

**POLITICAL CONSOLIDATION OF THE OTHER BACKWARD
CLASSES (OBCs) IN INDIA: A HISTORICAL ANALYSIS**

**A Thesis Submitted
To
Sikkim University**



**In Partial Fulfillment of the Requirement for the
Degree of Doctor of Philosophy**

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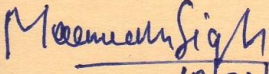
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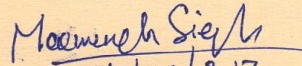
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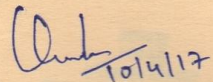
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A Historical Analysis”**

Submitted by **Maanvender Singh** under the supervision of Dr. V. Krishna Ananth of the
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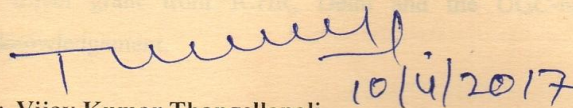
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All the assistance and help received during the course of the investigation have been duly acknowledged by him.

We recommend this thesis to be placed before the examiners for evaluation.


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- **Maanvender Singh**

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INTRODUCTION

What constraints do a modern nation state, that declares and claims to uphold the equality, face while attempting to provide justice to those who are in position of disadvantage as compared to the historically favoured ones? This is exactly how the Indian state has proceeded with the question of the Other Backward Classes (OBCs), notwithstanding the fact that one of the central roles of the state is to bring profound changes in the life of the people and especially to those who were and continue to suffer being in the position of disadvantage. This very purpose of the state was laid down distinctly in the constitution as adopted by free India on November 26, 1949; one of these roles being to readdress the disability and disadvantage suffered by the lower castes and proclaimed in Articles 14, 15 and 16. The Constitution (First Amendment) Act, 1951, which added Articles 15(4) and 16(4) among many other provisions clarified this further. However the decades of refusal to introduce reservation in case of OBCs at the national level and in many states and then the large scale of protests against the partial implementation of the Mandal Commission Report in August 1990, seriously question the claims which the Indian state had made towards equality and justice.

This abject denial to institute the constitutionally sanctioned policy was carried out by the state through various ideological¹ means that basically opposed any form of engagement with the institution of caste as far as the OBCs were concerned. It is visible in the apologetic nature of the Indian state in the 1950s and the 1960s towards the reservation policy drawing ample support from the higher judiciary in a series of cases -

¹ I am using 'ideology' here in the same sense that Marx used that ideology is false consciousness. See Karl Marx, Thesis on Feuerbach, German Ideology, 1845, Progress Publishers, Moscow.

Champakam Dorairajan, Chiterlekha, and Balaji, where the courts seem to have declared some (citizens) as possessed with ability and hence 'meritorious' and others (reserved category) as less deserving since they seek entry to educational institutions and services through the policy of reservation. These arguments over merit and efficiency in the nature of discourse quite conveniently stood opposed to the ideas that were settled in the constitution, made after extensive discussions and prolonged debates. On the other hand, politics for most parts, in the first four decades of independence, under the pretext of upholding various forms of nationalism and secularism, prevented any enquiry into the sufferings of the backward classes and has therefore permitted to develop such exclusionary ideas and in fact, established them as the norm. However, the journey of the OBCs from the formative years of the Republic leading up to the Mandal episode has largely improved the understanding of caste and therefore provided the space to the lower castes to counter the themes on nationalism, secularism, merit, and efficiency.

This thesis has primarily dealt with the two forms of development in the realm of Indian politics:

- a) the political language of the state which was hegemonic in nature, germinated first in the 19th century as a critic to anti- imperialism and later developed in the post-colonial phase which was focused on homogenising the public,
- b) the counter- hegemonic language of the subaltern that exclusively addressed the claims of the lower castes worked precisely on the lines of division in the society. An exercise that was first initiated in the colonial state by subverting the anti-imperialist discourse of the Indian National Congress and later on in the post-independence phase with the emergence of quota politics in 1970s led by the

socialist parties and ultimately with the Mandal episode, as caste was placed at the centre-stage of the Indian politics.

In this, various strategies were used to challenge and restructure the national narrative on caste and a new political language, distinct from the colonial and the post-colonial state, emerged; it was one that questioned the privilege acquired by the upper castes. This thesis also attempts to affirm this point that in a highly fragmented society, one where a minority -- primarily from upper castes -- holds on to the various forms of privilege and claims to have earned it through the modern system of merit, it becomes important to challenge those narratives in order to assert the democratic space. It is evident that the use of the term *politics* in this context is different from its traditional meaning and this thesis does not necessarily deal with the electoral politics.

Literature Review

The Other Backward Classes (OBCs) is a complex concept, which is sometimes hard to define in academic terms. Generally speaking, the OBCs are the social group other than the Scheduled Castes (SCs) and the Scheduled Tribes (STs) which have been deprived of their social, economic and political rights due to the nature of Indian caste system. Even the constitution does not specifically mention the OBCs as a category, but it does authorise the state to give preferential treatment to the 'Socially and Educationally Backward Classes' (SEBCs).² Similarly, the expression, backward class of citizens in Article 16(4) is neither defined nor explained in the constitution. The word backward is

² Article 15 (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any Socially and Educationally Backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

very wide bringing within its fold the social backwardness, economic backwardness, political backwardness and even physical backwardness.³

At the time of Independence, the term Backward Classes had a less fixed and definite reference. It had shifted rapidly in scope and had come to mean different things at different times.⁴ In official usage and public debate, the term 'Backward Classes' is used to designate disadvantaged groups entitled to special treatment from the state. In its inclusive usage, the category denotes the Untouchables (Scheduled Castes or Dalits), tribal groups (Scheduled Tribes or adivasis) and Other Backward Classes (OBCs). Even though there were preferential policies for the Backward Classes, their exact definition had not been clearly articulated and details of the various definitions employed during the British period are spelt out.⁵

So the real question is not about what is meant by the backward classes but how can we identify them, and the Mandal Commission Report becomes relevant in defining who the OBCs in India are. Having said that, surprisingly, in the first draft of the constitution placed before the Constituent Assembly in October 1947 there was not much clarity on the issue backward classes. However, later on when draft constitution was debated, the need was felt to define backward classes; but nothing concrete was achieved and Article 340 was introduced, giving the President the power to constitute a

³ Indra Sawhney vs. Union of India, AIR- 1993- SC-477

⁴ Galanter Marc, 'Who are the Other Backward Classes? –An Introduction to a Constitutional Puzzle' in the Economic and Political Weekly, Vol. XIII, Nos. 43 and 44, October 28, 1978

⁵ Galanter, Marc, 1984, *Competing Equalities: Law and the Backward Classes in India*, California University Press, Berkeley.

Commission.⁶ But even then, there was no attempt of creating OBC as distinct category; they were clustered together with SCs and STs to form the Backward Classes.

Consequently, confusion persisted as to whether the OBCs can be a class or a group of certain deprived castes, raising the question of what is the relevance of Caste in determining social and educational backwardness. The question of backwardness was taken up by various state commissions raising further the dispute over the understanding of OBCs and caste as a criteria for backwardness. In this regard, judicial decision of R. Chitralakha v. State of Mysore⁷ and Balaji vs. State of Mysore⁸, the Supreme Court held that caste is relevant for determining social backwardness and there is a *synonymity* between caste and class. The court also stated that the classification of backward classes should be made on the following two conditions: economic conditions and occupations. These questions have been exhaustively dealt with in Indra Sawhney v. Union of India⁹ and it has been specifically mentioned that caste alone cannot be the basis for reservations.

Another relevant question related to the preferential treatment pertained to providing 'excessive' reservation that was dealt in few cases. In T. Devadasan v. Union of India,¹⁰ the court agreed with Balaji that reservation over 50% of the vacancies violated of the Article 15(1). Further, in Indra Sawhney v. Union of India the court held that the reservation contemplated in clause (4) of Article 16 should not exceed 50%.

⁶ Constituent Assembly Debates (CAD) New Delhi: Government of India, 1950)

⁷ R. Chitralakha v. State of Mysore A.I.R. 1964 S.C. 1823

⁸ Balaji vs. State of Mysore A.I.R. 1963 S.C. 649.

⁹ Indra Sawhney v. Union of India, A.I.R. 1992 S.C. 421.

¹⁰ T. Devadasan v. Union of India ,A.I.R. 1964 S.C. 179.

These judgements and Commissions were not independent of the political events that occurred in that particular periods of time. Infact, the various Commissions were the outcome of political pressure that was built by the OBCs at both national and the states level. The whole trajectory of OBC consolidation, then, has to be seen in the context of the politicisation of caste and how it has increased the representation of lower castes in the Indian political system in its electoral sense.¹¹ Rajni Kothari in “Caste in Indian Politics”¹² studied how far caste influences the rural policy. He finds that caste is becoming more and more strengthened because of the formation of caste organisations. In the political sphere, the caste associations ask their members to vote the persons belonging to their own caste irrespective of the political party that they belonged to. While dealing with the social dynamics of caste, Kothari notes that the interaction between caste and politics in democratic polity has produced two results: First, “the caste system made available to the leadership structural and ideological basis for political mobilisation. Second, the leadership was forced to make concessions to local opinion, take its cue from the consensus that existed as regards claim to power, articulate political competition on traditional lines and, in turn organise castes for economic and political purpose.¹³

Even before independence, the non- Brahmin movements in Bombay and in the Southern states were concerned with creating regional non- Brahmin identities. In Bombay, the invocation of the Maratha identity was crucial in bringing the entire peasants together, which later on facilitated the emergence of Maratha politics on a

¹¹ Jafferlote Christopher (2003), *India’s Silent Revolution: The Rise of Low Castes in North Indian Politics*, Permanent Black: Delhi

¹² Kothari Rajni, 1970 *Caste in Indian Politics*, Orient Longman, New Delhi

¹³ Rajni Kothari (1970)

larger national scale.¹⁴ Much like Bombay, there were similar lower caste mobilisations in Mysore, Travancore and other parts of India. In this regard, the statistics collected by British officials for both enquiry purpose and curiosity made both non – Brahmin leaders and British aware of structural cleavages that were already there in Indian society.¹⁵ Infact the OBC movement that we see in contemporary times can claim its legacy from these pre-independent movements.

Further, the caste associations, which politically came into existence during the freedom struggle, while working for their caste interest, helped in the emergence of Backward Caste Associations. In this context, there have been different approaches to the caste associations referring to it as competitive enterprise where the purpose is acquisition of power,¹⁶ or para communities that enable caste members to foreground caste to pursue social mobility, political power and economic advantage¹⁷ to one or another of the pressure groups.¹⁸ But what is important is to study the role played by such associations in electoral politics.

As noted by Ghanshyam Shah, the associations of the different backward castes were instrumental in bringing reservation for OBCs. M.N Srinivas's early use of the term was in reference to a small locality or group of villages. In his essay 'The Social System of Mysore Village' Srinivas mentions that the concept of dominant caste is important in

¹⁴ Omvedt, Gail, 1976, "*Cultural Revolt in a Colonial Society: The Non-Brahman Movement in Western India, 1873 to 1930*", Scientific Socialist Education Trust, Bombay

¹⁵ P. Radhakrishnan, 1993, Communal Representation in Tamil Nadu, 1850 -1960: The Pre non Brahmin Movement Phase, Economic and Political weekly, Vol. 28, No. 31

¹⁶ Rajini Kothari (1970)

¹⁷ Lloyd I. Rudolph and Susanne Hoeber Rudolph, 1966, "*The Political Role of India's Caste Associations*" in *Social Change: The Colonial Situation*, ed. Immanuel Wallerstein J. Wiley, New York.

¹⁸ Shah Ghanshyam, 2002, *Caste and Democratic Politics in India*: New Delhi, Permanent Black,

understanding inter-caste relation in any local area.¹⁹ As far as dominance in the local area is concerned, there seems to be a direct link between dominance and numerical predominance. But Srinivas has been countered on this aspect, where there has been more than one dominant caste in a village and also the changing pattern of dominance from one caste to another.

Also the modernisation process has been one of the important factors which has, over the years, that changed the social dynamics of castes and there is a constant rupture between what has come to be defined as tradition and modern values of democracy. The result of this interaction has been wide ranging where the indigenous system has tried to hold its relevance. There is no doubt that in India, under the impact of western education, the nationalist movement, and universal adult franchise, the traditional community structure has undergone continuous change and adaptation.²⁰

In this interaction of caste and politics, it is true that caste has been politicised²¹ but caste has provided an opportunity for political articulation for various castes that were marginalised before by the very system, through electoral politics. This articulation can be in many forms, of which Srinivas talks about that of the dominant caste.

This interaction of caste and politics is not very old and it started primarily with the advent of British rule. Traditionally though it was an inegalitarian society with rigidity in occupational structure and lesser avenues for social mobility, it allowed the upper castes to establish an unquestionable hegemony. This kind of social organisation

¹⁹ M.N. Srinivas (1987), *The Dominant Caste and Other Essays*, Delhi: Oxford University Press

²⁰ Rajini Kothari and R. Maru, 1986, *Caste in Indian Politics*, New Delhi, Orient Longman

²¹ Kothari: 1970

has been described by Dahl²² as one of cumulative inequalities. This setup was challenged only when the British regime introduced western oriented educational system, opening up avenues of occupation and professions.²³. Interestingly caste has flourished in multifarious ways, as never before and contrary to what Max Weber thought that western educated Indians bred in rational concepts, would destroy caste on their return to home.²⁴

Coming to the issue of caste, it has immense relevance to any political and social study conducted on India, just because Indian society was ruled by this social philosophy of caste, unaffected by the modern ideas of rights and duties. However, not a single comprehensive definition is available on caste except for certain criteria which have been framed, over the years, by various sociologists. For instance, Hutton²⁵ and M.S. Ghurye²⁶ find it difficult to define caste; where Hutton finds it variable enough to make any concise definition, Ghurye finds it difficult to define caste because of its complexity.

One big misconception regarding the caste system is that most of the time, it is subsumed by the concept of varna. The varna which literally means colour, originally referred to the distinction between Arya and Dasa,²⁷ in the Rg- Veda the word Varna was never applied to any of the classes²⁸ which ordinary men and women use to make sense of the caste system. But, what is interesting is the social mobility of castes which became

²² Robert Dahl, 1961, *Who Governs? Democracy and Power in an American City*, New Haven, Yale University Press

²³ Also see Kothari: 1970, Rudolphs: 1967, Beteille: 1965, Singh: 1970

²⁴ Lohia, Rammanohar, 1964, *The Caste System*, Rammanohar Lohia Samata Vidhyalaya, Hyderabad, India.

²⁵ Hutton, J. H., 1963, *Caste in India: Its Nature, Function and Origins*, Indian Branch, Oxford UP, Bombay.

²⁶ Ghurye, G. S., 1969, *Caste and Race in India*. Popular Prakashan, Bombay.

²⁷ Srinivas. M.N, 1964, *Caste in Modern India*, Asia Publishing House, Bombay.

²⁸ Ghurye: 1969

visible as soon as the first caste census was carried out by the British administration.²⁹ It stated in varna terms rather than in terms of the local caste situation.³⁰

However, one of the most dominant discourses on caste is based on the theoretical premises of the social stratification. The institution of caste has been described as a system of social stratification,³¹ within which membership in a specific caste, or jati, is inherited from one's parent: Caste, then, is derived from birth and persists through the life of the individual.

In India, the major works done on the sociology of social stratification is related to the caste system. In normal words, social stratification deals with how human society is differentiated based on different criteria. The criteria then can be economic, religious, linguistic, or any such variable that exist in human society. Though there can be a single criteria that can be used for social stratification, there are always a host of factors involved in this.³² Basically Social stratification seeks to analyze the structure, process and ideology,³³ where ideology plays an important role in social mobility.

Studies on social stratification hold their relevance in societies which have been studied by employing the Marxist method of class analysis. Class stratification becomes particularly important in the present scenario where social inequalities are not only based on caste and where even other criteria such as status, economic differences become important. In this, there are relevant studies carried out on the agrarian relations by Rama

²⁹ Llyod. L. Rudolph (1967) highlights on this issue of how various caste has transformed them by creating new units of social consciousness, organisation and action. Also, how some of the lower castes were able to raise their social status, by successfully changing their caste cultures.

³⁰ Srinivas. M.N, 1962, *Caste in Modern India: And other Essays*, Asia Publishing House, Bombay.

³¹ Gupta Dipankar, 2000, *Interrogating Caste: Understanding Hierarchy and Difference in Indian Society*, Penguin

³² Ibid.

³³ Singh, Yogendra, 1977, *Social Stratification and change in India*, Delhi: Manohar Publications

Krishna Mukherjee³⁴(1957) and Daniel Thorner³⁵ (1976) focusing on the nature of the mode of production in Indian agriculture and these become very important.

Another important area of study in social stratification is on the nexus between caste and class.³⁶These studies on social stratification not only give us a better understanding of caste, but also reject the dominant notion where caste has been dealt as rigid, unchanging and outdated system,³⁷ or as a hierarchical system defined on the criteria of pollution and purity³⁸ which fail to give the correct picture of the caste system in India. These works present the Indian caste system as one working in isolation, where forces of social change, hardly affect the course of history.

Further, as K.L.Sharma notes, caste has never been static as it has been held by several scholars. Also, the very fact that the social mobility of SCs, ST and OBCs in present times has challenged the upper caste elite in Indian politics, contradicts this dominant view. In fact, the mobility within the Hindu system of caste stratification has always existed, although it has fluctuated in accordance with the varieties of socio-cultural time and place.³⁹

³⁴ Ramakrishna Mukherjee, 1957, *The Dynamics of A Rural Society: A Study of the Economic Structure in Bengal Villages*, Bombay, Popular Prakasham

³⁵ Daniel Thorner, 1976, *The Agrarian Prospect in India: Five Lectures on Land Reform Delivered in 1955 at the Delhi School of Economic*, New Delhi, Allied Publishers.

³⁶ See Andre Beteille: 1996, *Caste, Class, and Power: Changing Patterns of Stratification in Tanjore Village*, Bombay, Oxford University Press, and Sharma.K.L., 1997, *Social Stratification in India*, New Delhi, Sage Publication India.

³⁷ See Ghurye: 1961; Hutton : 1946

³⁸ Louis Dumont 1970, *Homohierarchicus: The Caste System and its Implications*, University of Chicago Press.

³⁹ William. L. Rowe, 1968, 'The New Cauhans: A Caste Mobility Movement in North India' in James Silverberg ed., *Social Mobility and the caste System in India: An interdisciplinary Symposium*, Mouton, The Hague.

A relevant study in this context by Romila Thapar,⁴⁰ observes that the caste and class divide in ancient India was never rigid because society was not rigidly structured. It is evident from Thapar's observation, regarding the prevalence of mixed castes and the hiatus between actual status and ritual status, that social mobility in ancient India was possible. Similarly D.D. Kosambi's emphasis on production rather than kinship⁴¹ for the study of social formations in ancient India also substantiates the multi-dimensional and multi-causal character of the social reality.

Research Methodology

The study is an exploratory one, looking at the factors and events responsible for the political consolidation of the OBC. The study uses both primary data and commentaries in the form of published works including polemical works. It has also involved a close reading of parliamentary debates, constituent assembly debates, newspapers, journals, various State and Central Commission reports on OBCs, judgments by the higher judiciary in a catena of cases involving reservations. Existing literature on Other Backward Classes have been used as well. This study has drawn out data on the electoral performances of political parties in the elections from 1951- 52 to 1991 and their manifestos at various times as well as their programmes. These documents of such parties as the DMK, Janata Dal, the Socialist Party, the Lok Dal and the BSP were studied in detail to locate the meta-narrative of the political assertion of the OBCs in the larger canvas of the political discourse.

⁴⁰Thapar, Romila, 1974, 'Social Mobility in Ancient Indian Society', in Sharma, R.S. (ed), Indian Society: Historical Probing, New Delhi: People Publishing House

⁴¹ D.D. Kosambi, 1956, Introduction to the Study of Indian History, Popular Prakashan, Bombay

The decisions by the Supreme Court on cases pertaining to the reservation for OBCs, beginning with the Balaji vs. The State of Mysore and until the Indra Sawhney case have been studied in extensive details to draw the trajectory of how the higher judiciary contributed to the denial of what essentially remained a Constitutional intent and yet postponed for over four decades in independent India.

Objectives of Study

This thesis is an attempt to trace the genealogies of various narratives on caste that played a significant part in the making and unmaking of OBCs in colonial and post- colonial India.

The objectives, thus, are:

- ✓ To trace the trajectory and evolution of the term Other Backward Classes and how this term became a category in the public policy.
- ✓ To understand the judicial position on Articles 15(4) and 16(4) of the Constitution and to seek clarity on the intent of the constituent assembly in general and on the inclusion of the Article 340 in the Constitution.
- ✓ To make sense of the rationale of the various commissions for backward classes, both in the different states and the national level.
- ✓ To understand the implications of the Mandal Commission report for Indian politics.
- ✓ To study as to whether the resurgence or consolidation of the OBCs helped strengthen democracy in the Constitutional sense of the term.

Chapterisation:

Chapter1

The Construction of 'Backward Classes' in the Colonial India

This chapter foregrounds the debate on the backward classes that emerged in tandem with the Indian National Movement. It has also analyzed how the narrative on caste developed by contesting the values of modernity namely liberty, equality and justice in pursuit of fairness and equal access to opportunities. Further the radical politics of backward castes, starting from likes of Jyotibha Phule to the different strands of the non- Brahmin movement in Mysore and Madras and other popular movements of backward classes are also discussed in detail.

