 October 1990.

forward, the legacy of semi-feudalism has enabled these forward castes to fight bitterly against the reservation scheme.³⁰ As a result of the Mandal Commission between 30 to 35% of the population in the North will be outside the pool of job reservation of any kind.³¹ The two National Parties BJP and Congress also criticised Mandal Commission but not openly. It offered muted opposition to the Mandal recommendations, as it did not want to risk alienating OBCs but away from public gaze it mobilized the Upper Castes to oppose Mandal recommendations.

In giving its assent to the government order for implementation of the Mandal Commission Report, The Supreme Court in 1992 not only limited overall reservation to 50 percent (thereby in the effect reserving 50 percent for the "**forward castes**") but also inserted an economic exclusion clause under the name of "creamy layers" The term itself was clever innovation, implying that by "skimming off the cream" a rather healthier glass of milk could be made available. The term "creamy layer" was used both to refer to the economically better off among the backward castes and to better off Jatis among them. This concept of "creamy layer" could not be applied to the Dalits and Adivasis on the basis of their social status. The Supreme Court directed the Uttar Pradesh government to adopt the concept of creamy

³⁰ *Patriot*, 17 September 1990.

³¹ *Telegraph*, 22 September 1990.

layer. State Government has decided to bring those OBCs under the purview of creamy layer whose family income was not more than one lakh (1,00000 Rs) per annum.³²

In writ petition, no. 631/94 Ashok Kumar Thakur's Vs Bihar State and others , the supreme court on 4th September 1995, directed Uttar Pradesh government to adopt the memorandum of central government which was released at 8 September 1993, about the "creamy layer".³³ If the "creamy layer" clause was actually enforced rigorously at determined level in state, it would have the effect of excluding today even children of class III government employees of moderately well-off farmers. Central government has given right to state to define the term "creamy layer" according to its own convenience hence It has no proper definition. It varies from state to state. To some extent, It can be said, that the "creamy layer" concept has prevented reverse discrimination. The national implementation of reservation policies reveal that the device of reservation has become the tool of aggrandizement in the hands of politically dominant castes who always try to strike political bargains to retain the privilege of being classified as backward even at the expense of the really needy and the deserving. Those in power use the reservation issue to

³² Interview , Rekha Saxena, (Section Officer, Ministry of Personnel. UP) 7, May, 2001.

³³ *Gazette, Uttar Pradesh government*, 8 December 1995.

virtually key off entire castes.³⁴ Backwardness has become a vested interest and any attempt to eliminate the well-off from the category 'backward groups' is strongly resisted. This leads to reverse discrimination against upper caste and social tension. In Uttar Pradesh the then chief minister Mulayam Singh Yadav announced that those student belonging to SC, ST or OBCs would be selected for admission in professional colleges even if they get zero or even negative marks. Any how their quotas must be filled up.³⁵

The Samajvadi Party and -Bahujan Samaj Party combine decided to implement 50 percent reservation - 21% for Scheduled Caste, two percent of Scheduled Tribes and 27% for OBCs in hill areas. In the hill areas OBCs constituted only 2% of the population. This decision of Uttar Pradesh Government created reverse discrimination against Upper Castes in the hill region.³⁶ But some erudite scholars assume that 'reverse discrimination' will not create impediment for Upper Castes because socially and educationally they are much advanced. George-Sher examine, the rationale behind the reverse discrimination when it is applied in the area of employment. In Uttar Pradesh, the benefit of reservation is only enjoyed by the elite among SCs, STs and OBCs. Jats, Kurmis, Yadavs are richer than

³⁴ *The Hindustan Times*, June 26, 1979.

³⁵ Interview, Manish Goel (Medical student, of Medical College Kanpur), 18th April, 2001.

³⁶ *Sunday Observer*, 11 September 1994.

others and have ample resource for development but they are absorbing the benefits of reservation.

Recently the 'Committee of seven governors' which was appointed to study the relevance of reservation, proclaimed it as 'Jargonistic policy'. According to the committee, for those who lack even the basic necessities of life, reservation does not mean much. The same committee recommended that reservations be denied to the creamy layer of the eligible classes.³⁷ Reservation have so far not benefitted the most backward classes. Taking it as reality Chief Minister Rajnath Singh has raised the issue of reservation within reservation for the 'most backward classes'. To give it proper shape he has appointed a committee for social justice. By raising his voice in favour of the 'most backward classes' he has tried to give concrete shape to Lohiaite politics.

Earlier in the chapter a reference was made to the compulsion the Congress Party was under to seek support from sections of the OBCs. Congress had to do it because Dalits were deserting the Congress camp. None the Congress Party could make inroads into the OBC constituency only by dividing it. For that it came up with the concept of the 'most backward classes'. The idea was to wean away the less privileged OBC castes from the more privileged ones like Jats, Kurmis, Koeris and Yadavas.

³⁷ *Dainik Jagran* (Hindi News Paper), Editorial, 30th April, 2001.

Ironically it was a Congress government which in 1975 set up a commission to identify the 'socially educationally backward classes' in UP. The C.L. Sathi Commission recommended compartmentalized reservations thus effectively splintering the monolithic OBC bloc. This was of course to the liking of the Congress Party as its interests lay in making inroads into the OBC bloc. However the non Congress governments which tried to implement the recommendations did not respect the compartmentalization - and understandably so.

The BJPs strategy was also to split the OBC bloc and attract the underprivileged OBC Castes to its fold. Given the electoral success of BJP, this party seems to have had more success in implementing the strategy. The recent announcement of by the UP Chief Minister Rajnath Singh of BJP to identify the 'MBCs' should be seen in this light.

It is in fact that reservations for OBCs have largely benefitted the well off castes. So there is a case for compartmentalized reservations to ensure that the benefits of the policy reach the most needy. The political consequences of the move are a different matter altogether.

Conclusion

In essence equality implies a certain levelling process. It implies the giving of favoured treatment to those who are through not fault of theirs lack the resources, opportunities, incentives and background to achieve success through of formal equality. Thus viewed, 'Protective' or 'Compensatory' discrimination is consistent with the idea of equality. The objective of 'Compensatory discrimination is to blot out inherited inequalities and remedy historic injustice. Redistribution of society's goods and services in order to remove or eliminate existing inequalities may ultimately be beneficial to the society as a whole. The compensatory treatment provides the beneficiaries access to the opportunity structure of the society that they would not have otherwise enjoyed. The preferences enable the integration of the disadvantaged groups into the larger society and promote national integration. Equality has both notions, favouring competence and creating a favoured group for redressing rooted inequalities.

Distribution according to 'merit', deserts or 'contribution' and distribution according to 'need' both are consistent with the idea of equality. The 'need' criterion takes into account the inequalities on society affecting the ability of individuals to contribute to the society. It therefore suggests the dispersal disproportionate of benefits to the unequals in order to counterbalance their deficiencies, weakness and inferiority caused by genetic environment or historical reasons.

Equality is an essential ingredient of social justice. Compensatory discrimination is an essential attribute of equality. However there is always a tension between competing claims of equality : the claims based on merit is at odds with claims for the redressal of historic injustice.

Articles 14 to 16 of the Indian constitution can be interpreted in such way that it provides substantive equality or equality of result , by making a reasonable classification on the guidelines produced by the Directive Principles of State Policy which define the constitutional goal of achieving equality overall or social equality. It is important to note that the preferential treatment to the backward classes or weaker sections could be given by the state by making a proper classification under Art. 14 'reasonable basis test' even without any explicit provisions like Article 15(4) or 16(4). Art. 15(4) or 16(4) are the explanations of the right to equality in relation to the backward groups. These protective discrimination provisions have been kept in part three of the Indian Constitution under the title 'Right to Equality' simply due to over-anxiety of the framers to incorporate the notion of positive equality.

So far as reservation is concerned, it is a cardinal mean to gain equality for the disadvantaged groups. The state has freedom to explore all possible means to encourage the backward groups to move upwards in the opportunity structure of the society. Thus the state

can adopt any method in order to provide adequate representation to the under represented backward groups in state services.

The policy of reservation in India was quite firmly established during the British rule but such a policy was designed more to redress communal inequalities in the representation in public services rather than to remedy the historic injustice. However, in South Indian provinces and in some princely states, a system of reservation had emerged as a result of anti-Brahmin movement.

When Article 16(4) was debated in the Constituent Assembly there was discussion on the question of intended beneficiaries of Preferential Job Policies. The debate revealed a wide spectrum of views. K.M. Munshi stressed the factor of educational, economic, and social backwardness. Ambedkar frequently referred to 'castes' and 'communities' as the intended beneficiaries of reservations in services. Art. 16(4) was described by him as a formula to reconcile the competing claims of merit and preferential treatment. Socialists like Jaya Prakash Narayan and Ram Manohar Lohia were in favour of social justice through preferential treatment. Later on, in Balaji Vs State of Mysore case, Justice Gajendragadkar observed that unless the educational and economic interests of the people were promoted quickly and liberally, the ideal of establishing social and economic equality would not be attained.