Chapter2

The issue of Other Backward Classes (OBCs) in the Constituent Assembly

This chapter has dealt with how the whole question of backward classes was treated in the constituent assembly. As in the first draft of the constitution, there was not much clarity on the issue of minority and backward classes. And even though, later on, it was made clear that Article 340 has to do with backward classes other than SCs and STs, no such category of OBCs was created. It was left to the discretion of the President (meaning the Union Cabinet) to even constitute a Backward Class Commission. This chapter has gone into the large grey area – the discretion rather than a mandate – and its implications.

Chapter 3

Quest for Equality: Legislative and Judicial trajectory of OBCs

When Article 340 was put into the Constitution, it was anticipated that the backward classes other than the SCs and STs were to be designated at the local level and also presuming that they were politically potent to look after their interests at local level. But this didn't happen until the Constitution (First Amendment) Act was enacted. Even after that, the history of OBC reservation was scuttled, for most parts, due to judicial interventions. This chapter has dealt with how the policy of reservation was developed in case of OBCs, where the judiciary played an important role. The chapter has also outlined how different state commissions on the backward classes were formed, starting from the decision of central government in 1961 (after having studied the Kaka Kalekar Commission Report and deciding to neither accept it or reject it!) where states were left free to formulate their policy on backward classes reservation.

Chapter 4

Mandal and Beyond: Caste at the Centre Stage

This chapter has largely summarized the political events that led to the partial implementation of Mandal Commission Report and concludes with an analysis of the Indra Sawhney judgement, where in it was settled that caste is an important criteria to determine backwardness in case of OBCs. The chapter also deals with the anti- Mandal agitation and the discourse on caste as it appeared aftermath V.P Singh announced to implement Mandal Report.

CHAPTER I

The Construction of ‘Backward Classes’ in the Colonial India

The concept of backwardness as an administrative definition for caste groups which suffered from disability or discrimination in the social order appeared first in the 19th century colonial India and was, in fact, internalized by many traditional jatis; and claimed by others, who were in the process transformed in both an organic and inorganic sense into what came to be known as backward classes, eligible to claim preferential treatment, institutionalized by the colonial government. In doing so, the colonial government was only documenting a reality of the Indian social system which was highly hierarchal, privileged to the upper castes and discriminated against groups that were placed lower in the caste hierarchy. While the narrative of the appearance of the category in colonial India might seem simplistic, the process was much more complicated. This chapter attempts to unravel this complex mosaic of the process by way of analyzing the backward caste/anti caste movements in the following regions - Madras, Mysore, Bombay, parts of United Province and Bihar. The complexities of this process begin with the ability of caste to transform both within the traditional as well as in the modern setup.

In this, the role of the colonial administration in the construction of caste in modern political and social setting cannot be denied.¹ The colonial administration acted as some sort of catalytic agent and thus played a crucial role in the social changes that were initiated by various lower caste movements. Having said that, the ingredients for such reactions were already there and the colonial rule only provided a conducive

¹ Driks, Nicholas (2001) *Caste of Mind: Colonialism and the Making of Modern India*, Princeton, NJ: Princeton University Press.

environment for the social transformation in the realm of caste. The context might have been new but some of these tensions were a century old. For instance, the rejection of the Brahmanical cultural hegemony, an integral part of the social transformation during the colonial period, was not a new thing altogether. The religious ideas, as proposed by Brahmanism, were contested earlier during the Bhakti movement in the medieval period or Buddha's denouncement of the caste based hierarchy for that matter.² So, the events that unfolded in British India were indeed a continuity of these struggles that the lower castes had waged from time to time against Brahmanism and the system of caste hierarchy.

The advantage held in the socio-cultural and economic domain by the upper castes became steeper as the British administration provided new opportunities in the form of jobs, education and representation in legislative bodies; more importantly the anti-imperialist movement led by the Indian National Congress created a political space, that from its very beginning, came to be occupied by those from the upper castes. The contest then was fought on the four primary axis cultural/religious, material, political and intellectual/knowledge production. M.S.S Pandian makes this point in the context of Madras: "The Brahmin exercised his hegemony in the 'political society' through the authority structures of the colonial state and in the 'civil society' through his caste location; in negotiating power in each of these spheres, he privileged English and Sanskrit."³

² For more extensive details on Bhakti movement and rejection of Brahminism, See Omvedt Gail (2003) *Buddhism in India: Challenging Brahminism and Caste*, New Delhi: Sage publication. Jayant Lele (1981) *Tradition and Modernity in Bhakti Movements*, Lieden: E.J. Brill.

³ Pandian, M. S. S (1994). "Notes on the Transformation of 'Dravidian' Ideology: Tamilnadu, c. 1900-1940." *Social Scientist*, vol. 22, no. 5/6, p.87.

In this regard two sets of documentation of caste emerged in the 19th century:

- a) The orientalist idea of caste as a unique social category and a rigid social structure, an understanding which was primarily based on the reading of religious Hindu texts.⁴ Although most of these arguments did not stand academic scrutiny, they had the ability to influence the nationalist leadership, some of whom were fascinated with idea of a glorious civilization as propounded by in the Aryan theory and in the process, muting the other histories of caste.⁵ The reduction of caste as a historical and social category was then not limited to the nationalists; the Marxists too framed caste in a much similar manner.⁶
- b) The other being the emancipatory narrative of caste, which was placed with conviction by Jyotibha Phule, Periyar, B.R.Ambedkar⁷. The one common thread among these leaders was that they, even though argued for the eradication of caste, they were clear that this could possibly be done only if the hegemonic structure of Brahmanical society is first destroyed. In fact, their ability to utilize the Hindu texts to frame their arguments against the cultural/religious hegemony of the upper castes provided the intellectual arguments for the anti- caste movements.

The objective of this chapter is to look into the latter aspect; that is into the institution of caste as a system of privilege, 'exclusion' and 'exploitation' on the one hand and on the other to examine the various methods employed by those who were excluded under the

⁴ Heehs, P. (2003), *Shades of Orientalism: Paradoxes and Problems in Indian Historiography*. History and Theory, 42:169-195.

⁵ Driks, Nicholas (2001) *Caste of Mind: Colonialism and the Making of Modern India*, Princeton, NJ: Princeton University Press, p.41.

⁶ Debanji Ganguly has argued that "The Marxist, like the secular nationalists, demystified 'caste' as a category of social and historical analysis and, like the nationalists, debunked the orientalist construction of caste an India's scene". Ganguly Debanji (2005) *Caste, Colonialism and Counter-Modernity*, London: Routledge, p.93.

⁷ Rege, Sharmila (2013) *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonies*, New Delhi: Zubaan.

new form governance that the British introduced in India.⁸ This narrative on caste developed by contesting the values of modernity namely liberty, equality and justice in pursuit of fair and equal distribution and in the process subverting the anti-imperialistic hegemonic discourse as promoted by the Indian National Congress.⁹ This contest in different parts of India then framed the debate on the engagement with modernity. The contest for the political space that was created at the local, state and the national levels, both by the activities that were carried out by the Indian National Congress and by the British government. Some of these movements also reflected the ability of caste as an institution to democratize the political space and produce social change. Caste was equally used to assert or reassert the older values. Such actions were then guided by the nationalist compulsion to create a homogenous society at the social level.

More importantly the colonial government employed certain 'techniques of measurement' notes Dipesh Chakrabarty,¹⁰ which even though existed before the British established their authority in India,¹¹ however were not implied to measure the social life in such minute details. The most prominent of these being the decennial census, wherein a large volume of data, particularly on the castes in India, was produced and this continued until independence.¹² These data that came out regularly were used for propaganda purpose, circulated through press and other modes of communication,

⁸ The techniques of modern governance as introduced and developed by the British were not introduced in the form it was practiced in the Britain but rather different. See Chatterjee Partha (2010) ,*Empire and Nation: Selected Essay*, New York: Columbia University Press, p162

⁹ Such arguments has been broadly discussed in Debanji (2005) *Caste, Colonialism and Counter-Modernity*.

¹⁰ Chakrabarty Dipesh, (1998), 'Modernity and Ethnicity in India' in David Bennet (ed.) *Multicultural States: Rethinking Difference and Identity*, New York: Routledge, p.97.

¹¹ For instance during the rule of Mughal King Akbar the administrative report A' *in-I Akbari* produced large volumes of statistical data on population and various trade related activities.

¹²Dipesh, (1998), p97.

providing hyper visibility to caste, whether it was the over- representation of Brahmins in the services or the absence of lower caste groups from the same. Dipesh Chakrabarty states:

The late nineteenth- century censuses and other similar institutions, then, reconstituted the meaning of ‘community’ or ‘ethnicity’ and gave Indians three important political messages, all of which are entirely commensurable with liberal political philosophy as we know it. These message (i) that communities could be enumerated, and that in numbers lay one’s political clout; (2) that the social and economic progress of a community was a measurable entity, measured in the case of Indian censuses by their share in public life (education, professions, employment etc.); and (3) that this enabled governments and communities to devise objective test for the relative ‘backwardness’ or otherwise of community¹³.

Similarly the concept of ‘merit’ and ‘efficiency’ were introduced in a very modern setup to determine the exclusion and inclusion in educational institutions and services, which practically allowed the reproduction of inequality by promoting few communities that had substantial cultural and economic capital as was visible in most of the states where the Brahmins and other sections from the upper castes dominated both education and services. As noted by Bourdieu:

...it [education] is in fact one of the most effective means of perpetuating the existing social pattern, as it both provides an apparent justification for social inequalities and gives recognition to the cultural heritage, that is, to a social gift treated as a natural one.¹⁴

These contests, as outlined above, were carried out in the presence of a colonial government which was neither fair to any of the groups nor completely objective in its judgment. They promoted what they deemed could provide legitimacy to their own rule and can prevent any form of revolt of the kind they confronted with in 1857. In doing so, they might have favored the Brahmins and the other upper caste groups due to the

¹³ Dipesh (1998) p101.

¹⁴ Bourdieu,P (1974), ‘ The School as a Conservative Force in Eggleston’, J. (ed.) *Contemporary Research in the Sociology of Education*. London: Methuen, p. 32.

misconception that these groups were largely influential and could help them provide uncontested control to the British government, a strategy that was later changed.

Indian National Congress and the Caste question

The prominent backward caste movements that appeared in colonial India mainly in the Bombay, Mysore and Madras regions had, in their early stages, opposed the Indian National Congress, primarily for its conservative outlook and the incapability of the party to raise the issues and concerns related to the lower castes. It is, therefore, equally important to look into the manner in which the Indian National Congress dealt with the issue of caste at the national level. It has been widely noted by scholars that the social composition of the Indian National Congress was drawn from an elite class; the fact being that these members mainly belonged to professions such as lawyers, advocate, doctors and journalists. Besides this, the Indian National Congress was represented by the upper castes in high numbers, who resented any change in the social structure and contributed to social exclusivity in an already fragmented society and this determined the platform's understanding of caste. For instance Jafferlot has argued:

Congress elite was hardly the product of the middle class given the over- representation of the upper castes within its ranks. Such a description is also misleading because many members of the intelligentsia were politically conservative. They maintained links with the traditional notable and were themselves sometimes from this social milieu.¹⁵

Statistics seem to suggest that this argument has its basis.

¹⁵ Jafferlote, Christopher (2003), *India's Silent Revolution: The Rise of Low Castes in North Indian Politics*, Delhi, Permanent Black, p.51.

Table 1.1**Caste and Religion of the Delegates to the Annual Sessions of the Congress**

Caste and Communities	YEAR				
	1919	1920	1921	1922	1923
Brahmin	33.13	32.09	31.9	24.8	25.14
Rajput	5.42	1.85	1.84	2.07	2.95
Kayasth	16.26	14.19	10.42	6.8	6.21
Banya	2.4	2.46	3.06	1.77	1.18
Other Hindu and Non-identified	29.51	31.48	28.8	36.09	36.98
Muslims	10.84	12.96	20.24	24.85	24.55
Sikh	-	1.23	1.22	2.66	2.36
Parsi	1.8	2.46	1.22	-	-
Christian	0.6	1.23	1.22	0.88	0.59
Total	100	100	100	100	100

Source: Reproduced from Jafferlote, Christopher (2003), *India's Silent Revolution: The Rise of Low Castes in North Indian Politics*, Delhi, Permanent Black p.49.

The Indian National Congress, as a political outfit, came up in 1885 and for many years it was reluctant to raise issues concerning the Indian caste system and even when they were debated, the idea was to bring reforms within the fold of the Hindu system. In this, the Congress session in Calcutta session (1886) made its intention clear, where Dadabhai Naoroji told the Congress that '*We are meeting together as a political body to represent to our rulers our political aspirations, not to discuss social reforms.*'¹⁶ Further, to avoid such activities, a resolution was passed in 1888, where it was declared that no subject

¹⁶ Quoted in Johnson, Gordon (1973) *Provincial Politics and Indian Nationalism: Bombay and the Indian National Congress 1880-1915*, Cambridge: Cambridge University Press. p35.

could be discussed at Congress to which a majority of the Hindu or Muslim delegates as a body objected.

The Indian National Congress became a mass organisation only a few years after the entry of Gandhi, beginning 1916. In a very short time Gandhi became the central figure of the platform and the national movement as well, wielding command on the ideological positions that the party took over key issues. From a very early stage of his political career, questioning of caste was part of both the larger strategy for Gandhi, both to engage every section of the society and to reform Hinduism. An approach that is reflected in one of the speeches that Gandhi made during the non- cooperation movement:

Inasmuch as the movement of non- cooperation can only succeed by complete co-operation amongst the people themselves, this Congress calls upon public associations to advance Hindu-Muslim unity and the Hindu delegates of this Congress call upon the leading Hindus to settle all disputes between Brahmins and Non- Brahmin, wherever they may be existing, and to make a special effort to rid Hinduism of the reproach of untouchability, and respectfully urges the religious heads to help the growing desire to reform Hinduism in the matter of its treatment of the suppressed classes¹⁷.

In fact, for most parts, Gandhi's efforts were restricted to eradicate untouchability and were, at times, he was even hostile towards the idea of any radical reform in the caste system. For instance, in one of his speeches delivered in 1927, during the non- Brahmin movement in Madras, Gandhi comes out in the defense of Varnashrama Dharam and declares:

Varnashrama Dharam is not an unmitigated evil but is one of the foundations on which Hinduism is built," and further added Varnashrama Dharam defines man's mission on earth.¹⁸

¹⁷ Bhimrao Ramji Ambedkar and Vasant Moon (1989) Dr. Babasaheb Ambedkar, Writings and Speeches, Vol. 5, Government of Maharashtra, p294.

¹⁸ Quoted in Irschick, Eugene (1969), Politics and Social Conflict in South India: The Non- Brahmin Movement and Tamil Separatism, 1916-1929. Berkeley: University of California, p338.

Further, the homogenizing impulses of the Congress leaders, and particularly Gandhi, provided little space to articulate alternative proposals on the transformation of the social order in the realm of caste, did have an impact on turning the reforms movement as pitted against the Indian National Congress. Writing in *Young India* in 1927, Gandhi defended the hereditary nature of caste by proposing that such a system largely produces social harmony.¹⁹ Besides this, Gandhi also refused to recognize the British as an agency to initiate any form of social change in the Indian society, a position that largely contributed to his reactions against the likes of Periyar and Ambedkar, and even described as immoral where they placed their demands/grievances to the colonial government.

However, Gandhi has changed his position many times, particularly in the 1940s and conceded the fact that caste indeed has to go. Having said that, there are too many positions that Gandhi took on caste and more importantly for the larger part of the freedom struggle, he maintained a much conservative position on caste and the Congress workers were, in fact, disciplined to follow the same line. Therefore, it is necessary to scrutinize Gandhi as he represented the hegemonic national space in the colonial India and imposed conservatism on the Congress to produce any radical response, as will be seen in the sections to come.

Lower caste movements in Western India

The early understating of the lower caste movement in the Bombay region, which included the present state of Maharashtra, lies in the struggle between two social groups -

¹⁹ *Young India*, 29 Sept. 1927

Brahmins²⁰ and the Marathas²¹ for establishing their power in the political realm.²² The subtext of this political struggle was provided by the dispute over the status of the Marathas in the social hierarchy. While the Maratha Kings started raising their claims of being Kshatriyas from the 17th century onwards by linking their lineage to the Rajputs of Rajasthan, such claims were highly disputed by the Brahmins, who wielded ritual authority in such matters.²³

The most famous illustration of the pattern was the events leading to Shivaji's coronation as Chatrapati in 1674, or the Lord of the chatra²⁴, which was opposed by the Brahmins of Bombay and Poona region, who refused to officiate the ceremony, which was finally conducted by the Brahmins of Benares. However, by the early 18th century, the Marathas were fragmented and marginalized as the Peshwas grew in power. More importantly, the Peshwas started patronizing the Brahmins, especially the Brahmins of Chitwan.²⁵ Symbolic insults to the Maratha identity gained traction across the nineteenth century as the Chitpavan Brahmin community gained political visibility as a consequence of the Brahmin Peshwa's (or prime ministers) increased centrality in the political affairs. This period was significant for the Brahmins in two ways: (a) it restored their spiritual superiority that was delegitimized, to some extent, after the coronation episode and (b) simultaneously provided larger control of political resources across the region.

²⁰ Brahmins as mentioned here in this section represents a rather fragmented category and included Brahmins of Chitpavans, Karhadas, Deshasthas, Vaishnavas, Saraswatas and Gaur Sarawatas.

²¹ Similarly Maratha is used here in the sense of it representing Shinde, Holkar, Gayakavad and Bhosale families.

²² See Gore. M.S (1989) Non Brahmin Movement in Maharashtra, Delhi: Segment Book Distributers, pp.1-18.

²³ Many of them claimed Rajput ancestry and descent from a set of elite ninety six Kshatriya families clustered to form Marathas, particularly the Sisodias.

²⁴ Chatra is a large parasol or canopy placed over Hindu gods and kings to signify grandeur and dignity.

²⁵ Gore. M.S (1989), p.5.

End of the Peshwa regime and dispute over Varna Status

In 1818, the East India Company increased its stronghold in the Bombay region by ousting the Peshwa King Bajirao II and installing Pratapsinh Bhosale (a descendant of Shivaji) as Chatrapati in Satara.²⁶ This was a symbolic achievement of sorts for the Maratha King, who even though was aware that his powers were highly limited in the presence of colonial ruler, over the excessive presence of Brahmins in the political and administrative offices. The British, on the other hand, were hesitant to intervene in the matters relating to the representation of non- Brahmin in services and educational institutions. But soon, the colonial system began intervening and the first of that was by questioning the monopoly of Brahmins in the education. The privileges that the Brahmin enjoyed in the Bombay society were curtailed to some extent as the colonial government initiated the exercise of enrolling lower caste pupils in schools. For instance, in 1856, a Mahar boy was refused admission to the government school at Dharwar, that resulted in protests by the lower caste group. Taking note of this, the government intervened and resolved the issue with some strong words against the practice of excluding lower castes from the portals of education and ordered that “all schools maintained at the sole cost of government shall open to all classes of its subjects without distinction.”²⁷

Meanwhile, the Brahmins continued to deny the Bhosle’s royal family claim to Vedic rites and thus rejected their identity as twice-born Kshatriyas. Instead, they argued that the Bhosles were Shudras entitled only to rites performed according to the Puranas.

²⁶ Pratapsinh Bhosale came from the same family of Shivaji, so his claim to the heir was automatic. See, Naregal Veena (2013) *The Mutiny in Western India: The ‘Marginal’ as Regional Dynamic in Mutiny at The Margins: New Perspectives on the Indian Uprising of 1857*, Vol1. Anticipations and Experiences in the Locality, Crispin Bates (ed.) Delhi: Sage Publications p174.

²⁷ Ghurye. G.S.(1969) *Caste and Race in India*, Bombay: Popular Prakashan, p. 275.

This led to a confrontation when Pratapsinh Bhosle claimed to be Kshatriya and to be entitled to perform Vedic rituals much like the Brahmin.²⁸ This form of battle between Brahmins and the Maratha king resurfaced in the early 20th century in Kohlapur; there also, Sahu Chatrapati was denied the right to conduct Kshatriya rituals. Thus, the controversy between Pratapsingh and the Chitpavan Brahmins of Poona, between 1820 and 1830, and again in 1900 between Shahu Chatrapati of Kolhapur and his Rajopadhyaya (priest to the royal family), resuscitated the long-standing battle over Maratha demands for recognition as Kshatriyas in the face of Brahmin efforts to reiterate their Shudra identity.²⁹

Phule and his Revolt

In the early decades of the 19th century, the trajectory of the struggles in Bombay province was more about controlling the power structure between the Brahmins and the Marathas. It was much later, with the arrival of Jyotirao Phule, a systematic challenge was posed to the idea of Brahmanism and to the caste system as a whole. Even then, the historical context of Brahmin- Maratha rivalry was never lost. Even Phule was aware of these, as he mentions the fact that still most Brahmins refuse to dine with Shudra rulers such as the Bhosles, Holkars and Shindes as they still consider them inferior.³⁰ In fact, the rise of lower caste movement in the Bombay province was in tandem with the quest for a

²⁸ Rosalind O' Halnon (2002) *Caste, Conflict and Ideology: Mahatma Jotirao Phule in Nineteenth- Century Western India*, New York: Cambridge University pp.24-30.

²⁹ The larger details of contest between the Brahmins and the Marathas has been dealt in O' Halnon (2002) *Caste, Conflict and Ideology*

³⁰ Jotirao Phule : *Shetkaryaca Asud* translated by Gail Omvedt and Bharat Patankar p. 68.

Maratha identity, which also developed its meaning over the years as other caste groups, particularly Prabhu and Kunbi also laid their claim.³¹

The rule of the Peshwa had ended when Phule was born; Phule himself belonged to a lower caste family, but the stories of oppression conducted in times of the Peshwas was now folklore.³² Also, this was a period where different forms of social reform movements had started to appear and came out both as a reaction to the proselytization by the Christian missionaries, who had shown keen interest in the lower caste groups, and also as an attempt from various Indians to reform the Hindu society, which was consistently criticized for upholding the orthodox values. In this, Bengal became the early centre of these reforms with the likes of Raja Ram Mohan Roy raising concerns on issue of widow remarriage and Sati Pratha.³³ Others which was more radical and sought a solution to these inequalities outside the fold of Hindu religion was started by Phule. It changed its course from time to time, first into non – Brahmin movement and later on into a total rejection of Hinduism by Ambedkar. However, it is important to point out that one of the earliest motifs of Phule's campaign was to reform the social order by educating the lower castes and it was only in later stages that he started giving up on the idea that education alone can reform the society.³⁴

³¹ a detailed account on Maratha identity and role played in lower caste mobilisation see Caste, Conflict and Ideology: Mahatma Jotirao Phule in Nineteenth- Century Western India, New York: Cambridge University Press

³² O' Halnon (2002) Caste, Conflict and Ideology, p.32.

³³ Desai. A.R (2010) Social Background of India Nationalism, Bombay: Popular Prakashan, p269.

³⁴ Gore (1989) p20.

Phule and Lower caste Education

Phule saw education as an important tool to free the lower caste from the Brahmanical hegemony and it was in this context that he saw British administration as an important partner to produce social change. In this, Phule writes: *“Without education wisdom was lost; without wisdom morals were lost; without morals development was lost; without development wealth was lost; without wealth the Shudras were ruined; so much has happened through lack of education.”*³⁵

The cause of educating lower castes was so dear to Phule that he started a primary school for both boys and girls of Non- Brahmin castes. He went one step further by opening up a primary school for untouchables in 1851.³⁶ Education became a true arena for this struggle when the colonial administrator and not just the missionaries succeeded in conveying the impression that they were concerned with the education of common people.³⁷ However, Phule was critical towards the British and their approach on policies related to education; in his view, the colonial administration was doing little for the cause of lower caste education. He even conveyed this before the Hunter Commission in 1882, where he has poignantly argued that “upon what ground is it asserted that the bestway to advance the moral and intellectual welfare of the people is to raise the standard of instruction of the higher classes?”³⁸

³⁵ Jotirao Phule : Shetkaryaca Asud translated by Gail Omvedt and Bharat Patankar, p. 3

³⁶ Ghurye. G.S.(1969) p.287

³⁷ Kumar Krishna (2005), Political Agenda of Education: A study of Colonialist and Nationalist ideas, Sage Publication Delhi p.100.

³⁸ Mentioned in Dhananjay Keer, Mahatma Jotirao Phule. Bombay: Popular Prakashan (1964) p.169.

Phule, Polemics and History of Shudras

Soon Phule realized the difficulty of bringing social change by focusing only on the education of backward classes and he began taking a more militant outlook and attacked the whole philosophy on which Brahmanism was based. Phule's arguments were based on strong polemics which he developed since 1855 when, in a play entitled, 'Third Eye' he touched upon the subject of exploitation of lower castes by a Brahmin.³⁹ One of his major and strong critique of Brahmanism was built on rejecting traditional Hindu texts and rewriting the Shudra history,⁴⁰ and some of these arguments were later on refined by Ambedkar.⁴¹ While attacking Brahmanism for its exploitation and oppressive tendencies, Phule gave a call to replace Hindu superstition with what he called 'Sarvajanic Satya Dharma' or true religion of the community.⁴²

Phule's own idea about the Brahmin in the Indian history was of an Aryan outsider and the Shudra and the Ati Shudras as aboriginals. It may be stressed here that this construction of Brahmin and non-Brahmin on the binaries of outsider and insider was based on the colonial writings on the Aryan theory of race.⁴³ Polemics were created by using Hindu texts, myths and stories, in the process of producing new forms of

³⁹O' Halnon (2002) Caste, Conflict and Ideology, p 123. Also detail of Phule's play 'Third Eye' has been discussed in papers of P.S Patil in the Journal Purogami Stayashodak (Marathi), Vol. 5, no. 2, April- June 1979.

⁴⁰ Rege Sharmila (2013) Writing Caste/ Writing Gender: Narrating Dalit Womens' Testimony, Delhi: Zubbani

⁴¹ Both Ambedkar and Phule narrated Indian History not dominated by elite reinterpretation. It was an attempt to construct an alternative identity of Indian people, based on non-north and low caste perspective. The difference arrived with Ambedkar's rejection of degenerate racial theory of Aryan and Non Aryan supported by Phule. For Ambedkar caste system did 'not demarcate racial division on the other hand he believed caste system as a social division of people of the same race. For Ambedkar's view on caste see Ambedkar, B.R., 1891-1956. Annihilation of Caste: An Undelivered Speech: New Delhi: Arnold Publishers, 1990.

⁴² Omvedt Gail pp. 241-42

⁴³ In his works Phule gives the reference of work done by various foreign authors on the issues of Aryan race theory. Major among them is John Wilson's work India Three Thousand Years Ago

knowledge of the self (shudras) were undertaken by criticizing the other (Brahmin) which also presented the alternative explanation to the Indian mythology.⁴⁴ One such alteration was the story of Parshuram and Bali, where the former is portrayed as destroyer of Indian culture and the latter as the protector, completely opposite to Hindu mythology where Parshuram was treated as a great saint and Bali as *Asur*. On the issue of Brahmins and their origin, Phule argues that Brahmins migrated long back from Iran. Further, the Iranis (Aryas,), Turks and other Yavanas began to attack Dasyus (Shudras and Atishudra) from time to time in the quest for gold. According to Phule, this spree of attacks were resisted by the Shudra king, Bali, on the border. However, finally the Arya Parashuram, unleashing one after the other twenty-one campaigns against the Dasyus living throughout this country, brought them to ruin.⁴⁵

In doing this, even though Phule claimed the Shudras to be Kshatriyas who were once wiped out by the Aryan Parshuram, it does 'not necessarily imply that he was advocating sanskritisation. This becomes clear from the fact that Phule never developed these arguments into a full-fledged discourse and used them only as anecdotes to counter the claims of Brahmins. The argument, on one hand, tried to show solidarity and common history of both Shudra and Ati Shudras and on the other, it portrayed the Brahmin as the destroyer of the aboriginals. In fact, Phule, in his work *Cultivator's Whipcord* laments over the Kunbi community for wearing sacred thread and not realizing the fact that social division of any kind is part of the same engine of social oppression.⁴⁶

⁴⁴ This strategy to create the identity for self (non- Brahmin) while debating the other (Brahmin) was also utilized by the non- Brahmins in Madras. See Pandian M.S.S (2007) *Brahmin and Non- Brahmin: Genealogies of the Tamil Political Present*, Permanent Black.

⁴⁵ Jotirao Phule : *Shetkaryaca Asud* translated by Gail Omvedt and Bharat Patankar pp. 31-32.

⁴⁶ Jotirao Phule, *The Cultivator's Whip-cord*, Keer and Malshe (eds), p.196.

Also, even though, much of Phule's work targets Brahminical hegemony, the aim was much wider to induce democratic norms in a caste ridden society. For instance, while writing on the condition of the peasants, Phule was critical of castes other than Brahmins and argued that the circle of oppression is created by corrupt Brahmin officials, who demand bribe for work to be done, and then by money lender Gujjars and Marwaris.

Satya Shodak Samaj

The *Satya Shodak Samaj* (Society for the Decimation of Truth) was founded by Phule in 1873, with the principal aim to uphold the natural rights of men, which according to Phule has for so long been denied in the caste society.⁴⁷ Phule was deeply affected by western philosophers, prominent among them being Thomas Paine. In fact, one of Phule's major arguments was that all men enjoyed certain natural and inalienable rights which every just society must recognize and this clearly was formulated from Paine's thesis of Natural Rights. The *Satya Shodak Samaj* was also meant to serve as a non-political forum for non- Brahmin castes and generate a propaganda campaign. The other major agenda was to engage the British administration over the issue of Brahmin dominance in services and education. It was clear that Phule sought a more active and direct role of the British. In Phule's own words, the colonial ruler was the new 'maibaap' and therefore much of his work was addressed to the British.⁴⁸ Phule's achievement as a social reformer, indeed, lay in his capacity to use the colonizer's presence to intensify the

⁴⁷ The establishment of an ideal society on following principles:

1. Faith on one God (creator)
2. Rejection of any kind of intermediary between God and Man.
3. Rejection of caste system and the basic four folded Varna division of society and believing on that man's supremacy is determined by his qualities and not by his caste or.
4. Faith on equality, freedom and brotherhood. Quoted in Sanjay. D. Salve, pp 21

⁴⁸ Mentioned in Michael S.M (1999) Dalits in Modern India: Visions and Values, New Delhi: Vistaar Publication, p95.

struggle against Brahmanical dominance. Having said that, Phule did put forward various criticisms of British, particularly on the economic policies that had an adverse effect on the peasants; also at times he held British responsible for over representation of Brahmins in administrative jobs.

Even with these criticisms, Phule was still anxious over the domination of Brahmins in education services for which the role of British was very important (See Tables 1.3 ad 1.4). He argues that the Brahmin domination was the key element against which the downtrodden had to organize their dynamic forces, and education and state employment are the resources from which they can draw their energy for the struggle. The civil services and the liberal professions such as legal practice and teaching represented to Phule the two important avenues for progress for Indians. The monopoly of the Brahmins over these avenues was a source of great anxiety for him. If the monopoly continued, even after the withdrawal of British from India, Phule thought it will result in caste tyranny and caste oppression of an unparalleled intensity.⁴⁹

In the end, the *Satya Shodak Samaj* was successful in bringing people from different castes to its fold. Even few princes provided the much needed patronage to the Samaj; prominent among them were the prince of Borada and the Majoraja of Kohlapur. The Satyashodak Samaj and its activities were centered around Phule till he died, creating leadership crises in organisation after his death. But Phule left a legacy, a culture of protest against the Brahmanical claims to religious/cultural superiority. Phule was also

⁴⁹ Phule Gulamgiri qouted in Kumar, Ravinder (1968). Western Indian in Nineteenth Century, London Routledge, p. 314

critical of the Indian National Congress. In fact, Phule argued that such organisations were an attempt to re-establish the Brahmin dominance.

The Maharaja of Kohlapur and the non- Brahmin movement

The changes brought in the early 19th century by the British, where the native army was disbanded and this meant closing down major avenues of employment for Marathas and other non- Brahmin. Similarly, education and civil administration were opened up for the native people and new departments were opened like health, Revenue, Police and Judiciary, which were captured easily by the educated Brahmins.⁵⁰ As the traditional avenues of power were either taken up by the British or came under their direct administration, the result was a further dominance of the Brahmin. Data in Table 1.3 shows the preponderance of Brahmins in both the executive and the judiciary; we see only one lower caste member in these. The situation of lower castes in education was equally grim as shown in Table 1.4; male literacy rate among the Brahmins was as high as 79.1 percent, whereas both the Marathas and the Kunbis combined together, the figure is close to 10 percent.

The very reason that the Brahmin, who had kept education secretly to themselves in the pre-British society, were in fact the first to grab the opportunity of western education and by the end of 19th century Brahmin's had almost monopolized western education scene in Bombay region. It further resulted in their dominance in various jobs offered by the foreign ruler, who needed 'natives' familiar with the local language in the

⁵⁰ Chandra .Y. Mudaliar (1978), 'The Non Brahmin movement in Kohlapur', The Indian Economic and Social History Review, Vol. XV, No. 1. p.5

administration Therefore, the Maharaja of Kohalpur found a cause common to his own in the lower caste movement to dismantle the domination of the Brahmins in the administrative jobs.

Table 1.2

Representation of Non-Muslims in Executive and Judicial Service in Bombay Presidency (1886-1887)

Caste/ Community	Number	Percentage
Brahmin	211	64.33%
Kshatriyas	25	7.62%
Prabhus	37	11.28%
Vaishyas	38	11.58
Shudras	1	0.3%
Total	328	100

Source: Data compiled from figures given in Anil Seal, (1968) *The Emergence of Indian Nationalism*, Cambridge: Cambridge University Press, p.185.

Table 1.3

Literacy of Male and Female in different communities

Caste/ Communities	Literacy Male	Literacy Female
Brahmins	79.1	1.65
Jains	10.7	.04

Lingayats	10.6	.05
Marathas	8.6	.03
Muslims	7.5	.03
Kunbies	1.5	.04

Source: Chandra .Y. Mudaliar (1978), ‘The Non Brahmin movement in Kohlapur’, The Indian Economic and Social History Review, Vol. XV, No. 1. p.5

Historically, Kohlapur that was ruled by Maratha came under total control of British in early 19th century. It was a small Maratha state under the rule of the Bombay government by Maharaja Chattarpati Sahu. The Brahmin- Non Brahmin rivalry was escalated, when Sahu Maharaj was denied to perform Vedic rituals. The outcome of the Vedkota controversy that went in favor of the Maharaja acted as a catalyst to Non Brahmin movement in this region. Sahu had initially maintained a cordial relation with some of the nationalist leaders, prominent among them being Tilak. The fact that during the vedkota episode Tilak opposed the claims of Maratha to Kshatriya status had dented the relationship between Talik and Sahu.⁵¹ This finally was the reason that led the Sahu to crystallize his earlier sympathies for the lower caste to the non- Brahmin stance.⁵² This bitterness against the Brahmin is reflected in a memorandum that Sahu wrote in 1918, when he argued:

The Brahmins, Bureaucracy here is not like the priestly bureaucracy. In priestly bureaucracy not only caste but learning is also necessary. A learned Brahmin becomes a priest. In the Brahmin Bureaucracy it is the caste alone that is required. However low, wicked, unhealthy, immoral a man may be, being a Brahmin, he is supposed to be higher than a Prince a General or an Admiral or any learned man of another caste. If steps not taken it will not be correct to say that the Princes

51 Kaur Raminder (2003) Performative Politics and the Cultures of Hinduism: Public Uses of Religion in Western India, New Delhi: Permanent Black, p.62.

52 Gore (1989) p.55

rule India or I may even say that the British rule India but on the contrary it will be right to say that Brahmin rule India.⁵³

The movement that proceeded thereafter was part of the legacy of this region since the 17th century, where conflict for power has persisted between the Brahmins and the Marathas. Sahu played an instrumental role in instituting reservation and in 1902 the communal representation scheme was introduced, where 50% vacancies were reserved for the members of the backward communities.⁵⁴ Further reforms were carried out in this direction. Such as, in 1917, primary education was made free and compulsory in Kohlapur.⁵⁵ The lessons learned from Vedkota controversy made Sahu to establish competitive religious institutions for lower castes by the creation of Maratha priesthood in 1920 and the establishment of the Kashtara Jagadguru in 1921.⁵⁶ Further, Vedic Schools were inaugurated, selecting their own priests, giving them the status of Kshatriya. The Patgaon Math was established, founded by a celebrated non-Brahmin Sanyasi, Mouni Buwa. These religious reforms were an attempt to claim higher status by replicating the rituals of Brahmins and the institution of priesthood which was rejected by Phule; but then, these were also challenging the Brahmin's religious superiority in a symbolic sense.

However, as the nationalist movement grew in its stronghold, there was rise of lower caste leaders in the Indian National Congress. In this, the entry of Marathas in the Bombay Legislative Council (as shown in table 1.5 below), changed the relations of the Marathas with Indian National Congress. Even within the Indian National Congress there

53 Kavelakar, Kashinath (1979) Non-Brahmin Movement in Southern India, Kohlapur: Shivaji University Press, pp.232-233.

54 Chandra .Y. Mudaliar, The Non Brahmin movement in Kohlapur, The Indian Economic and Social History Review, Vol. XV, No. 1

55 Ibid.

56 Ibid.

was a realisation that to broaden its base it was necessary to include people from the lower castes.⁵⁷ It resulted in a coalition of the Maratha dominated *Satya Shodak Samaj* and the Indian National Congress which was now seeing the induction of Marathas on the rise. It was also evident that the rise of Gandhi and Nehru in the later stages also played an important role in this process.

Table 1.4

Caste and Community of Non-Muslim Members of The Assembly of Bombay Presidency (1920- 1930)

Caste/ Community	1920	1926	1930
Brahmin	19.3	26	25
Kayasth (Prabhu)	2	—	—
Banya	6	11	10
Dubashi	2	—	—
Cultivators	23	36	32
Mahad Lingayat	17 6	17 6	22 6
Scheduled Castes	—	2	2
Parsi	15.3	9	14
Other	27	9	10

Source: Jaffrelot Christophe (2003), *India's Silent Revolution: The Rise of The Lower Castes in North Indian Politics*, Permanent Black. p51

⁵⁷ Omvedt, Gail (1974) "Non-Brahmans and Nationalists in Poona" *Economic and Political Weekly*, Vol.9 pp.201-16.

Just like Phule's, the legacy of the Maharaja of Kohlapur is very important in the non-Brahmin movement of Bombay. He was not merely a patron to the non-Brahmin organization but also brought many reforms not only limited to the Marathas or other intermediate castes but also to Dalits. So, in the early phase, when the Indian National Congress did little for the cause of the lower castes, the leaders of lower castes, found in the Britishers their natural ally to fight against Brahmin dominance. In the process, the British became the agency where claims and counter claims were made in a struggle that was centuries old. The response of the British government were not entirely novel; they proceeded by the logics that suited well to their own government and could lend legitimacy to the foreign rule.

Even though the lower caste movement in Western India lacked mass mobilization as was seen later in the Southern part of India, they were quiet successful in giving a comprehensive view on caste. Later history of the backward caste movement should be seen as a continuity of Phule's ideas of emancipation, rediscovered by the likes of Periyar and Ambedkar by their own means and strength.

The Non Brahmin Movement in Southern India

The challenge posed by Phule's *Satya Shodak Samaj* and later taken on by Maharaja of Kohlapur lacked the mobilization from ground level. Also the defection of large number of backward caste leaders, particularly from the Maratha community, to the Indian National Congress was a setback to the non-Brahmin movement in Western India. It was in the South, particularly in Madras, that the non-Brahmin movement emerged and it was consistently built on the binary construction of Brahmin and Non-Brahmin. In fact, it

was down in Southern India that the first legislation was introduced that defined 'backward caste'.

The Backward Caste Movement in Mysore

Much like in Bombay, where the contest between the Brahmins and the lower castes preceded the British rule, Mysore had a similar history, where the two communities the Lingayat and the Vokkaligas⁵⁸ successfully challenged the Brahmin superiority even before the East Indian Company arrived in India. The history of anti- Brahmin movement in Mysore can be traced back to the 12th century revolt against Brahmanism. It was spearheaded by Veerashaivism which provided the foundation in the present state of Karnataka for the spread of Non – Brahmin or the anti – Brahmin movement. One of the aims of the reforms was to overcome caste distinction. In this, the Lingayats, through the influence of their Mutts (Monasteries) and the Suramijs (religious heads) provided secular leadership for the dispute against the principal philosophy of Brahmanism.⁵⁹

Unlike in the adjacent state of Madras, where Brahmanical ideology was challenged and dismantled to a large extent based on the principle of Dravidian movement, such sentiments were absent in the late 19th Century Mysore. The reason for a certain communion between the Brahmin and other non-Brahmin elite was partly because such dominant groups as the Vokkaligas held economic and political superiority in the

⁵⁸ Both Volkakiyat and Lingiyats were dominant caste in rural areas; they were landed gentry, who wielded superiority in political and economic matters. See Manor, James (1977) *Political Change in an Indian State: Mysore, 1917-1955*, New Delhi: Manohar Publication.

⁵⁹ C Parvathama (1964), *Elections and Traditional Leadership in a Mysore Village*, *Economic and Political Weekly*, p.475

rural pockets of Mysore state.⁶⁰ In fact, with the progress of colonial rule in Mysore the princely state witnessed clearly demarcated spaces of urban and rural Mysore, where the Lingayats and the Vokkaligas were comfortably placed in important positions in the rural areas and enjoyed socio- cultural and material superiority as compared to the other communities. Brahmins, on the other hand, were present in abundant numbers in the administrative jobs and captured the formative public sphere of urban Mysore.

James Manor has listed the following reasons for the dominant positioning of the two communities - Vokkaligas and Lingayats -- in the rural society of the Princely state of Mysore:

- a) Both the communities have better landholding as compared to the other caste groups, which provided them the ability to engage in some sort of ‘agricultural entrepreneurship’ and money lending.⁶¹ More importantly the material prosperity of these communities created patron-client relationship and result of which they held key position in village like headship in large number of villages in 19th century was controlled by Lingayats (47.3%) and Vokkaligas (30.6%).⁶²
- b) Secondly, the numerical superiority of Vokkaligas (20.4%) and Lingayat (12.0%) also contributed to their dominance in the rural areas.⁶³

Therefore the different socio- historical context of Mysore produced a different form of lower caste movement which, from its inception lacked the ideological direction of the kind that was found in different stages in Bombay and Madras.

⁶⁰ Raghavan, E and Manor, James (2009) Broadening and Deepening Democracy: Political Innovation in Karnataka, London: Routledge, p-18.