Preferential opportunity or preferential treatment, which is known in India as the concept of 'Protective discrimination', involves discrimination in favour of the weaker and backward sections of the community such as women, Scheduled Castes and Scheduled Tribes and other economically or socially backward classes. This discrimination takes the form of special concession such as reservation of seats in educational institutions and in Public Service, and the provision of monetary help for student belonging to these categories.

The Scheduled Castes are selected on the basis of their low rituals or social position. On the other hand, the Scheduled Tribes are selected on the basis of their residence in exclusive territorial communities. The caste and religion are the major considerations in selecting the these backward classes for preferential treatment.

The term "backward class of citizens" includes all the three categories; the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. To measure backwardness, several Commissions were formed, Kalelkar Commission was first amongst them. **The Kaka Kalelkar Commission was** in favour of using 'caste' as the sole determinant of backwardness on the belief that its prominent task was to delineate social categories or groups who were suffering disabilities and backwardness due to genetic or hereditary reasons. It was thought that as 'diamond cuts diamond, evils of caste

system could be eliminated, only by taking caste into account. But at the eleventh hour, the Chairman of the Commission denied caste as criterion for measuring backwardness and suggested economic test in its place.

When the Mandal Commission Report was submitted to the government in 1980, it almost went unnoticed, but when its implementation, though partial was announced, it shook the Indian society to its very foundations. The Commission in keeping with its mandate, identified the Socially and Educationally Backward Communities (SEBCs) for reservation in services of the state. This announcement of Mandal Commission report created a basic imbalance. The 'Mandal Commission' Report and the Reservation Policy of OBCs can be attributed to the political expediency rather than social necessity. It has made "backwardness" a privilege. Therefore instead of reservations acting to undermine caste, the Mandal Commission has rather succeeded in strengthening caste identities.

In Indra Sawhney's case (in popular parlance, Mandal Commission Case), the Supreme Court laid down the "means test" which signifies imposition of an income limit for the purpose of excluding persons from the backward classes. Those whose income is above a certain limit constitute the creamy layer. While defining the creamy layer, income or the extent of property can be taken as a

measure of social advancement and on this basis a given caste can be excluded from the benefits of reservation. It was for the executive to come up guidelines defining the 'creamy layer'. However, due to the indecisiveness of the executive, creamy layer concept could not be implemented.

The purpose of Social Justice must be understood in its real intent rather than as a slogan for political manoeuvring . It's real sense is that every one should have ample opportunities of getting a reasonable start in life and of developing his faculties to the maximum of being his best-self.

In Uttar Pradesh, the benefit of reservation are enjoyed largely by elite among SCs, STs and OBCs. Quota system for OBCs has become politically sacrosanct because the prosperous agricultural castes in the state such as Yadavs, Kurmis and Jats have taken it to enhance their prospects. Quota system is adopted by these superior rural (Jats, Yadavas, Kurmis) communities to realise their community ends; the earlier emphasis on raising the downtrodden by enlarging socially valuable skills has been given up.

Recently the 'committee of seven governors,' which was appointed to scrutinize the relevance of reservation, argued that reservation has no meaning for those, having scarcity of basic needs. In other words those who are really poor stand to gain very little from reservations. They were implicitly suggesting that it is the better off in

the 'backward classes' who benefit from reservations. The Committee has neglected caste as a criterion.

In UP reservation has deteriorated into political squabbling and vote bank politics. Caste based parties demand reservations for their respective castes without any regard for the original intent of the policy of reservations.

Recently the announcement made by the UP Chief Minister Rajnath -Singh, that his government was in favour of making provision for reservation within reservation for most backward castes, has caused a natural reaction among caste based parties. In reaction to it, Mulayam Singh Yadav has countered the BJP theory of social justice by demanding reservation in government jobs for Muslims in proportion to their population.

Even half a century after independence there are several Dalit castes which have not benefitted at all from the policy of protective discrimination. It reveals the deep rooted problems in the policy of 'Protective discrimination. The policy contains several drawbacks which have not been addressed till now. In addition, whole policy has been mindlessly politicised. Social justice demands managing a proper balance between two competing claims of compensatory discrimination and reverse discrimination.

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