⁶¹ Manor, James (1977) Political Change in an Indian State p.31

⁶² Ibid.

⁶³ Ibid.

Table 1.5

Percentage of some major caste/ community in Mysore state (1931)

Caste/ Community	Percentage
Brahmin	3.8%
Vaisya	0.7%
Lingayat	20.4%
Vokkaliga	12%
Kuruba (Shepherd)	6.7%
Adi- Karnataka (Depressed Classes)	15.1%
Muslims	5.8%

Source: Manor, James (1977). Political Change in an Indian State Mysore 1917-1955. Manohar Publication, Delhi, p29

Brahmin's: Dominating Urban Space

As soon as the modern system of administration was introduced, it came as an opportunity for Brahmins, especially Brahmins of Madras (as evident from the data in Table 1.6 below). In fact, it had started much earlier with Krishnaraja Wodeyar III,⁶⁴ who has been patronizing the Brahmins by providing them land grants and allowing them to grow in numbers as service elites.⁶⁵ All this was done at a time when other castes hardly had an idea about these new forms of opportunities. Further changes were brought in Mysore state after being annexed by Britishers in 1818. The major political activity

⁶⁴ After defeating Tipu Sultan Britishers installed earlier Hindu rulers Wodeyars, belonging to low caste.

⁶⁵ Ramakrishnan, R (1997). Press and Politics in an Indian State: Mysore (1859-1947) Channarayapatna: Swabhimana Prakashana., p44.

started to appear from 1894 as Wodeyar IV was made the new head of the state, who unlike his predecessor was very keen over the issue of lower caste, was an attempt to increase his social base to gain legitimacy from British rule and also the challenge posed by nationalist movement, who at time stood in opposition to the princes and their rule. The other instrumental change in Mysore was produced by the introduction of the Representative Assembly in 1881.

Unlike in Bombay and Madras, where conflict was mostly Brahmin -Non Brahmin, in Mysore it started as an outsider and insider issue. So, the conflict between Madras Brahmins and the Mysore Brahmins was a prelude to the developments in the first decade of the 19th century. The anti- Brahmin movement in the Mysore region was restricted to certain urban pockets and Manor has argued that this form of mobilization was created due to the reversal of the pattern of dominance from the traditionally dominant Lingayat- Vokkaligas over the Brahmins who now enjoyed superiority in the modern institutions.⁶⁶ Also, as the movement of 'Mysore for Mysore' ushered in, the Brahmins of Mysore were largely benefited, who were highly educated as compared to other castes in Mysore (as shown in Table 1.6); this, in a sense, followed the national trend. Till now, silent lower castes that had supported the Brahmins of Mysore in the Madras- Mysore conflict started campaigning for representation in jobs using the platform of legislative council to raise their concern. The major voices were raised by the Vokkaligas and the Lingayats, which started targeting the Brahmins, particularly residing

⁶⁶ Manor (1977) p35.

in the urban areas.⁶⁷ In this, it is important to note that while the Brahmins constituted a mere 3.74% of the total population in the Mysore state, they were the single largest community in both the cities of Bangalore and Mysore. Their population in the urban areas was quite high as compared to their total population in state with 18.68% in Bangalore and 19.6% Brahmin population in Mysore.⁶⁸

Table 1.6

Percentage Literacy Rates of Major Castes/Communities in the Princely State of Mysore from 1901 to 1941

Year	Brahmin		Lingayats		Vokkaligas	
	Total Literacy	English Literacy	Total Literacy	English Literacy	Total Literacy	English Literacy
1901	68.0	10.2	14.1	0.13	4.0	0.07
1911	70.5	15.6	17.7	0.22	6.2	0.12
1921	78.7	24.0	20.3	0.63	7.4	0.24
1931	78.3	33.9	30.1	1.43	12.2	0.53
1941	87.1	36.2	32.6	2.34	15.2	1.09

Source: Manor, James (1977) Political Change in an Indian State, New Delhi: Manohar Publications, p. 32.

⁶⁷James Manor argues that in the villages, where the Brahmins were often poorer and depended on the patronage of the dominant castes, they showed greater respect to dominant caste like Vokkaligyas and Lingayats.

⁶⁸ Bairy, Ramesh (2010). Being Brahmin, Being Modern: Exploring the lives of Caste Today, Delhi: Routledge, p 58.

To challenge this new form of dominance in the modern institutions, where lower castes had lesser experience, numerous backward caste associations were floated. This trend continued till independence as shown in the table 1.7 below. Prominent among them were the ‘Vokkaligara (Okkaliga) Sangha’, the ‘Mysore Lingayat Education Fund Association’ and the ‘Arayavasa Mahasabha’.⁶⁹ Among the various organizations that emerged in the first and the second decades of the 19th century, the one that had a major impact was the Praja Mitra Mandali, formed by C.R Reddy, a disciple of Phule, in 1917.⁷⁰ The aim of the organization might have been to bring all non- Brahmin interests on one platform but they lacked support of the untouchables, even in the early stages.

Table 1.7

Various Backward Caste Association 1906-1931

Period	Number of Association
1906- 1909	3
1915- 1919	2
1920-1922	8
1923-1925	18
1926-1928	9
1929-1931	5

Source: Sahana Udupa (2010). Print Communalism: The Press and the non- Brahmin movement in early Mysore, 1900-30 in *Contribution to Indian Sociology* 44, 3, p.272.

⁶⁹ Most of these organisations were opened up by retired civil servants and land holders to further the interest of the community they belonged to. Sahana Udupa (2010), *Print Communalism: The Press and the non- Brahmin movement in early Mysore, 1900-30* in *Contribution to Indian Sociology* 44, 3.

⁷⁰ Yadav, Manohar (1998): 'Career of Dalit Movement in Karnataka', *Journal of Social and Economic Development*, Vol 1, No 1, pp. 107-27.

Praja Mitra Mandal and the Miller Commission Report

In the early twentieth century, as opportunities for political participation for the indigenous elite increased in Mysore,⁷¹ the lower castes began to seek ways to break the Brahmin monopoly on professional and government employment. The backward castes were helped by the fact that the Maharaja, who was not a Brahmin, was sympathetic to the demands for greater representation for these numerically strong middle and lower castes and he perceived that his own political fortunes would be enhanced by improving their access to political and economic power.⁷²

The first major non- Brahmin Party, the Praja Mitra Mandali, came up in 1917 under the leadership of C. K. Reddy, which was an alliance of Muslims and non – Brahmin caste Hindus, formed to voice the claims of the non-Brahmins. Soon it started its activities and the very first was to ask the Maharaja of Mysore for reservation in administrative jobs for non- Brahmin.⁷³ On the basis of the representations received from the aggrieved communities, a Committee was appointed by the Maharaja⁷⁴ in 1918 under the chairmanship of L.C. Miller (the Chief Justice of Mysore) to investigate and report on following questions:

- (i) Changes needed, if any, in the existing rules of recruitment in the public service.
- (ii) The special facilities to encourage high and professional education among member of backward communities.
- (iii) Any other special measures which may be taken to increase the representation of the Backward Communities in the public services, without materially affecting efficiency⁷⁵.

⁷¹ Of many measures taken in Mysore prominent were establishment of the Legislative Council by Diwan V.P. Madhav in 1907 that soon got powers to discuss the budget and The Mysore Local Bodies and Village Panchayat Act, 1918 provided for elections to district and taluk boards.

⁷² Manor, James (1977)

⁷³ Naidu.B.N (1996) Intellectual History of Colonial India: Mysore, 1831-1920, Jaipur: Rawat Publications, p191.

⁷⁴ In this Kantharaj Urs than Dewan of Mysore, who was a non – Brahmin, played an important role.

⁷⁵ Miller Committee, Report of the Committee Appointed to Consider the Steps Necessary for the Adequate Representation of Communities in the Public Services Report, 1919, pp. 1-2.

The Miller Committee, in its report submitted in July 1919, vindicated the complaint of the non-Brahmins that the civil services in Mysore was dominated by Brahmins: “We find that the results obtained have not shown any progressive reduction of the inequality each year.”⁷⁶

The committee defined backward castes as those castes or communities coming under a general head of caste or community as enumerated in the Census Report of 1911, which contain less than 5% of literates in English.⁷⁷ The very fact that backwardness was defined only in terms of literacy and not the social positioning of a caste in the society showed that the concern of the authority and those who raised the demand was access to administrative jobs. There was no agenda of bringing social and economic reforms as these were landed gentry themselves who were demanding reforms on the behalf of the backward castes. The reasons were simple; the movement led by the elite hardly bothered about bringing other important issues to their fold.⁷⁸ The Miller Committee report provided information on inadequate representation to backward classes in services, the data that was used for propaganda purpose.⁷⁹

The Miller Committee report was accepted and the government passed orders, in 1921, to constitute a Central Recruitment Board and reserved 75% of the vacancies for the backward classes.⁸⁰ Following the Miller Committee Report, the Government of Mysore abolished the competitive examinations for the jobs and the recruitments were made by nominating the rank holders in the university examinations and implemented the

⁷⁶ Ibid, Miller Committee, 1919, p.7

⁷⁷ Ibid, Miller Committee, 1919, p.2

⁷⁸ Hettne, Bjorn (1977) *The Political Economy of Indirect Rule*. London: Curzon Press. p- 87.

⁷⁹ G. Thimmaiah (1993), *Power Politics and Social Justice: Backward Classes in Karnataka*, Delhi: Sage Publications, p69

⁸⁰ Singh. S.N (1996), *Reservation Policy for Backward Classes*, Jaipur: Rawat Publication, pp. 39-40.

Miller Committee recommendations from May 1921, in regard to reservation. The introduction of reservations did provide some relief to the lower castes as their numbers in government started increasing, a trend that continued and consolidated in 1940s. (See Table 1.5 above).

Table 1.8

Brahmin's Public Employment in Karnataka, 1918- 1947

Year	Gazetted Post		Non – Gazetted Post	
	Total No.	Brahmin %	Total No.	Brahmin %
1918	370	64.86%	13,946	69.64
1936	760	61.32%	22,615	49.65
1947	1298	46.89%	37,820	37.50

Source: Report of the Second Backward Classes Commission of Karnataka, Government of Karnataka, 1988, p-18.

On the other hand by the late 1920s The Praja Mitra Mandali started splintering caused by internal feuds on the issue of dominance of high caste non- Brahmins. Especially as there were no special provisions of reservation for untouchables, the major benefits of the Miller Committee recommendation were gobbled up by the dominant non-Brahmin caste Hindus. Even the Muslims who had sided with the party could ‘not gain much from this alliance.⁸¹

In fact, in terms of its social base, the Praja Mitra Mandali was similar to the Justice Party in Madras; both of them were non-Brahmin caste Hindu attempts at getting

⁸¹ Mentioned in Karnataka Backward Class Commission Report, 1975, Government of Karnataka, Vol. 1, p5.

positions in their respective regions by challenging the Brahmin domination. The result was that the movement assumed a less radical dimension. It was mainly a movement to gain entry into administration and, barring exceptions, lacked the cultural manifestations which its counterparts in British India exhibited.

Later, in 1930, the Praja Samyukta Paksha was formed, and unlike the Praja Mitra Mandal, membership to this party was opened to even Brahmins. It was more nationalistic in its outlook and later on merged with Praja Mitra Mandal to form the People's Federation,⁸² which ultimately merged with the Indian National Congress in 1937 to become the Mysore Congress. The merger might have seemed as if the Praja Mitra Mandal having coming into the fold of the Indian National Congress; but it was more of the opposite. As the Mysore Congress was completely independent of the Indian National Congress functioning and secondly the realization within the State Congress over the need to include regional aspirations and the common aim to defeat the autocracy of the Wodeyar, who by now had lost his popularity. Also, the political ambitions of the leaders to draw more control at the executive level, similar to what was offered by the Montague Chelmsford reforms, played an important role.

So, by late 1930s, the non- Brahmin movement of the kind that was practiced by Praja Mitra Mandali had completely vanished from the state of Mysore. The one reason was the strengthening of Indian independence movement, which received much impetus after the temple entry movement which was witnessed at T. Narsipur and the subsequent visit of Mahatma Gandhi to Mysore, Tagadur, Badanwal and Nanjangud. On the other

⁸² Omvedt Gail p.128.

hand, non- Brahmin leaders now dominated the Mysore Congress, which gave them no reason to form an outfit against Congress, which was now represented by them.

The movement in Mysore lacked the revolutionary content and ideology as witnessed in Bombay and much later in Madras. What the movement in Mysore could achieve was caste based reservation to certain non- Brahmin section. However, events of Mysore were important in one aspect they it became the first state to establish a commission, to enquire about the condition of backward castes and giving them reservation, setting up the course for such actions in future. On the other hand the demise of princely autocracy in Mysore played its part and most of these movements were consumed by the nationalist aspiration. Also the social imbalances were not as acute as experienced in Madras and Bombay, presence of community other than Brahmin's in the position of power even if that was in rural area never allowed to develop movement on two axis of Brahmin and non- Brahmin in the manner it was witnessed in Madras and Bombay.

Non- Brahmin Movement of Madras

Broadly speaking the backward caste movement in Madras developed in three phases anti- Brahmin discourse of Iyothee Thoss and Maraimalai Adigal in the late 19th century, non- Brahmin movement of Justice Party in the 1920s and 1930s and the Self Respect movement led by Ramaswami Naicker in late 1930s and 1940s. Even though with differences in the kind of language these movements used to mobilize the non- Brahmin public (and in fact created one), they shared the common distrust with the Indian

nationalist movement⁸³. No other parts of colonial India witnessed polarity of such extent. The most distinct feature of non-Brahmin/ anti caste movement in Madras was the cultural/religious separation of non-Brahmin public from the Brahmins, where the polarity among the two language- Sanskrit and Tamil played a prominent role, something that was unique to Madras and no other region in Indian witnessed that.

In this, while the Brahmin's made continuous attempt to legitimize that the other languages in India had their origin from Sanskrit an argument that was supported by texts written by them in a language that only they spoke. This representation of Sanskrit as high culture one that existed for ages was legitimized with the help of oriental writing on Aryan origin. Same was appropriated by the Indian nationalist and glorified in the anti-imperialistic propaganda. For instance Tilak at many instances made reference to oriental writings as well as to Hindu text to argue a glorious Indian past of Aryan civilization, one which was now destroyed by the foreign rule. On the other hand these narratives on the Aryan civilization were utilized to develop a non-Brahmin/ Tamil public, distinctive from Sanskrit speaking Brahmin's.

The early stages of non-Brahmin movement was headed two distinct personalities Thos and Adigal, who even though radical in their own sense largely operated their arguments to contest the claims of Brahminical religious and cultural superiority⁸⁴. While Thos argue largely of a Tamil past being of Buddhist origin, Adigal contested socio-religious authority of Brahmins through the philosophy of Shaivism

⁸³ To understand the influence of Saivism and neo-saivites on the Dravidan movement in Tamil Nadu, See Ravi. V (2015) Religion, Caste and Nation in South India: Maraimalai Adigal, the Neo-Saivite Movement and Tamil Nationalism (1876-1950), Delhi: Oxford University Press India.

⁸⁴ Pandian, M.S.S (2007) Brahmin and Non-Brahmin: Genealogies of the Tamil Political Present, Delhi: Permanent Black p.145

which like Thoss argued was the part of Tamil culture. However the inability of both these reformers to extend their argument beyond the realm of cultural and religion hardly produced any change in the dominance of Brahmins, who by now have moved to urban areas and captured posts and services as offered by the colonial administration.

In this, the Britishers, much like in the other parts of India had no intention to disclose their strategy. Therefore recruitments to influential post in early 19th century became dominated mostly by Brahmins, which at times were promoted by British themselves. A fair idea about their superiority in field of both education and administration can be judged from data shown in table 1.9 below.

Table 1.9

Composition of District Administration, 1885

Caste/Commuinty	Huzur	Naib	Tashildar
Brahmins	90.5	86.8	75.2
Non Brahmins	9.5	7.9	18.3
Muslims	—	—	13
Indian Christians	—	5.3	1.2
Total	100	100	100

Source: P. Radhakrishanan (1993) in 'Communal Representation in Tamil Nadu, 1850- 1916: The Pre Non Brahmin Movement Phase', *Economic and Political Weekly*, Vol. 28, No. 31, pp. 1585-1597.

Table 1.10

Community wise Students in Arts Colleges in Madras Presidency (1890- 1891)

Community	Percentage
Brahmins	69
Other Hindus	21
Indian Christians	8
Muslims	1
Anglo- Indian and Europeans	1
Total	100

Source: Mohan Ram, Hindi against India, 1968, New Delhi: Raclma Prakashan, p.70.

P. Radhakrishnan has pointed out that the earliest break in British policy of employing Brahmins to the important administrative post started first in 1850s, when reports from Nellore district which was controlled by 50 Brahmins all from the same family.⁸⁵ As the More report regarding irregularities and misuse of power by Brahmin authorities was flooded, it gave the reason for British to think about ill effects of dominance of one caste in the employment sector.⁸⁶ Therefore, to break the monopoly of Brahmins government came with a policy to encourage Non Brahmins. To encourage the enrolment of backward classes into services an order was issued in 1854, directing that the appointments were to be divided among all castes. Further, it stated that a proportion

⁸⁵ . Radhakrishnan P., (1993) in 'Communal Representation in Tamil Nadu, 1850- 1916: The Pre Non Brahmin Movement Phase', *Economic and Political Weekly*, Vol. 28, No. 31, pp. 1585-1597.

⁸⁶ The early measure adopted by British to restrain the dominance of Brahmins in employment has been dealt by P. Radhakrishnan in Communal Representation in Tamil Nadu, 1850- 1916 : The Pre Non Brahmin Movement Phase ,Published by EPW, Vol. 28, No. 31 (Jul. 31,1993), pp. 1585-1597.

of Tahsildars should belong to castes other than Brahmins and no two Chief Revenue servants in the office should belong to the same castes.⁸⁷ The British, with no allegiance to any group, were swift to change their strategy; so earlier if the educated Brahmins suited them to carry out administrative activities their corruption led British to diversify this to other communities.

On the other hand, as more data and statistics came out on the over-representation of Brahmins in the education and government jobs, it resulted in dissatisfaction among the elite within the Non- Brahmin landowning castes.⁸⁸ The reasons were the same as pointed out in the case of Mysore; the urban centers reflected the new power structures and the landowning castes lagging behind in this. It was in the wake of these situations that emerged by the end of the 19th century, lower castes felt the need to organize themselves to challenge the monopoly of the Brahmins. These movements shifted the discourse from the cultural/religious domain to contest the material and political dominance of Brahmins. This, then, was done by engaging the non-Brahmin public in a political manner.

The earliest of such associations was the Dravidan Association established in 1912. Much like the Satyashodak Samaj in Bombay province, the organization was hopeful that the British rule will be helpful in serving their interest. Although short lived, the organization made it clear that political and social cause of non- Brahmin could be served only under the British rule.⁸⁹

⁸⁷ Saraswathy, S (1974) Minorities in Madras State, University of Madras, Delhi: Impex India, p.56.

⁸⁸ Pandian, M.S.S (1994), 'Notes on the Transformation of 'Dravidan Ideology': Tamilnadu 1900-1940, Social Scientist vol.22 no 5/6.

⁸⁹ Hardgrave, Robert (1965), The Dravidan Movement, Bombay: Popular Prakshan, p.12.

Justice Party and the Non-Brahmin Manifesto

The success meted by the Swadeshi movement and later on the popularity of the Home Rule movement, especially in Madras, created great anxiety among the Non Brahmin leaders who had strongly resented the conservatism of Congress and therefore favored British rule. In fact, it was partly because of this fear of the Brahmin taking control of political power, first by the Brahmin dominated Indian National Congress and then the Home Rule League, which by 1916 rose in popularity. This series of events culminated in the formation of the Justice Party.⁹⁰

Before the Justice Party came into being, an organization was formed by Dr. Nair in November 1916, called the South Indian People's Association, Ltd. It was, in fact a company opened with the purpose to disseminate non- Brahmin voices, which will further address their grievances through newspapers to be owned by the company itself.⁹¹ It largely countered the nationalist propaganda.

In just about a month after its formation, the organisation went one step further and a militant non- Brahmin Manifesto was released by Sir P. Thiagaraya Chetty. It represented an important ideological statement of the Non-Brahmin elite, which was more concerned with the material and political superiority of Brahmins. Beside this it also led to the founding of, and provided the ideological basis for, a political party, the South India Liberal Federation, in August 1917. The manifesto analyzed the problems of the Non-Brahmin community, suggested possible solutions, and emphasized the urgent

⁹⁰ The formation of Justice Part has been dealt in greater details in Irschick, Eugene (1969) *Politics and Social Conflict in South India: The Non- Brahmin Movement and Tamil Separatism, 1916-1929*, Berkeley: University of California Press, pp. 44-54

⁹¹ Irschick (1969) p 46.

need for Non-Brahmins to organize themselves to make their voices heard.⁹² Their claims were supported by the statistical evidence of over- representation of the Brahmins in services. The manifesto declared:

The time has come when an attempt should be made to define the attitude of the several important non- Brahmin Indian Communities in this Presidency toward what is called “ the Indian Home Rule Movement,” also to indicate certain facts with respect to their present political position. Not less than 40 out of 40 and half millions who form the population of this Presidency are non-Brahmin, and the bulk of taxpayers, including a large majority of zamidars, landholders and agriculturists, also belong to the same class. But what passes for politics in Madras they have not taken part to which they are entitled.⁹³

In Manifesto again the non – Brahmin elites showed their allegiance to British ruler, it declared that

We are not in favor of any measure which, in operation, is designed, or tends completely, to determine the influence and authority of the British Rulers, who alone in the present circumstances of India are able to hold the scales even between creed and class and to develop that sense of unity and national solidarity without which India will continue to be a congeries of mutually exclusive and warring groups without a common purpose a common patriotism.⁹⁴

The South India Liberation Federation’s, which later on became famous by the name of Justice Party, immediate purpose was to promote the interests of the non- Brahmin and to counter the Home Rule Movement and their mouthpiece New India. To initiate the counter propaganda, the Justice Party came up with their own newspapers, prominent among them were Dravidan, Justice and Andhra Prakashika. These papers targeted Annie Besant and her home rule movement by describing them as Brahmanical. The first and most important conference of the Justice Party was organised in Coimbatore on August 19, 1917. The organiser, T.A.Ramalingam Chetty, who was also a Congressman demanded that all persons attending the Congress Conference should be asked to sign a statement affirming that the aim of the Congress would be to attain self -government only

⁹² Sattanathan. A.N (1982) The Dravidian Movement in Tamil Nadu and its Legacy, Chennai: University of Madras, p13.

⁹³ The Non Brahmin Manifesto, 1916 cited from Irschick (1969), Appendix 1 p. 358.

⁹⁴ *ibid.*

by gradual steps and further argued that all representative bodies in the future should contain the proper proportion of all communities and interests.⁹⁵

Montagu- Chelmsford Reform and Non Brahmin Politics

As the British government announced their intention to bring more reforms in India by bringing self -government, the stage was set for the Justice Party to use the issue to strengthen the non- Brahmin movement. The previous stand of British government about self- government had changed aftermath of Home rule and the events that followed it⁹⁶. The new Secretary of State Montagu declared on 20 August, 1917 “*The policy of His Majesty’s Government is that of the increasing association of Indians in every branch of the administration and the gradual development of self- governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire*”.⁹⁷ This declaration led to great activity among the elite Non-Brahmin leaders who were doubtful of the Self -rule.

Another major issue involving the Montagu-Chelmsford reforms was communal representation. The Montagu-Chelmsford Report firmly opposed the principle of communal representation on the ground that it would strengthen the communal divisions within the Indian society, thereby stalling India's advance towards self-government. Finally, the report was published on July 2, 1918 and Communal representation for non-Brahmin was denied, bringing disappointment for Justice Party.

⁹⁵ Irschick (1969), p.53

⁹⁶ In 1909 Minto Morley reforms were strictly against any compromises on self -government.

⁹⁷ See, Chandra, Bipan (1989), India’s Struggle for Independence, New Delhi:Penguin Books p.168

However, the efforts of Nair and others in the Justice Party to reverse the decision had paid off in some way. As it was now left to the Southborough Committee and the Feethman Committee to decide on detailed working of new franchise system and exact division of functions of government⁹⁸. Finally, the Meston Award came reversing the previous decision of Montagu- Chelmsford report and non- Brahmin's were given reservation in the assembly. It announced giving 28 seats (3 urban and 25 rural) which were quiet below the expectation of Justice Party.

On the other front, the Indian National Congress, upset with the reforms, launched the non- cooperation movement under the leadership of Gandhi and as a result of which the Congress boycotted elections in Madras. The decision of Congress to not contest election largely helped the Justice Party to win elections in 1920; with this, the assertion of the non- Brahmin politics had started. As soon as the Justice Party came into power, adhering to its objective regarding representation of non- Brahmins in administrative jobs, a Communal Government Order, subsequently came to be known as first Communal G.O. was passed in 1921.

The first Communal G.O. clearly spelt out that:

distribution of appointments among various castes and communities should be extended to appointments of all grades in the several departments of Government. For this propose communities were classified under six categories among Brahmins, Non Brahmins Hindus, Indian Christians, Muhammadans, Europeans and Anglo- Indians and others.⁹⁹

⁹⁸ Irschick, Eugene (1969) Politics and Social Conflict in South India: The Non- Brahmin Movement and Tamil Separatism, 1916-1929, Berkeley: University of California Press, p.89

⁹⁹ Ibid. p. 368.

Table 1.11

Quotas for various communities in Madras 1927 and 1947

Categories	Posts to be allocated	
	1922	1947
Non Brahmin Hindu	5 out of 12	6 out of 14
Backward Hindu	--	2 out of 14
Brahmin	2 out of 12	2 out of 14
Muslim	2 out of 12	1 out of 14
Anglo Indian and Indian Christians	2 out of 12	1 out of 14
Scheduled Castes(Depressed Classes)	1 out of 12	2 out of 14

Source: Report of Tamil Nadu Backward Classes Commission, Government of Tamil Nadu, 1970, p. 39

Therefore, the Justice Party was able to achieve its short term goal by capturing political power and introducing statutory measures that curbed Brahmin influence and advance non – Brahmin interests in educational institutions and services. The Justice Party did ‘not restrict to the affairs related to the administrative jobs, in fact Party’s one of the most astonishing step was its decision to regulate temple administration and bring it under the control of the state administration.’¹⁰⁰ To do so, the Hindu Religious

¹⁰⁰Geetha. V. and S.V. Rajadurai (1998) Towards A Non Brahmin Millenium: From Iyothee Thass to Periyar, Calcutta: Samya, p.210

Endowment Act, under which a board was formed to supervise and settle the temple related dispute was passed.¹⁰¹

Given the elitist composition of the party, soon the agenda of the party became narrow. The only aim now being to free non- Brahmin Caste Hindus from the clutches of the Brahmins. A resolution was passed at the Justice Confederation in January 1923, which stated that the *“Non- Brahmin should.... train a batch of purohits to officiate at their marriages and they should encourage matrimonial alliances between one section of the non- Brahmin community and another.”*¹⁰²

The party was soon flooded with problems, initiated by the party itself. The non-Brahmin movement that was supported by both Muslims and the untouchables in its early phase; these two, however, felt neglected as the Justice party came into power. The series of events like closing down the Labour Department (which also served to regulate conditions of work and involved thus the interests of the socially oppressed), the refusal of several leaders to support an anti- untouchability law in 1922, which further led to the resignation of M.C Raja, an important Dalit leader of that time, from the Justice Party.

The very fact that the Justice Party was dominated by the landed castes meant that it hardly developed any concrete agenda on caste and their main aim was to replace the Brahmin with few non- Brahmin elite. In fact, it was partly because of these differences and domination of Party by the non- Brahmin elite that the undemocratic Communal G.O was announced in 1947, in which for the first time, the non-Brahmin castes were bifurcated into non- Brahmin Hindus and non-Brahmin backward Hindus. Obviously, the

¹⁰¹Justice Party Golden Jubilee Souvenir, Madras, 1968, p.116.

¹⁰² Irschick (1969) p 252.

non-BrahminHindus consist the forward castes like Vellalas, Naidus, Chettiarsand Reddys, castes that did not resent this bifurcation since they were given a compartmental reservation of 43% of the jobs.

Therefore, it may be held that the concerns of the Justice Party was limited mostly to elite classes within the non- Brahmin community. It is quite clear from the data shown in table 1.12 below that the dominance of the Brahmins in the field of education was maintained even after the strong currents of Non Brahmin movements in Madras, showing that non- Brahmin movement at that time could not take their propaganda to deeper strength.

Table 1.12

Caste Wise Level of Education in 1911, 1921, 1931.

Caste	1911		1921		1931	
	Percent of Population	Percent of Students	Percent of Population	Percent of Students	Percent of Population	Percent of Students
Brahmin	3	35.5	3.5	39.5	2.0	31.0
Non Brahmin	86.0	41.5	85.5	44.5	86.0	47.0
Muslim	6.5	5.5	6.5	5.0	7.0	6.0
Christian	3.0	13.5	3.0	10.5	4.0	12.0
Others	1.5	4.0	1.5	1.0	1.0	4.0
Total	100	100.0	100.0	100.0	100.0	100.0

Source:Mathur,M.L (2004), Encyclopedia of Backward Castes Vol. 2, Delhi: Kalpaz Publication. p.21

Self Respect Movement of Periyar

E.V Ramaswamy Naicker is perhaps the most crucial figure to understand the political milieu that emerged in the late 1930s and also to generate larger understanding of the Brahmin non- Brahmin public. As Naicker interpreted the modalities of Brahmin and non- Brahmin in 1930s he proceeded to transform an elite movement to a much radical mass movement. His ability to advance critique of Brahmin dominance based on the orientalist construction of Hinduism, which was largely appropriated by the Tamil Brahmin, was the most effective propaganda.

Periyar, born in Erode, joined the Indian National Congress in 1920 and in the year after that participated in much successful non- cooperation movement in which he was jailed twice. It did not take much time as he grew in popularity within Congress and Madras region and soon he was elected Secretary of Tamil Nadu Congress Committee in 1921. Soon things were about to change as Periyar started raising questions about dominance of the Brahmins within the party. As much as he supported Congress on the front of Swadeshi and use of Khadi, this was an issue where Periyar was highly critical of the party. During the next few years, his activities became a great cause of concern for the Brahmin leadership of the Congress in Madras. His total disregard to religious texts and classic Hindu mythology drew criticism from the Brahmins within and outside Congress.

Finally, the constant rejection of his plea to include the demand of communal representation in the Congress' agenda made him to leave the party. It was in 1925 when two of his resolutions regarding communal representation of Non Brahmins in Public

services and representative bodies were rejected that he staged a walkout from the meeting. After that he quit the Congress in the same year to start Self Respect Movement in 1926. The conservative views of Gandhi himself contributed to the departure of Periyar.

The general objective of the Self-Respect Movement was to strive for equal rights and opportunities for everyone in the political, economic, social and other spheres of life. It gave a new life and agenda to whole movement of Non Brahmin started by Justice Party. One of the aims of movement was to end the caste system and to bring an end to the priestly rule of Brahmins. These were two general things that were till now missing from the agenda of Justice Party which had by now become an organization of landed gentry who has lost the cause of backward caste movement.

The criticism of Hindu religion and mythology by Periyar were constant themes. It was one of the reasons that Self-Respect Movement did not succeed in securing the support of many Non-Brahmin intellectuals, who even though were critical of Brahmin followed Hindu religion.¹⁰³ However, the support it obtained from the lower caste groups, particularly the Harijans, was tremendous and beyond expectations, and generally, it contributed to the broadening of the politically relevant strata of the population. As Pandian suggests this public was qualitatively different from those produced by other critics of the Brahmin who proceeded the self- Respect Movement- such as Thoss and his neo- Buddhism and even the non-Brahmin subalternity of the Justice Party.¹⁰⁴

¹⁰³ Ram, Mohan (1974), 'Ramswami Naicker and Dravidan Movement', *Economic and Political Weekly*, Vol.9 Nos. 6, 7 and 8, pp.217-224.

¹⁰⁴ Pandian, M.S.S (2007) *Brahmin and Non- Brahmin: Genealogies of the Tamil Political*, Delhi: Permanent Black, p.210

Unlike the Justice Party that relied on the construction of a divine Tamil past, Periyar was critical of such claims and instead relied on rationality of arguments. For Naicker the rejection of Hinduism over Tamil was not based on the fact that one was aboriginal and the other was alien to the people of this land; his reasoning was based on the simple argument that Hinduism was in-egalitarian. Therefore for him the Culture/language/religion that claimed superiority in the social realm has historically invested into creation of hierarchy in the society, contrary to this Tamil language/culture represented democratic and egalitarian principles. To quote him:

I do not have any attachment to the Tamil language for [the reason] that it is my mother tongue or the tongue of the nation. I am not attached to it for [the reason] that it is a separate language, ancient language, language spoken by Shiva [or] language created by Agastiyar. I do not have attachment for anything in itself. That will be foolish attachment, foolish adulation. I may have attachment [for something] for its qualities and the gains such qualities will result in. I don't praise something because it is my language, my nation, my religion...¹⁰⁵

In the late 1930s, Periyar had joined Justice Party, which accepted his fourteen point Erode programme that gave a new life to the Justice Party, while providing Periyar a political platform to counter the nationalist propaganda. The quarrel that started with the over- representation of Brahmins in administrative jobs was transformed into a semantic quarrel. All started in 1938, with the announcement of C. Rajagopalachari to implement Hindi as a compulsory subject in schools. This was looked as an attempt to re-establish Brahmin hegemony over Non Brahmin masses, who by now has claimed of different descendant to Brahmins. So the imposition of Hindi became prelude to the North and South conflict. Naicker traced the origin of caste in Sanskrit culture of North India that for him was alien to Tamil until introduced by Brahmins. In this Naiker argues that *if Sanskrit word Jati is removed from Tamil language is there any equivalent Tamil*

¹⁰⁵ Quoted in Ibid., p223

*word for it. Let the Tamil pandit answer this Alas non. It is clear that there was no caste system among our people in the ancient days; and it emerged (among us) due to our association with the North*¹⁰⁶.

These events stand great importance because as idea of nation was built by many on great culture of Sanskrit language, only to uphold the principle idea of caste was challenged and was in course uprooted to great extent. The movement as led by Periyar was neither anti- Brahmin nor anti- Hindi, instead it was only rejection of those narratives which failed to uphold the principle of equality in the society.

Socio- political system of North India in 19th Century

Whereas the anti- caste movement grew and consolidated considerably in Southern and western part of India, same was not true for the backward caste mobilization in the North India¹⁰⁷. There were two important factors that made considerable difference in timing and intensity of backward caste mobilisation in the North India. Firstly in contrast to Western and Southern part of India where there was clear absence of twice born, the caste system in North India replicated the Varna system at certain level. This is not to say that there was no distinction between various jatis/caste, which indeed there was but the large presence of upper caste in this region easily replicated socio- religious and material superiority one that was proposed by the varna system. Secondly, the landed gentry were mostly from the upper caste or from some other dominant caste. In addition to that the

¹⁰⁶ See, M.S.S. Pandian, Towards National- Popular: Notes on Self Respecters' Tamil, Economic and Political Weekly, Vol. 31, No. 51 (Dec. 21, 1966) pp. 3323- 3329

¹⁰⁷ For the convenience and the continuity of this thesis the term North India has been used to mention the present state of Uttar Pradesh and Bihar, which in British India included the provinces of United Province, Bihar, Bengal, Orissa, Central Province and Berar.

material dependence of the lower caste on the zamindar provided very lesser space to the lower caste in the rural areas to contest the dominant presence of upper caste.

In this, Permanent Revenue Settlement introduced by the British government where the Zamindars were made intermediaries to collect land revenues from the peasant and in return they were used to give a fixed amount to the British government. This was perhaps the most exploitative land revenue system in the colonial India. On the whole, the British had introduced three types of revenue settlement these were- permanent Zamindari settlement in United Province, Bihar, Bengal and Orissa, Royatwari: in Bombay, parts of Madras, Berar and Assam, Mahlwari: in parts of Punjab¹⁰⁸. The Royatwari system was more of a direct tax payment system, where there were no middlemen like zamindar in north India.

Further unlike the Southern part of India, where only the dominance of Brahmin community was contested for the cultural/ religious and material superiority, in North India the Brahmins had to share power with other upper castes. So, landlords in Uttar Pradesh and Bihar came from different upper castes that are Rajput, Brahmin, Bhumihar, wielding economic and political power. Also Brahmins were not the most educated caste as was the case in Madras, Mysore and Bombay; here presence of Kayashata was much more visible. So ritually Brahmins might have held superior position but the same was not true in the political and economic arena where other caste were much more dominant. Therefore it was difficult to create such clear division in the society and in term of

¹⁰⁸ Kumar Dharma (ed.) (1982), The Cambridge Economic History of India, Vol II, Hyderabad: Orient Longman p.36

politics as the non- Brahmin leadership was able to produce in Bombay Mysore and Madras.

Also it is important to note that unlike South and west India where western education and Christian missionary came up in large number, they were scant in North India. Therefore the absence of these modern institution that played a prominent role in the early stages of non-Brahmin/ anti-caste movement of Madras, Bombay and Mysore region also produced a large difference in the nature of backward caste movement of North India. And even where they came, more than Brahmin other groups like Kayashts were first to make their claims¹⁰⁹. So whereas it might have been easy to target one Brahmin group in South India, whose population was nominal as compared to non-Brahmins in case of North India the oppressive forces formed a large chunk of population which made it hard to dismantle them. More importantly the presence of different castes in the upper caste group made it difficult to develop one single narrative as different caste groups' wielded power in cultural, material and political arena. In fact there was a strong presence of upper caste elite was seen across U.P, Rajasthan, Madhya Pradesh and Bihar which constitute the present Hindi belt as shown in table given below. Lastly these differences are also due with the kind of land revenue system that came to be practiced in North India. Soonafter 1857 where zamidars provided much needed help to British in suppressing the mutiny they were rewarded by a land revenue system that gave them all authority over the agrarian issues.¹¹⁰

¹⁰⁹ Sarkar, Sumit (1989) *Modern India: 1885- 1947*, Basingstoke: Macmillan, p.67.

¹¹⁰ F. Frankel, *Caste, Land and dominance in Bihar* in F. Frankel and M.S.A. Rao (eds), *Dominance and state power in modern India*, vol. 1, Delhi, Oxford University Press, 1989, pp. 58-59

Table 1.13

**Composition of Varna and caste in UP, Bihar, Rajasthan and Madhya Pradesh
Census 1931**

	UP	Bihar	Rajasthan	Madhya Pradesh
Upper Caste/ Twice Born	20	14	24.2	12
Intermediate	1.5	—	9	—
Lower castes	41.9	49.7	—	42.5%
Untouchables	20.9	14.1	—	14%
Muslims	14.6	12.5	—	—
Tribal	—	9.1	—	25%

*Numbers shown above are in percentage.

Source: Jaffrelot, Christophe (2000) "Sanskritization vs. Ethnicization in India: Changing Identities and Caste Politics before Mandal." *Asian Survey*, vol. 40, no. 5, pp. 756–766

Lastly the movement of backward caste emerged in major two ways first by coming of up caste association, which lacked mobilisation from below and the aim of such organisation was to claim for upward social mobility in Hindu caste system. Secondly, formation of Kisan sabhas and other peasant organisation that indirectly helped in the cause of backward caste by constantly opposing the landed gentry.

Caste Associations and Mobilization in North India

One of the prominent reasons to form caste association was to stake claims for government recruitment in military, administrative jobs and to avail other opportunities provided by the colonial government. In that sense they were not different from any sort

of organization that came up in colonial India to raise their demands to the new ruler. In case of caste associations it was census and statistics that gave major impetus to coming up of such organizations. This was, in fact, the case of India all over, where lower caste made constant effort to raise their social status in caste hierarchy by the process of Sanskritisation. In this the introduction of certain kind of representational politics by the British government also provided the push for the horizontal consolidation of caste.¹¹¹

These caste associations sought to organize and unite all members of the caste so that their claims might be advanced more effectively against other castes.¹¹² The role of caste sabhas was very important in demanding higher status through sanskritisation during the first census in 1901. This was evident from the rise of caste associations; the number of caste organizations that forwarded petitions in the 1901 census was 21 and it went up to 148 in the 1931 census.¹¹³ Till independence, these caste sabhas were used for upward social mobility bringing positional and hardly any structural change. The census only reinforced a reality of caste and marked the birth of categories like SCs, STs and OBCs.

Unlike the progressive forms of movements in western and southern parts of India headed by Phule, Periyar and Ambedkar that largely worked to eliminate the caste system by delegitimizing the hegemony of the upper castes, the early phase of lower caste movement in North India was reactionary in nature. The major aim was to attain some form of upward social mobility; it started a trend of identifying concerned caste with higher caste status. This was being carried out even in Bombay by the Marathas but the

¹¹¹ Srinivas, M.M. (1952) Religion and Society among the Coors of South India, Bombay: Oxford University Press. p5

¹¹² Robert, L, Hardgrave, Jr (1968). The Dravidan Movement, 1965. Bombay Popular Prakshan. p.10

¹¹³ Imtiaz Ahmad, 'Caste Mobility Movements in North Inida', IESHR, (1971), pp. 170-171.

only difference being while doing so they had largely questioned the religious authority of Brahmins, which was absent in North India.

For instance, the All India Koli Kshatriya Mahasabha, the All India Khatik Kshatriya Mahasabha, the All India Jatav Mahasabha, etc., were associations of lower castes but they demanded and themselves proved their origin from Kshatriyas. This was also a sort of reactionary form of lower caste movement because this move supported the existence and persistence of the caste hierarchy as a justified institution.

In fact, in the early 20th century, there was a major movement among the Shudras in the United Province and Bihar to form a Kshatriya warrior identity.¹¹⁴ Petitions were submitted to the British government asking them to form regiments of their particular castes. In this, these groups drew upon the colonial constructions of their culture, tradition, and myths of origin to assert a history of martial exploits.

One important development was to organise and integrate the various sub castes to raise their demand for higher status in the caste hierarchy. For instance, the ahirs in United Province came under the banner of Yadav or Ahir Kshatriyas in the beginning of the 20th century and by 1910, the Ahir Yadav Kshatriya Mahashaba was founded by the initiative of Royal families of Rewari, and demanded recruitment of the Ahirs in the army. Similarly, in adjacent Bihar, the Goopal Mandali was founded in 1909, which later on became the Gopajatiya Mahasabha and made claims for Kshatriya origin.¹¹⁵

¹¹⁴ William R Pinch (1996), *Peasants and Monks in British India*, Berkeley and London: University of California.

¹¹⁵ M.S.A Rao, *Social Movement and Socail Transformation*, Delhi, 1987, pp.134-136.

The All India Yadav Mahasabha came into existence in 1922 to advance the sociopolitical interest of the Yadavs. The sabha made an appeal to the Yadavs to refrain from drinking liquor and observing the old age practices such as child marriage, dowry, casteism and untouchability. The attempt to seek a higher status in the Hindu society led the Yadavs to participate in the prevention of cow slaughter movement and forge a tenuous agrarian unity with the upper landowning castes. The All Yadav Mahashaba was inaugurated in 1924 and an important member of this was Dr. Khelkar. Even before this, in 1920, he headed a deputation of the Backward Classes to represent their case for political rights before the Joint Select Committee of Parliament in London.

Just like the Yadavas, the Kurmis started organizing themselves, done in response to an order issued by the Government of United Province to debar certain castes including the Kurmi from recruitment to police service, in 1894. A movement was launched by the Sadar Kurmi Kshatriya Sabha of Lucknow, whose members were mainly from United Province and Bihar. The campaign that went on for two years was stopped only when the order was rectified in 1896.

Therefore there was hardly any concrete progressive approach behind these caste organisations and the only purpose was to solve issues concerning matters of employment. And even though there was an increase in the number of caste associations that came up from 1901 to 1931, they lacked mass mobilisation, which was the case with South India. The important reason was the success of the peasant movement in both United Province and Bihar, which were aligned with the independence struggle and

hence left little space for such organisations to flourish, whose aim was more or less restricted to the status within the Hindu hierarchy.

The Peasant Question

There was great discontent among the peasant class in North India¹¹⁶ with British rule and the landlordism.¹¹⁷ So the peasants in northern India provided an opportunity to the Indian National movement to dismantle British as well as landlords (which they claimed to), in which most of them belonged to the upper castes. In order to get a fair idea of dominance that upper castes exercised and how caste conflated with class and vice versa in North India can be made by the fact that in U.P. as a whole Thakurs and Brahmins owned 57 percent of the land, while the intermediate castes owned 32 percent, and Scheduled Castes owned a mere .09 percent. The Muslim zamindars owned another 11 percent.¹¹⁸ Therefore, the peasant movement, even though fought on class lines, had issues of caste inherent in their struggle.

In this, the success of the Non – cooperation movement gave a new lease to Indian National Congress which was on the back foot with the announcement of Montagu- Chelmsford reforms. The importance of non –cooperation movement was the effect it had on Kisan movements in United Province and Bihar.¹¹⁹ The movement

¹¹⁶ Here North India is used for only the purpose of convenience to show how the peasants largely mobilize in parts of India which now constitute North India.

¹¹⁷ See Ranajit Guha(2005) Elementary Aspects of Peasant Insurgency in Colonial India, New Delhi: Oxford University Press

¹¹⁸ Singh, B. and Mishra, (1984), A Study of Land Reform in Uttar Pradesh, Calcutta: Oxford Book Co p.216

¹¹⁹ The role of Nehru was particularly important in mobilizing and creating non- cooperation propaganda among kisan sabhas in United Province Chandra mentioned in Bipan and others (1989), India's Struggle for Independence, Penguin Books, p 189-190.

received impetus from the social and agrarian tension of these areas; in many areas it brought forth the agrarian question.

Further the Peasant movement in Oudh in 1920-22 and the Champaran movement in Bihar signified the arrival of the peasant in the folds of the nationalist movement, also laying the seeds for peasant movement where lower castes stood against the oppressive regime of landlords, mostly belonging to upper castes and the British system as well. In October 1920, the Oudh Kisan Sabha in Lucknow and the United Provinces Kisan Sabha in Allahabad were formed, in order to give the movement a semblance of a province-wide organisation.

Indeed peasant movements during the period of 1921-24 in United Province had forced the Congress to adopt a radical social programme of zamindari abolition and land reforms as part of the Indian national movement. But the Indian National Congress kept going back and forth over the issue of a no rent campaign. In fact, in the 1930s, the leadership felt the need to walk very carefully between the Zamindari interests in the Congress and the leftist elements who wanted radical agrarian change; the latter, even if represented by Nehru was sidelined. The larger reason for this was Gandhi's refusal to engage in any form of class war. On the contrary, Gandhi made consistent attempts to bring both the landlords and the tenants under the banner of nationalism. He also claimed that landlords were the trustees of the people and that the Congress represents every section.¹²⁰ It was on these controlled lines that the Congress was directed by Gandhi to make appeal to the peasant as well as zamindars. In fact, in May 1931, the Indian

¹²⁰ Quoted in Pandey Gyanendra (2002) *The Ascendancy of the Congress in Uttar Pradesh: Class, Community and Nation in Northern India, 1920-1940*. London: Anthem Press, p84.

National Congress made an appeal to the peasant class to pay rent, which Pandey states that the Congress was bound by the Gandhi Irwin truce.¹²¹

The Congress expects every tenant to pay as early as possible all the rent he can, and in no case as a general rule less than 8 annas or 12 annas as the case may be. But just as even in the same district there may be cases in which a larger payment is possible, is equally possible that there may be cases in which less than 8 annas or 12 annas can only be paid. In such cases I hope the tenants will be treated liberally by the Zamindars. In every case you will see that you get against payment a full discharge from your obligation for the current year's rent¹²².

However, in November 1931, the Indian National Congress again launched the no- rent- no revenue campaign of middle and rich peasant, supported by small land holders. In UP, it was in fact under the strong influence of Jawaharlal Nehru that the Congress and kisans frequently worked together, especially during the formative years of the kisan movement, and during the thirties when there was a call for non-payment of revenue and rent.¹²³ This was, in fact, one issue on which the Indian National Congress was able to garner great support from the peasants in U.P and Bihar. They said that the British-cum -landlord Raj was an evil, to be replaced soon by their own home- made social order. Baba Ramchandra, a peasant agitator, took a prominent part in the agrarian movement of this period.

So, the inborn conflict with the zamindars did not allow many to join the Indian National Congress. Therefore, a large number of lower caste associations came out in early the 20th century. In Bihar, among those were Gop Jatiya Mahashaba, The Kurmi Sabha, and Koeri Sangh came up representing the Yadavs, Kurmi and Koiries

¹²¹ Ibid. p87.

¹²² Ibid.

¹²³ W. Hauser, The Bihar Provincial Kisan Sabha, p43.

respectively. Later on they came together to forge one big alliance under the name of Triveni Sangh in Sahbad.¹²⁴

In this, it important to highlight the events that took place in late 1930s bringing Bihar Kisan Sabha and Bihar Congress on the path of war. The issue was the Kisan Enquiry Committee set up by the Bihar Congress that was critical of the Zamindars and their exploitative methods. The Kisan Sabha that was adamant on its no rent campaign was not pleased with the way the Indian National Congress siding with the Zamindars. It ultimately went so far that ties between the Indian National Congress and the Kisan Sabha came to an end in 1942.¹²⁵ This again showed the willingness of the Indian National Congress to compromise on the principle of socialism as proposed by their own leaders in the name of nationalism and solidarity between landlord and peasants, wiling under the pressure of Gandhi.

This peasant movement, meanwhile, was carried further by the Bihar Provincial Kisan Sabha led by Swami Sahajanand Saraswati, who advocated for abolition of Zamindari system in the 1930s and 1940s.¹²⁶ In 1934, the Congress Socialist Party came into being, with considerable following in both U.P and Bihar region. Later on, the movement was joined by the likes of Jayaprakas Narayan (Congress Socialist Party) and by Karyanand Sharam of the Communist Party of India. This, in turn, forced the Indian National Congress to address the issue of agrarian relations but Gandhi's presence and domination prevented this maturing further.

¹²⁴ M.P. Singh, (1975) Cohesion in a Predominant Party- The Pradesh Congress and Party Politics in Bihar, New Delhi: S. Chand.

¹²⁵ Tirumal Mundagiri(1990), Congress and Zamidars : Collaboration and Consultations in Bihar, 1915-36

¹²⁶ Das. A.N. (1983) Agrarian Unrest and Socio- economic Change in Bihar, 1900-1980. New Delhi:Manohar, pp.24-27

In the later period, the tenant movements in United Province and Bihar came under Congress control that resulted in some modest reforms and some amelioration of the condition of the tenant but the zamindari system remained essentially intact throughout the British rule where the conservative strategies deployed by Gandhi played an important role.

In the end, one can say that the class consciousness subsequently played a significant role to form broader peasant fronts, whether it flourished under Congress or outside the party. This, in turn, helped in waging fierce class struggles against landlords in the 1930s and 1940s, but they were not devoid of caste manifestation. This is what social reform movements of north India contributed to in bringing about different forms of social change from the south even though the impact of such movement was highly restricted. In north India although there was no structured campaign and ideology against upper caste as was the case in Southern and Western India. However, the legacy of lower caste movements in Northern India lie in bringing about different forms of social change contributed by peasant uprising which definitely was absent in the agenda of most of early non-Brahmin movement in the South and in the West. They were successful in generating class consciousness among the peasants whose struggle was against higher castes.

Conclusion

Eventually these movements in different parts of colonial India were revolt against the exploitative and oppressive elite that existed even before the British arrived in India. However with the new administration in charge, Brahmins and some other upper castes

became more visible as they were even before. This hyper-visibility led to a consolidated effort from the lower castes to mobilize against the over- representation of communities that were indeed minority in terms of their number. The rule of upper caste elite was challenged with different means and intensity, so down in south and west because of predominance of Brahmin, non – Brahmin movement of different varieties looked more logical whereas in North India it was struggle against a numerically strong upper caste as a whole. The common cause to bring down a system of deprivation and exclusion was the connecting link between the various lower caste movements that emerged in pre independent India. In the process some of them also made an attempt to alter the dominant political narrative of the Indian National Congress, with tools and ideology that suited them best in their locale.

In addition to that, British policy from the start favored those, who traditionally had means to claim and utilize public resources. In fact, British on their own had no intention in bringing any reforms to the caste system; except for the fact that they were willing to encourage any group which they thought could produce divisions in the movement for independence. Their concerns for the inequalities among the Indians was reflected from the fact that one of the most oppressive land revenue system was kept in place and hardly any major reforms came in that area. And even though lower castes did benefit from colonial policies like reservation in jobs and representative assembly, these were limited to certain elites (reservation has its own limit as a policy of social change) and hardly produced any change in the life of rural masses that over the period became more impressed with the idea of nationalism. This was one of the reasons, that non-Brahmin outfits like Justice Party and Praja Mitra Mandali hardly created any support

base outside of the educated elite and a thin middle class. Besides this, most of these movements and their leaders largely undermined the evocative power of nationalism, which was able to capture the imagination of Indian masses.

The movements in parts of Mysore succeeded only in raising the issues of reservation in administrative jobs, but the question of agrarian relation and its exploitative nature was almost absent. Whereas in North India partly because of land system (zamindari) that was more unequal compared to South India (Royatwari) acted as a catalyst. Having said that, it also true that the absence of a strong political organization of backward classes and lack of resources to create propaganda on one hand and on the other the conservatism of Gandhi within the Congress such as over the issue of abolition of Zamindari abolition and over the understanding of caste prevented any large churning in the political narrative of the Indian national Congress. So while clinging to the individualism of the modern western society, congress also professed conservatism resisting any movement that had the capability to produce social change in the caste system.

Also the very fact that the party that played so important role in making of the constitution has not much to do with these radical anti -caste and social reform movements that took place alongside the national movement. The voices of marginalized were ignored in the makeup of the popular sentiments of nationalism; the result of which was that the coming up of many radical movements, that at times, stood in confrontation with the nationalist ideas.

Nevertheless, before India gained its Independence the OBCs¹²⁷ had emerged as a political outfit in Southern part of India, particularly in Madras and in pockets of Mysore and Bombay region. In the end these events definitely affected the policies of Independent India. So, when the constituent assembly sat for framing the constitution, some of these concerns were evident, even though still disputed and monitored by a large section of the Congress Party in the constituent assembly.¹²⁸ Even though British decided the earlier life of caste in colonial India, it was evoked to achieve multiple purposes, contrary to this the new republic that was formed on 26 Nov, 1949 provided hardly any space for such expression. India as gained freedom proceeded to achieve many of these identities as they emerged in colonial India were consumed or silenced in the pretext of upholding modernity and the national unity. These issues will be discussed in the next Chapter.

¹²⁷ The term OBCs was introduced only after independence in the constituent assembly by Nehru while moving the objective resolution.

¹²⁸ On December 13, 1946, Jawahar Lal Nehru moved the historic objectives resolution that included a commitment that wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes- See Constituent Assembly Debates (CAD) Vol 2. p 4.

CHAPTER II

The Issue of the Other Backward Classes (OBCs) in the Constituent Assembly

No other policy issue has generated such controversy as the issue of reservation for the Other Backward Classes (OBCs) in the political discourse of independent India. This is again one issue where, on one hand, the Indian constitution is praised for providing various safeguards for this section and on the other it is accused of letting down their interests, by not providing enough.¹ Having said this, there is no doubt that the Indian constitution can be held as a charter of liberal justice, where various provisions has been panned out in favour of the OBCs.² It is also true that the extension of such policies, in favour of the OBCs (at the national sphere), became visible only after the implementation of the Mandal Commission report by the V.P Singh government in August 1990.³ The one reason for this delay, by almost four decades after the Constitution was adopted, insofar as rendering justice to the OBCs was concerned, had to do with the vagueness or the ambiguity that marked the definition of the category of the OBCs in the Constitution itself.

¹ Indian constitution is seen as a document of social justice See Rajeev Bhargava ed, (2004), Politics and Ethics of the Indian Constitution, Oxford University Press. p23. Some of them also raised doubt on the way these provision were framed and were in fact retrogressive than the measures that were already in functioning during British times. See Jaffrelot Christophe (2003), India's Silent Revolution.

² Under Article 15 (4), 16(4) and Reservation in both legislature and administrative jobs has been provided in case of scheduled Castes and Scheduled Tribes. Article 15(4) was not part of the original scheme and introduced later after the 1st amendment to the Indian constitution. In case of OBCs the scope of such provisions has been limited only to reservation in administrative jobs that was implemented in 1990 at central level.

³ The Mandal Commission was formed in 1979 by the Janta government but it was not implemented by the next governments for little longer than a decade. It was only when V.P Singh came into power the report was implemented. The Mandal Commission along with the other things provided 27% reservation to OBCs in central administrative jobs.

This is not to say that the constitution had nothing to offer to the OBCs. The fact is to the contrary; and it is appropriate to spell out the few provisions in Indian constitution that somehow changed the course of OBC politics at the outset. These can be categorized under three sections. Firstly, the commitment to the abolition of the Zamindari system was given shape after the First Amendment to the Constitution, which in effect, sought to enforce equality in the economic realm.⁴ Secondly, the introduction of universal adult franchise that provided the power to the lower castes in electing their representatives to the central and state assemblies was indeed a radical measure that had far reaching implications.⁵ This and the assertion of the numerically large Backward Classes, in the political realm, ultimately led to the implementation of the Mandal Commission report in 1990.⁶ Third, and the most important from the scope of this study, are the provisions that directly aim to change the traditional structure of social hierarchies by providing for positive discrimination and safeguards for the backward classes to construct a more egalitarian society.⁷

⁴ The first Amendment had two legs: One was it dealt with the provisions for acquisition of Zamindari lands and inserted Article 31 B and the Ninth Schedule to the Constitution and two it provided for reservation in educational institutions for the Scheduled Castes and Tribes to overcome the difficulties in this regard by the Supreme Court's decision in the Champakam Dorairajan case. We shall discuss this in detail later in this thesis. Meanwhile, it may be noted that V. Krishna Ananth argues that even though the Indian constitution, when it was adopted did not contain something explicit policy to socialism but over the years it was transformed and right to property provided the road to social revolution. See Ananth Krishna *The Indian Constitution and Social Revolution: Right to Property Since Independence*, Sage, New Delhi, 2015.

⁵ Introduction of system of adult franchise brought heterogeneity to Indian parliament by increasing the number of lower caste representatives has been supported by Kothari (1970), Brass (1990), Hasan (1999), Jaffrelot (2003). The details of this aspect will be dealt in upcoming chapters.

⁶ This aspect of political assertion of OBCs and their role in implementation of Mandal Commission report forms the important premises of argument in the upcoming chapters and will be dealt in greater details there.

⁷ This idea that reservation in services was aimed to bring both justice and distribution of resources more appropriately to each section of society is majorly supported by Kothari(1990), Austin(1999), Palshikar(2004)

Of the above mentioned aspects, the last one – the legal measures to effect changes in the traditional social structure – was in vogue since the colonial times. However, the real intention behind such measures in the colonial times was not to bring change but to create a communal division in a caste ridden society.⁸In that sense, it is important to note here that rather than changing the structure of caste system the British created a morbid system for backward classes consolidating on already existing hierarchies. It was a rule of contradiction; on the one hand an unregulated system of reservation was introduced which created an elite among the backward classes, especially OBCs,⁹ and on the other the regime refrained from bringing about any reform in the agrarian structure, especially in the domain of property relations, where the ownership of land remained in the hands of the upper castes. In other words, as long as the means of production remained in the hands of a few, little or no change was expected insofar as the exploitative order that persisted under the colonial regime.¹⁰ So it was only after independence, when the Constitution was drafted and adopted, committing the nation to deliver justice, social, economic and political was it possible to even perceive this question in perspective. However this agenda at many levels has remained unfulfilled, particularly when it comes to the question of land reforms and the issue of OBC reservation.

⁸ The policy of colonial government was to deal separately with different communities. This was there measure policy after 1857 and Montague Chelmsford reform further.

⁹ The policy of reservation was first introduced in Madras and later on in other parts of India was a result of backward caste mobilization but the policies were so implemented that it created confusion rather any clarity on issue of backward castes. This issue has been dealt in greater detail in previous chapter.

¹⁰ Marx proposed that any fruitful change in society can come only when the ownership of mean of production changes. See Marx, Karl (1849) A Contribution to Critique of Political Economy. Moscow: Progress Publishers.

This chapter focuses on the arguments over the issue of the Other Backward Classes in the Constituent Assembly. Here we will deal with the various conventions that were invoked to support or oppose the idea of extending reservation in jobs and education to the OBCs. One major aspect that will be touched upon is the differential treatment meted out to the OBCs, in the Constituent Assembly, in comparison to the Scheduled Castes (SCs). It will also seek to discuss as to whether the guarantee of reservation to the OBCs were denied in assembly just because they did not represent the worst off sections in the society in the economic as well as social sense of the term, as was the case with the SCs and STs.¹¹ This, in fact, has been the premise of questions raised against reservation to the OBCs even now; and such arguments were raised in the Constituent Assembly too. However, contrary to such a perception, this chapter will attempt to pose the debate over reservation in case of OBCs from within the framework of the Marxian redistribution manifesto. In this sense, the attempt is to go beyond the Rawlsian theory of justice and to locate the principle of reservation as not merely as a question of a few thousand government jobs but instead as a tool to change the power structure of Indian politics.

Further, an enquiry will be made into how the political process of colonial India affected the case for OBC reservation in the Constituent Assembly. As discussed in the previous chapter, the non- Brahmin movement that represented the concerns of the

¹¹ The major proponent of this argument are Dipanker Gupta(1999) and Andre Beteille (1991) who however support the idea of reservation but extension of this policy to OBCs has been severely criticized by the duo. The argument is based on the Rawls theory of 'differential principle'. It proposes that positive discrimination policies should be formulated keeping in mind the interests of the "worst off sections in the society. So they argue that in Indian society it is only SCs that are without any asset and so the worst off. Whereas OBCs even though they have also faced caste discrimination have land and money which are prized in market-oriented liberal democracies as of India, so any reservation to them goes against the principle of equality. This understanding is flawed as reservation in case of OBCs was justified it will have proved a mean to end caste discrimination by challenging the hegemony of upper castes. So the idea of justice is not only restricted to constitutional category it goes beyond, much like what Amrtya Sen purposes that justice has to be seen with reason that keeps on changing.

backward classes was led by the intermediate castes, with hardly any representation from the depressed classes. However, a new backward class politics emerged in the 1930s, particularly after the Poona Pact, where a reluctant Congress was forced to take up the caste question, at least in the arena of untouchability¹². This helped in building the claims of the depressed classes even though the OBCs remained more or less scattered in both leadership as well as in the nationwide movement for their rights. These two issues that are post Poona pact, leading to the separation of the depressed classes from the fold of the other backward castes and the increasing acceptance, within the Indian National Congress, of the demands of the SCs had a major impact on the kind of mobilization of the OBCs and in the drafting of their agenda. As the SCs and their concerns emerged as the issue of prime importance it was hard for the OBC agenda to continue with the earlier framework. This colonial legacy¹³ was, in some sense, controlled by the vocabularies of secular state. Also, unlike in the case of the Scheduled Tribes, the Scheduled Castes and the religious Minorities that were distinctly represented in the nationalist discourse and the political domain thereof, there was no such political formation, at least in the colonial times, to represent the huge category of the OBCs.¹⁴

¹² From the late 1920s Ambedkar has consistently argued for a separate space for the SCs and an important step in this direction was taken with the demand of separate electorate for the SCs in 1930, a move which was opposed by Gandhi during the round table conference. The rejection of Ambedkar to accept subordinate position for the SCs and Gandhi's insistence on that SCs should stay in the fold of Hindu society. Even though in the end Gandhi resisted separate electorate and only reservation was given to the SCs. However in the process of the contest between Gandhi and Ambedkar, later was recognised as a leader of untouchables and an opponent of the Indian national Congress, raising his stature to the national level a feat that the other backward caste leaders before or even after him were unable to achieve. Congress and Gandhi in particular invested more in the question of untouchability. For further details see, D.N. (1991) Gandhi, Ambedkar and Separate Electorates Issue, Economic and Political Weekly. Vol. 26, No. 21.

¹³ The introduction of separate electorates in the 1909 Morley- Minto reforms set the pattern for subsequent development. It legitimized the language of communal and interest group politics by acknowledging its primacy and according an institutional recognition. This made it much harder, perhaps impossible, for even professedly secular Indian politicians not, at least tacitly, to do the same.

¹⁴ The representation of the various minority communities in the Assembly after Partition was as follows: Nepalis 1, Sikhs 5, Parsis 3, Christians 7, Anglo-Indians 3, Backward Tribes 5, Muslims 31, and Scheduled

It is also important to highlight here that even though the Constituent Assembly was dominated by the leaders of the Indian National Congress, they were also representing certain sections or group, in the social and economic sense of the term, to which they belonged. Claims for preferential treatment were often competitive, with representatives of each group advancing reasons for why their group was more eligible for safeguards or deserved greater representation than another, on grounds, for instance, that it was numerically superior, more backward than others, more distinct from the majority in its cultural practices and so on. But then there were many voices those were not present in the process of the framing of the Indian Constitution; as for instance, Mahatma Gandhi, the socialist block that had been instrumental in radicalizing the Indian National Congress or such leaders as E.V. Ramasami (Periyar).¹⁵ Similarly, some of the political formations that had spoken for social groups in the course of the nationalist movement and even influenced its course were not present in the Constituent Assembly.¹⁶ In this sense, except Ambedkar and few others, not many members in the Constituent Assembly had anything to do with backward caste politics in the past; it is important to note here that Ambedkar too had restricted himself to the cause of depressed classes only. So, when it came to the issue of backward castes, there were very few voices that were consistent in their arguments in the Assembly. Also, the constituent assembly that was

Castes 33 – a total of 88 out of the 235 provincial seats. Source Granville Austin Constitution pp. 9-13. Also there was not even a single member in important advisory committee who belonged or represented the OBCs. On the other hand in the case of SCs their rights were duly presented by Ambedkar.

¹⁵ Unlike Ambedkar who had from the very start distanced himself from Congress Agenda on nationalism Periyar was very active. He was in fact an unannounced leader of backward caste. However in later stages he restricted his energy more to the cause of Dravidian movement and on the question of Hindu imperialism. See Chapter 1.

¹⁶ There were two other groups that were not part of constituent assembly Muslim League and representative of states.

formed on a limited franchise provided little scope for the lower castes to be elected and so there was no real representation of OBCs.¹⁷

As far the question of positive discrimination is concerned, the logic lies in the idea that the upper castes will hardly give up the position that they enjoy in an unequal system. So, the changes have to be brought about forcefully through laws and cannot be left to the decision of the executive. This chapter will try to argue that it was because the rights of the OBCs were left to the benign wishes for justice of an upper caste dominated legislature at national level. This was the reason why positive discrimination was extended to OBCs in Mysore and Madras, where the legislative assembly, as it came up in the context of the Minto Morley Reforms and the Montagu Chelmsford Reforms of 1909 and 1919, when the Indian National Congress boycotted the elections and left it to the platforms that were representing the interests of the non-Brahmin castes and thus dominated by such intermediate castes. Also the hesitation of Indian National Congress leadership to see backwardness in term of caste delayed the process of backward caste assertion in general in the regions outside Southern India. This, indeed, is among the reasons behind the history of the OBCs empowerment was marred in judicial conflicts and intervention. This factor played an important role in the post-independence mobilization of the Other Backward Classes on the issue of reservation in jobs that was denied to them until the 1990s. To get a grasp of all these events that affected Indian politics, a fresh reading of the Constituent Assembly debates becomes important.

¹⁷ Voting was a privilege in British times and Franchise was restricted by tax, educational and property qualifications specified in the 1935 Government of India Act, which meant that about 28.5 percent of the adult population could vote.

Further, such a reading of the Constituent Assembly debates on the backward class issue brings to light the Congress agenda of placing emphasis on ‘class’ (economic) rather than ‘caste’. And even though the criteria for backwardness were social and educational, the understanding based on class terms led to a conclusion where the economic criteria were held as important. A fallout of this led to a situation where the backward classes were perceived in a manner that kept the Muslim among the OBCs and the Dalit Christians out of the reservation bracket. A reading of the Constitution also clarifies that in case of extension of reservation to the OBCs, three logics worked: namely the idea of a secular state, detraction from principle of merit and consequently the dilution in efficiency. Since the extension of reservation to the OBCs meant an opposition to these principles of merit, efficiency and the secular state, they were not given the same treatment as in the case of SCs and STs. More importantly, the debate in the constituent assembly over caste (historical discrimination) reflects the dilemma of the new republic, which was highly motivated by the ambition to construct a ‘casteless society’ by eliminating caste but the commitment to readdress the discrimination and disability faced by the lower caste meant that caste has to be recognized¹⁸.

In this regard, Aditya Nigam argues that the Constituent Assembly functioned from within these codes and all democratic aspirations of sections of the people were made to abide by such codes. Anything outside this code hardly made it to the final draft of Indian constitution.¹⁹ Although Nigam restricts his arguments to the religious communities, it is a fact that a similar treatment was meted out to arguments, within the

¹⁸ Deshpande Satish (2013): Caste and Castelessness in the Indian Republic- Towards a Biography of the ‘General Category’ Economic and Political Weekly, Vol. 48.

¹⁹ Nigam Aditya (2009), A Text Without Author: Locating the Constituent Assembly as Event in Rajeev Bhargava, (ed) Politics and Ethics of the Indian Constitution, Oxford University Press. p137.

assembly and from outside when it debated the drafts, with regard to the idea of reservation to the OBCs. A close reading of the debates reflects this point where the agenda of reservation, though accepted, was restricted to only to the SCs and the STs. The demand of OBCs did not fit into the modernist agenda of the independent Indian state, where caste was seen as a blot, which many of them thought will be eradicated by modern values. Moreover, the debates on the issue of OBCs in the Constituent Assembly were framed in the Foucauldian discourse analysis: Where production of different categories was systematically checked by the dominant majority and alternative views, if so produced, were marginalized. Nevertheless, it must be stressed here that, these meanings were contested both within and outside the assembly.

Objectives Resolution and the Re-invention of the OBCs

Jawaharlal Nehru, without doubt, was most appropriately placed, to give guidelines on the kind of constitution India was to have. The Objective Resolution he moved (on December 13, 1946, when the Assembly began its business in right earnest), in fact, came closest to defining the aspirations of the independent nation-state as well as its various communities. Indeed, Nehru did explicitly use the term Other Backward Classes (OBCs) in his Objective Resolution in the Constituent Assembly. He declared that special measures were to be taken in favour of minorities, backward and tribal areas and depressed and *other backward classes*.²⁰ This resolution was supposed to be a pledge, where nothing was elaborated and contained only the fundamentals that were to be followed while drafting the constitution. In fact, Nehru made it clear that the resolution

²⁰ Nehru's Objective Resolution, Constituent Assembly Debates (CAD) Vol. 1, p.59.

did not go into details and that it only sought to show how we shall lead India to gain the objectives laid down on it.²¹

On the one hand, the intermediate castes were mentioned as a separate category as the OBCs, giving them a class character and this indeed was a deliberate choice on the part of Nehru.²² On the other hand, Nehru was conscious enough that such group rights should not eat up the individual equality and the idea of a secular and the united nation. He makes it clear in so many words:

We are all now, in our respective spheres, partymen, belonging to this or that group and presumably we shall continue to act in our own respective parties. Nevertheless, the time comes when we have to rise above party and think of the Nation, think sometimes of even the world at large of which our nation is a great part.²³

By this, we may argue, that the resolution cleared two things: One was that in general there will be some rights or privileges to be guaranteed to certain classes; that of the OBCs being one of them. Secondly, a clear distinction was made between depressed classes and the Other Backward Classes, which, infact, has been there in both the social and the political domain for quite long. The objective resolution, as it came to be known, was debated immediately and also had its bearing, as it was intended, upon the various provisions all through the process of making the Constitution and its imprint was evident in the Preamble to the Constitution in the end.²⁴ As the debate on the Objective Resolution went, many voices were raised on the usage of the term backward; claims

²¹ CAD Vol. 1, p.58.

²² Nehru was of the opinion that modernity will do away with the evil of caste system and this could have been the reason for using class rather than caste in the objective resolution for both OBCs and SCs.

²³ CAD Vol.1, p.58.

²⁴ Although the Preamble was adopted only in the end of the Constituent Assembly debates, it must be stressed here that this part of the Constitution has served as the guiding principle in all further interpretations of the Constitution and hence it may be held that the Preamble, which was essentially drawn from the Objective Resolution, is the direction and the precept on which the Constitution is to be read.

were made and voices were raised stressing the need to define the backward classes. One such person was Dambar Singh Gurung who made a plea that all the *gorkhas* are infact a backward community.²⁵ Yet another member brought the issue of reservation that needs to be provided to such groups. They need props, was a constant refrain. They need a ladder by which they can reach the stage when it will be possible for them to appreciate the value of rights that we are placing before them and enjoy them, such members argued.²⁶

However, a constant heard concern was on the issue of the minorities, where representative of various groups claimed themselves to constitute a minority. Infact, the term minority and backward class were used inter-changeably. Some clarity on this issue arrived only after the partition of India and the making of Pakistan into a separate nation-state. The concern for minorities and their rights were indeed sought to be defined as the most important part of objective resolution.

Issue of Rights for certain Classes

As discussed above, there are certain articles in the Indian constitution that exempt individuals and are only guaranteed to certain classes or communities. Among them is Article 15 in general and 15(4) in particular, Article 16 in general and 16(4) in particular; these Articles, even while guaranteeing equality of opportunity on one hand, permit the state to make provisions in favour of backward classes on the other. Similarly, there are other articles that specifically deal with the rights of certain classes such as Article 46²⁷,

²⁵ Ibid p.148.

²⁶ CAD Vol. 1, p.281 Prof. N.G. Ranga.

²⁷ Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes other weaker sections of society.

335²⁸, and 340²⁹. However, the most important aspect of group right is that of positive discrimination, provided in the constitution for the SCs, STs and the OBCs.

Further, the inclusion of SCs, STs and OBCs follow different criteria. In case of STs the fact that they have been historically excluded from the development process and form a culturally distinct category became an important criterion. On the other hand, the reservation for SCs is based on their unique experience of untouchability.³⁰ Incidentally, these categories were formulated by the colonial regime and based on its needs and considerations and concrete lists of such categories were already there before the independent Indian nation-state. Lastly, in the case of OBCs caste becomes the criteria for backwardness and ultimately for positive discrimination.³¹

Although such policies existed as negation of the right to equality, there was no such a priori agreement insofar as the backward castes were concerned even though these social groups too discriminated due to their belonging to a certain caste. In this sense, although the principle of “justice as fairness,” as propounded by John Rawls³² must apply in their case too, it was not considered at the stage of the making of the Constitution. In other words, it must have been presupposed that the idea that positive discrimination in favour of the backward castes was justified in order to undo the injustice inflicted upon these groups in past, as past injustice continue to be a source of present injustice. Such a

²⁸ Claims of Scheduled Castes and Scheduled Tribes to post and services.

²⁹ Appointment of Commission to investigate the conditions of backward classes.

³⁰ Marc Galanter (1984), *Competing Equalities*, Oxford University Press, Delhi p124.

³¹ Gopal Guru (2004), *Constitutional Justice in Rajeev Bhargava* (ed), *Politics and Ethics of the Indian Constitution*, Oxford India Press, New Delhi, p244.

³² John Rawls in his theory of Justice proposes that fairness refers to desirability of advantage for the marginalized groups. It again is applicable only in certain conditions of constitutional democratic regime. This theory is further built on the idea of social contract in democratic societies that espouse for building of a just society. It was started by Thomas Hobbes and further refined and practiced by John Locke, Jean Jacques Rousseau and Immanuel Kant. To this Amrtya Sen idea is in fact an extension to Rawls theory and sees justice outside the constitutional category based more on reasoning that keeps on changing.

course would have been a set of temporary adjustments done in an unjust society to make it more egalitarian.³³

The other important thing is that the modern state plays an interventionist role.³⁴ It can also be seen as an institutionalized commitment to the protection and welfare of the marginalized groups.³⁵ Further, these group rights are supposed to reverse the process of exclusion through introducing policies of inclusion. The reservation policy, is, then seen as a way to equalize access to resources and rights.³⁶

There are two aspects attached to Articles 15 and 16 of the Constitution and that they are read in continuity with the article on right to equality; that is Article 14 of the Constitution. Whereas Article 15 deals with the prohibition of discrimination, Article 16 deals with equality of opportunity in public employment. However when it comes to the Constituent Assembly debate, only Article 16 (4) holds importance and Article 15(4) was added after the Constitution (First Amendment) Act, 1951.³⁷ Hence, we may argue that the Constitution, as adopted on November 26, 1949, did not contain any provision for

³³ See Khilani Sunil (2004), *The Idea of India*, New Delhi, Penguin Publication, pp1-5.

³⁴ Most of leader in assembly saw Indian state as means to do way the ill will of suffering masses. So many of them within and outside the Congress, wanted Indian state to be an agent of change. Even the criticism of JP that constitution hardly proposes any revolutionary policy was guided with the principle that it is the duty of state to improve the condition of masses. These points have been further elaborated in Suhas Palshikar (2004), *The Indian State Constitution and Beyond* in Rajeev Bhargava (ed.) *Politics and Ethics of Indian Constitution*, pp. 143- 162.

³⁵ This process has been catalysed by rise of backward castes making Indian politics more participative and democratic.

³⁶ This policy has been criticized based on the arguments of Herbert Gans, where he argues that not only it is impossible to achieve a position of equality but also it is not desired in a society where people fill so many different roles. See Herbert Gans (1973), *More Equality*, Pantheon Books, New York, p65.

³⁷ The first amendment introduced significant changes in articles relating to property rights (Article 31), freedom of speech and expression (Article 19) and prohibition of discrimination (Article 15). As in case of backward classes 15(1), 14 and 29 (2) of the Constitution of India stood as a challenge to the government programme aimed at making special provisions for the weaker sections of the society. In this one main reason was judicial decisions of the *B.Venkkatramana SC vs. State of Madras and others* (A.I.R 1951 SC 229), *C.R. Srinivas v. State of Madras*, 1951 SCR 271 and *State of Madras vs Chamakaran Dorairajan* (A.I.R 1951S.C. 226) that led to the adding of Art. 15 (4) with the First Amendment to the Indian Constitution.

positive discrimination and it was made possible only after Article 16(4) was added that the idea of positive discrimination in favour of backward classes was made a Constitutional possibility.

This, notwithstanding the fact that this was clearly enunciated in the Objective Resolution that rights will be guaranteed to minorities, backward classes; however, the question as to who constituted the 'minority' and 'backward classes' was shrouded in confusion even after an intense debate. The other matter was the conflict over rights related to the individual and the society at one level and as to whether in a caste ridden society an individual can be separated from the community. In other words, will it be rational to treat them as individuals when at the social level they are discriminated as a part of the community? These were the issues that the Assembly had to consider; for these were facts they could not refute.

Before analyzing the debates in the Constituent Assembly on fundamental rights and minority rights it is important to mention that within the Indian National Congress and by extension in the Constituent Assembly, there were two sets of people who proposed equality by treating all as equal and changing the social structure of class inequalities by adopting a socialist constitution and others who wanted some kind of preferential treatment to be provided to certain classes to undo caste inequalities so that equality can be created among the unequals. Ultimately, the constitution, as adopted, ended up catering to the two views -- individual rights and preferential treatment for certain groups. However, the exact opinion of Congress Party when it came to the issue of reservation was not only divided but was also tilted to individual rights. Gobind Ballabh Pant's speech, in Advisory Committee, for instance, captures this feeling and the

intention of the members who held key position in the committee which was about to decide the fate of backward classes, was an instance of this: He said:

It is not for me to attempt any dissertation on the various aspects of minorities or fundamental rights. I cannot however refrain from referring a morbid tendency which has gripped this country for the last many years. The individual citizen who is really the backbone of the state, the cardinal centre of all social activity, and whose happiness and satisfaction should be the goal of every social mechanism, has been lost here in that indiscriminate body known as the community. We have forgotten that citizen exists as such. There is the unwholesome, and to some extent degrading habit of thinking always in terms of communities and never in terms of citizens.³⁸

Although the Objective Resolution, which the Constituent Assembly had adopted with much unanimity and applause, used OBCs as a category, as distinct from Scheduled Castes, it was left to the advisory committee on Fundamental Rights, Minorities and Tribal and Excluded areas, headed by Vallabhai Patel to discuss the various issues concerning the backward classes and minorities. The advisory committee was further divided into sub committees, in which the sub-committee on Fundamental Rights³⁹ and minority rights⁴⁰ dealt with the issue of group rights and the question of equality. While moving the resolution in the Advisory Committee, Pant made the point that these committees are to show the commitment this house has for the safeguards of minority as outlined in the Objective Resolution. To this, he further added “we find that in our

³⁸ The speech was made by Pant in Jan, 1947 in the context of communal strife that nation has been witnessing, providing an appropriate opportunity to claim once again the allegiance towards the universalists discourse, where in demands made by communities/ caste for special provisions were projected as divisive to the national unity. See, CAD Vol. 2, p.332.

³⁹ The Sub- Committee on Fundamental rights consisted of: J.B. Kriplani, M.R. Masani, K.T.Shah, Rajkumari Amrit Kaur, Alladi Krishnaswami Ayyar, Sardar Harman Singh, Mualana Abul Kalam Azad, B.R. Ambedkar, Jairamdas Daulatram and K.M Munshi. The President of Constituent Assembly was authorized to nominate additional members.

⁴⁰ The Sub- Committee on Minority consisted of: Jagjivan Ram, Mualana Abul Kalam Azad, B.R. Ambedkar, Sardar Jogendar Singh, Dr. S.P. Mookerjee, Sardar Ujjal Singh, Sardar Harnam Singh, Bakshi Sir Tek Chand, Gopi Chand Bhargava, H.J. Khandekar, P.R. Thakur, Homi Mody, H.C. Mookherjee, P.K Salve, S.H. Prater, F.R. Anthony, C. Rajagopalchari, Rajkumari Amrit Kaur, Shri Jairamdas Daulatram, R.K. Sidhwa, Rup Nath Brahma, M. Ruthnaswamy, M.V.H. Collins, Dr. Alban D’Souza, K.M. Munshi, Govind Ballabh Pant. The President was authorized to nominate additional members.

country we have to take particular care of the Depressed Classes, the Scheduled Castes, and the Backward Classes. We must do all we can to bring them up to the general level and it is a real necessity as much in our interest as in theirs that the gaps should be bridged”.⁴¹ Pant moved back and forth on both the need and necessity to address the disability faced by the lower caste group but also to uphold the unity of nation, where in tradition identities

Before the general discussion, various notes and drafts were submitted to the sub-Committee on Fundamental rights. Of the five important notes or drafts submitted before the constituent assembly, only two dealt with the provision for the protection of minority rights. One of it was Ambedkar’s draft that advocated for representation of SCs in services; this, however, was a position that he took up very late. Only Harman Singh’s draft proposed a clause on the issue of positive discrimination at the very outset. It laid down that equal opportunity of education shall be open to all citizens and stressed that “provided that nothing herein contained shall preclude the state from providing special facilities for educationally backward sections of the population.”⁴² Alongside this was the larger point of dividing rights into ‘justiciable and non justiciable’ in the proposals by B.N.Rau, the Constitution Adviser.⁴³

Although the draft proposed by Ambedkar contained various articles on reservation and preferential treatment at the policy level, these proposals were specifically left for the sub-committee on Minority Rights of the Constituent Assembly and were not meant for consideration by the Fundamental Rights sub-committee. Infact,

⁴¹ B. Shiva Rao Vol. 2, p.63.

⁴² Harnam Singh’s Draft, See, B. Shiva Rao Vol. 2 p63

⁴³ The proposal to have justiciable and non- Justiciable rights was part of proposal drafted by B.N Rao. After initial hesitation by the members the schemes as proposed by B.N Rao came to be accepted.

it was K.T Shah, who was perhaps the lone member who seemed to represent a Marxist view in the Constituent Assembly, who raised the point as to whether the equality of all citizens before the law implied that there would be no discrimination either in favour of or against any class or community.⁴⁴ On this point it was decided that it was the outside the scope of sub-committee to deal with such an issue.⁴⁵

Hence, it may be argued that the draft, so prepared by the sub-committee on Fundamental Rights remained focused only on a general clause on equality that included right to equality before law and therefore limited the purpose of the constitution at that point to achieve only formal equality. The only clause that dealt with the issue of backward class was clause 25 of the draft submitted by the sub-committee which read as follows:

All citizens shall have equal opportunities of receiving education. Provided that nothing herein contained shall preclude the state from providing special facilities for educationally backward sections of the population.⁴⁶

However this article never became the part of Indian constitution and was deleted during minority committee discussions first from justiciable rights⁴⁷ and then it was decided to do away with it completely⁴⁸

The report on fundamental rights was then debated thoroughly by the sub-committee on minority rights, where several suggestions and objections were made. The first major objection was raised on clause 5 that dealt with the equality of opportunity in public employment. In this, Ujjal Singh (Punjab) proposed that this clause should not debar rules being made for giving special consideration to minority communities in

⁴⁴ Shiva Rao Vol. 2, p. 119.

⁴⁵ Ibid.

⁴⁶ Ibid. p. 174.

⁴⁷ This was done on the insistence of Alladi Krishanaswami Ayyar.

⁴⁸ Shiva Rao Vol. 2. pp. 282-283, 291-292.

recruitment to public services.⁴⁹ Although his suggestion restricted the meaning only to religious minorities, later on it was agreed upon that there should be a section added to clause 5 that will provide for reservation in public sector employment for the various classes. This clause became the source of confusion and great debate. The confusion was on the use of word `minority`; as to who all can be accommodated under the definition of minority, and whether it can be synonymous with class as was proposed by a section within the Assembly, representing the Indian National Congress. The time when this question came up was when the word minority had represented a certain meaning from within the religious identity among various members in the Assembly and elsewhere in the larger context of the partition.

At this juncture, another important issue was raised by Alladi Krishnaswami Ayyar, who held that affirmative assertion, in the first place, was not necessary on the ground that the claims of minorities could be adequately met without any such specific provision.⁵⁰ This was sought to be resolved by C. Rajagopalchari with a proposal that a clause be added qualifying that this shall not prevent any provision being made for the convenience of particular classes like women or backward groups.⁵¹ Later on K.M.Panikkar proposed that such a clause must specify that it should be to the benefit of certain classes.⁵² These, then, took the debate to a larger issue as to whether the word to be used should be `minority` or `classes`. In this context, K.M. Munshi argued that exception are not primarily for backward classes but for religious minorities also and

⁴⁹ Ibid.p. 200.

⁵⁰ Shiva Rao, Vol. 2, p.220.

⁵¹ Shiva Rao, Vol. 2, p.222.

⁵² Ibid, p.222.

proposed to lump them together.⁵³ To clear this confusion, a separate committee was formed consisting of C. Rajagopalchari, Dr. Ambedkar, K.M. Panikkar and K.M. Munshi.

On the other issue, relating to the sub clause on equality of opportunity, Ayyar had proposed that the clause on equal opportunity should be introduced before the discriminatory clause for minorities,⁵⁴ and this has been accepted ultimately in Indian Constitution. The idea was that before adding the clause on positive discrimination, the state should declare a general policy that everybody is equal. And the positive discrimination, so provided, will create equality among unequals.

K.M. Pannikar was of the view that because there is already a clause 4 that deals with equality before law, any provision for positive discrimination, subsequently, will be declared ultra vires by the courts; in other words, his argument was that if any special measures are guaranteed to any class of citizens, it will be rejected as the fundamental rights override all local conditions.⁵⁵ This meant that any reservation that was given in favour of the backward class will be challenged in the court of law. This is what actually happened in the Champakam Dorairajan case, even before the first ever general elections and the anomaly remedied by way of the Constitution (First Amendment) Act, 1951, inserting clause 4 to Article 15 of the Constitution.

The committee that was formed to deal with clause 4, 5 and 6 of the draft, made certain changes in clause 5 and a new section was added that nothing herein contained shall prevent the state from making any provision for reservation in public services in favour of classes as may be prescribed by the state. Two important issues were raised in

⁵³ Ibid, p. 222

⁵⁴ Ibid. p. 223.

⁵⁵ Ibid, p. 225.

the debate that followed on clause 5 of the draft. One was whether the phrase 'not adequately represented' should be used or not; and the other issue was as to whether the provisions should be for 'classes' or 'minority'. On the question of whether to leave this to the understanding of the executive or the legislature to decide on who all exactly constituted the backward classes, Ambedkar suggested a few changes. Ambedkar wanted the omission of the phrase 'not adequately represented' from clause 5 of the draft. He argued that if such a phrase as 'not adequately represented' is used it may leave the state vulnerable to be challenged in a court on its definition from time to time and that it is not wise to leave such matters to the understanding of courts.⁵⁶ His fear was that it will be hard for any minority community to defend itself in courts. However, in case of the OBCs, exactly the opposite happened where courts have most either appropriately denied the issue of reservation or, at times, given the ruling in favour of OBC reservation.

It was made clear by Ambedkar that he would insist on some provision in the Constitution itself and that this shall not be a matter which will be left to the sweet will of the legislature or the executive. It will be part of the Constitution, he stressed.⁵⁷ Ultimately, Ambedkar pressed on this aspect only in case of the SCs and the STs, who were included in this, leaving OBCs out of such specific provisions; the fact is that there were hardly any voices, in the Constituent Assembly, to take the argument in their favour further to its logical end. In other words, Ambedkar's sense of clarity was restricted to the case of the SCs for job reservation as a Constitutional Right.

⁵⁶ Shiva Rao, Vol. 2. P. 258.

⁵⁷ Ibid. p. 259

However, even after it was settled thus, another important issue was raised by Bakshi Tek Chand on whether to retain classes or to go back to the protection of minority.⁵⁸ Now, it is important to mention that throughout the debates in the Constituent Assembly, the term minority was used in two different senses; one as a political and religious minority and the other as a broad category comprising the STs, SCs and backward classes. C. Rajagopalachari sought to clarify this by holding that minority may be taken to mean what it is in the political sense of the term and that it is more appropriate to use the word 'classes' elsewhere.⁵⁹ K.M. Pannikar, then sought that it may be desirable to make some kind of provision, not merely on the basis of political or religious minorities, but for certain classes which we have to encourage to come forward, so that it may afford protection not only for the minorities in the sense as Christians, Parsees, etc., but also provide for certain classes which may have to be encouraged.⁶⁰

The debate was finally brought to an end when the Chairman, Dr. Rajendra Prasad, intervened to say no leader will be stupid enough to interpret that classes do not include the minorities and it was settled that no changes will be brought in the original draft as submitted by the committee⁶¹. However, a certain clarity on this issue came only after a series of judicial interventions and finally with the Second Backward Classes Commission (popularly known as the Mandal Commission) distinctly included sections

⁵⁸ Ibid. p. 259

⁵⁹ Ibid., p. 259.

⁶⁰ However there is an interesting observation that needs to mention here is that while making his point on safeguard to be given to certain classes Pannikar gave example of Nambudris, who were not backward in sense of their social position but due customs that they practiced were seen as orthodox, where the position of women was very much degraded. But the backwardness so defined by Indian constitution then follows the social and educational criteria, which automatically exclude economically well of classes. See Shiva Rao Vol. 2. p. 259.

⁶¹ Ibid. p. 260.

from within the Muslims in the list of OBCs. This was on the basis of a definition of backwardness on social and educational status.

Meanwhile, another sub-committee was formed by the Constituent Assembly, specifically to redraft the clause in question consisting of Rajagopalachari, Ambedkar, Panikkar and Munshi. This clause 5, which now more or less forms the present Article 16 of the Constitution, was adopted in the end in following form:

(i) There shall be equality of opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the state, are not adequately represented in the public services.

This was ultimately adopted as part of fundamental rights by the constituent assembly in April- May 1947, in the section on right to equality.⁶² Where clause 4 dealt with prohibition of discrimination, became Article 15 of the Constitution.

Confusion over Who are the Backward Classes

The one issue that came up relentlessly during the constituent assembly debates was about defining the term backward class and identifying who exactly was backward. There was a definite reason for this. Unlike until the 1931 census, when the colonial administration had listed certain castes as backward and thus a specific list of backward classes was possible, the discontinuation of this since 1941 had caused a problem even if there was agreement in the Constituent Assembly for affirmative action on this front. This was not the case with the Scheduled Castes of the Scheduled Tribes. Hence, and especially in the context of the urgency that had caught the members to have the Constitution adopted as soon as it could be, led the members to hold that this be left to

⁶² Shiva Rao Vol. 2. p. 300.

the wisdom of the President. The fear among the members and especially among those who supported the cause of OBC reservation was that any vagueness in the definition of the term 'backward classes' could lead to the exclusion of the OBCs from the scope of reservation.

Similarly, in the draft prepared by the constitutional advisor B.N Rao, the word backward was not used. This was done to avoid the controversy that had erupted in Minority Committee over the use of word class in place of minority as discussed earlier in this chapter. The draft, as accepted by the minority committee, contained a clause on positive discrimination which borrowed heavily from Government of India Act, 1935. As part of the provisions on the right to equality, Clause 12 of the draft read as follows:

12 (I) There shall be equality of opportunity for all citizens in matters of employment under the State

(III) Nothing in this section shall prevent the State from making any provisions for the reservation of appointments or posts in favour of any particular class of citizens who, in the opinion of State, are not adequately represented in the services under the State.⁶³

The draft, so prepared by B.N Rao, was passed on to the drafting committee, under the chairmanship of Dr. Ambedkar.⁶⁴ The drafting committee decided to substitute the words 'particular classes' in sub-clause (3) of clause 12 with the term 'backward classes' and this became Article 10 of the draft constitution that Ambedkar placed before the Assembly.⁶⁵ It read as follows:

(i) There shall be equality of opportunity for all citizens in matters of employment under state

(ii) No citizen shall, on ground only of religion, race, caste, sex, descent, place of birth or nay of them, be ineligible for any office under the State.

⁶³ B.N. Rao Draft Constitution, Shiva Rao Vol. 3. p.8.

⁶⁴ The original committee consisted of seven members, namely, Alladi Krishnasami Ayyar, N. Goplaawami Ayyangar, B.R. Ambedkar, K.M. Munshi, Mohammad Saadulla, B.L. Milter and D.P. Khaitan. Later on B.L. Milter and D.P. Khaitan were replaced by N. Madhav Rao and T.T. Krishnamachari.

⁶⁵ Shiva Rao Vol. 3, pp.328, 408.

(iii) Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of backward class of citizens who, in the opinion of State are not adequately represented in the services under the state.⁶⁶

Most members of the Assembly, however, were apprehensive of this change and argued against the use of 'backward classes' here on grounds that it was vague. As for instance Ari Bahadur Gurung (West Bengal: General) held that "the word backward includes three categories of people, namely Scheduled Castes, and Tribals and one particular class which is so far not included under the term backward . . . the meaning of word backward seems to be vague to me."⁶⁷ There were others who felt that the word backward classes are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced.⁶⁸ Similarly Dharam Prakash (United Province: General) argued that there is no community which does not have a section of people which is backward, whether economically or educationally or socially...it is necessary to clarify impartially as to who are backward classes⁶⁹. Other member Saradar Hukum Singh, representing East Punjab had least clue about the term backward classes and claimed that in clause (3) this new phrase backward class of citizens has been introduced. We have heard of "depressed classes", "scheduled castes" but this "backward class of citizens" so far as our part of country is concerned, we have never seen used in any statute⁷⁰.

⁶⁶ Ibid. p.521-22.

⁶⁷ CAD, Vol. VII, p.685.

⁶⁸ R.M. Nalvade CAD, Vol. VII, p.686.

⁶⁹ CAD, Vol. VII, p.686-7.

⁷⁰ Ibid. p.69.4.

So, the introduction of the term backward class became a contentious issue and amendments so proposed revolved around three aspects: One was to omit the term 'backward class' completely or if it is included, then a clause should be added to restrict it to a certain period of time.⁷¹ The other was to include the Scheduled Castes and religious and political minorities in clause (3) of article 10. The third was to define the backward class in such manner that that it will also include other backward classes both irrespective of the religion they profess. On this, even B.N. Rao was of the opinion that deletion of word 'backward' from this clause will open up the possibilities for the state to reserve posts in favour of any class of citizens who are not adequately represented in the services and would thus substantially extend the scope of the clause.⁷² Similar voices were raised by the Madras Legislative Council by advocating the omission of word backward as it will only exclude the Scheduled Castes from such definition.⁷³

At this stage, Munshi held as follows:

In view of the condition in our country prevailing in several provinces we want to see backward classes, classes who are really backward, should be given scope in the State services.... The word backward signifies that class of people- does not matter whether you call them untouchables or touchables belonging to this community or that- a class of people who are so backward that special protection is required for them in services.⁷⁴

It was partly due to the policy of the Indian National Congress, which as a party wanted a clear cut reservation only for the Scheduled Castes that the demand for inclusion of any other caste was left to the understanding of executive. Indeed, it became

⁷¹ Pandit Kunzru amendment read That in clause (3) of article 10, for the words 'shall prevent the State from making any provisions for the reservation' the words 'shall, during a period of ten years after the commencement of this constitution, prevent the State from making any reservation be substituted'. See CAD, Vol. VII, p.679.

⁷² Shiva Rao, Vol. 4. p.30.

⁷³ Ibid. p.31.

⁷⁴ CAD. Vol. VII, p.696-7.

the dominant view that it scuttled or marginalized any other argument in favour of the OBCs within the Constituent Assembly. This approach to the question of caste had its roots in the Poona Pact, where Gandhi made it clear that the campaign on against untouchability has to be the part of freedom struggle and it was developed further by the leadership of the Indian National Congress to resist any approach based on recognizing the fragmented social structure as it prevailed. In other words, the Indian National Congress considered such recognition as accepting the disunity among the Indian people. Little was said or done, by the Congress as a political platform, on the hierarchical and discriminative caste system. This is not to mean that the same conclusion can be drawn about individual leaders in the Indian National Congress, most importantly about Gandhi and Nehru. An extensive discussion on this, however, is beyond the scope of this study.

Further there were others who wanted deletion of clause 3. Among them were Loknath Misra and Seth Damodar Swarup. Their argument was that such a policy, if introduced, will sideline the criteria of merit⁷⁵ making it inconsistent with the clause on equality. So, in their view, it will be a negation of good governance and efficiency which according to them were among the consequences of British rule and that needed to be reversed.⁷⁶ Infact, this argument of merit was given to do away with any kind of reservation, especially when such provisions were extended to the OBCs time and again. It persists to this day, notwithstanding a consensus in favour of such reservation among the political parties across the spectrum; the point is that there are sections, across the spectrum, opposed to reservation in jobs on grounds that it defies merit and will only lead to inefficiency.

⁷⁵ Loknath Misra CAD, Vol. VII, p.673.

⁷⁶ Damodar Swarup Seth CAD, Vol. VII, p.679.

The other major concern came from members belonging to the Madras and Bombay region where the term 'backward class' was already in use in the legal-administrative sense for granting financial assistance, reservation of seats in legislature and government jobs; and it did convey a certain meaning too. Skepticism in this regard came from representatives of sections that were kept out of the ambit of such reservations during the colonial era.⁷⁷ For instance, Mohamed Ismail Sahib (from Madras), even explained the situation that prevailed in the Province: In Madras the word 'backward' had assumed a definite and technical meaning and included a number of castes and sub-castes and that the colonial administration in Madras had counted and scheduled more than 150 of these castes in that province. He stressed this in the following words:

When you utter the word backward it is one of those 150 and odd communities that is meant, and not any community that is generally backward. And I may also say that those 150 and odd communities constitute almost the majority of the population of that province, and every one of these comes from Hindus.⁷⁸

There was yet another view, dominant too within the assembly, which laid the basis for the confusion regarding the term backward class. It was argued that the members coming from northern India have little idea about the term backward classes and had difficulty in understanding the term as compared to the members coming from South India, where there was already clarity on OBCs.⁷⁹ However, it may be noted here that it was a member from Bihar, Mr. Chandrika Ram, who actually came closest to

⁷⁷These apprehensions were shown by R.M. Nalavade who asked to include Scheduled Castes in place of backward class argued that our experience in provinces, though there are provisions for reservation in the services, is bitter. See CAD, Vol. VII, p.686. Another member from Bihar Chandrika Ram cited an example from his state. According to the Census report, the Backward Class constitutes a major section of the population of the province. But you will find that with the only exception of Ahir Community no other community has been given representation in the Council or Assembly of the province. See CAD, Vol. VII, p.687.

⁷⁸ CAD Vol. VII, p.692.

⁷⁹ See Christopher Jaffrelot (2008), *Containing the Lower Castes: The Constituent Assembly and the Reservation Policy in Rajeev Bhargava (ed.), Politics and Ethics of the Indian Constitution*, Oxford University Press.

defining OBCs at the social level. Beside this the member from Bihar also provided scathing criticism to towards the suggestions made by member to delete the term 'backward classes'. He outlined that OBCs are the intermediate castes that are neither forward like the upper castes nor backward like the Scheduled Castes.⁸⁰ This, however, was at that stage a cry in wilderness. There was no effort, at least from the evidence we have of the debates, to take this as the basis and identify the OBCs; this would take place only after a couple of decades in such States as Bihar and Uttar Pradesh in the 1960s. It may be argued that it was because of the fact that the OBCs had arrived as a political formation in the South even in the pre-independence times, such a development in the Northern states had to wait until the 1960s when the politics of anti-Congressism emerged there and wrested power in the 1967 elections. We shall discuss this later in this study.

In the Constituent Assembly, meanwhile, apprehensions over the term backward classes were sought to be allayed by Munshi with the argument that Article 301 of the draft constitution (which would become Article 340 in the Constitution as adopted on November 26, 1949), makes it clear that there will be a Commission appointed for the purpose of investigating and identifying the other backward classes. Munshi added:

Some references have been made to Madras. I point out that in the province of Bombay for several years now, there has been a definition of backward classes, which includes not only Scheduled Castes and Scheduled Tribes but also backward classes, who are economically, educationally and socially backward.⁸¹

⁸⁰ Referring to reports of 1931 census data Chandrika Ram argued that our society is divided into three sections- The highest consisting of that section of our society which is known as 'Caste Hindus' and the lowest of the section known as Scheduled Castes or Harijan, while third occupying the middle position between these two and consisting of a large portion of our people what may be termed as the Backward classes. See CAD Vol. VII, p.687.

⁸¹ CAD, Vol. VII, p.697.

In fact, the provisions in draft Article 301 then became the basis to dodge any uncomfortable question relating to the issue of Other Backward Class. In this, both Ambedkar and Munshi took pains to defend the vagueness that was marked on the question of the issue of reservation to the backward classes. Ambedkar, for instance, said:

Anyone who reads the language of the draft itself will find that we have left it to be determined by each local government. A backward community is a community which is backward in the opinion of the Government.⁸²

In the later stages, some questions were raised on the ambiguous nature in which the word backward was used here and there and it was hardly consistent with the article that dealt with recruitment to jobs in the administrative services. It was in this context and while they were debating on issue of backward classes that Pandit H.N. Kunzru asked whether there is continuity among clause 3 of Article 10, Article 296 and Article 299 of draft constitution.⁸³ The draft article 299 and 296 dealt with the issue of minorities respectively while it was otherwise in case of Article 10 of the draft. Pandit Kunzru's argument was that though it is the word minority that is used in article 296 and the expression backward classes is used in article 10(3) on the ground that ``it seems to me that in fairness to the country protection can be granted to any class, whether you call it a backward class or minority, not only on the ground that it is backward and if left to itself, would be unable to protect its interests. This shows need for clearing up the connection between the two articles that I have just referred to.''⁸⁴

⁸² CAD, Vol. VII, pp.699-702.

⁸³ Ibid. p.680.

⁸⁴ Ibid. p.681.

In this wake, these articles were suitably amended and made consistent with article 16(4) of the Constitution, as adopted in November 1949; but then, but this was done only in the case specifically of the SCs and STs as there was no such scope for reservation for the OBCs at that stage. This is, notwithstanding that Article 16(4) does mention the backward classes along with the Scheduled Castes and the Scheduled Tribes.⁸⁵ One of the effects of this was that it excluded the backward castes among minority out of such definition. This aspect and its remedy (in the Mandal Commission's recommendations and the Supreme Court's decision in the Indra Sawhney case will be dealt with later on this chapter.

Still, the matter was not clear and these doubts were best articulated by T.T. Krishnamachari who apprehended that the clause on backward classes is so loosely drafted that it will be a paradise for lawyers.⁸⁶ His fear was that the term will be so defined in legal parlances that it will create more confusion than clarity; to this, Ambedkar's response, as Chairman of the Drafting Committee, was that the Constitution was certainly going to give rise to questions involving legal or judicial interpretations, and they might often require to be taken to the highest court; but there was nothing to be ashamed of this since there was hardly any constitution in the world which was not a paradise for lawyers.⁸⁷ It may be stressed here that this argument was contrary to his earlier positions during the debates in the minority sub-Committee. There, he had vehemently opposed the idea of leaving anything to the courts or the executive; it may be added that Ambedkar's concerns then were restricted to issues pertaining to the SCs only

⁸⁵ Article 16(4) "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State".

⁸⁶ CAD Vol. VII, p.699.

⁸⁷ Ibid. p.700.

and not, in any sense, of the OBCs. It is necessary to understand such contradictions in Ambedkar's arguments and positions from the context of the nature of the backward caste politics in post independent India. There is no hiding of the fact that Ambedkar had bitter experience with the OBCs and was convinced that the SCs had to find a solution to their exclusion only as separated from the OBCs.⁸⁸ In arriving at this, Ambedkar was certainly guided by the experience of exclusion of the SCs at the hands of the non-Brahmin leadership even during the pre-independence period. Also the exploitation of the landless labourer, predominantly the Scheduled Castes at the hands of the peasants, who were predominantly the OBCs was an important issue that guided Ambedkar understanding of the OBC- SC dynamics.⁸⁹

Meanwhile, the draft article was put to vote and all the amendments, except those accepted by Ambedkar, were negated by the Assembly. The draft Article 10, as amended, was adopted to be added to the constitution, renumbered as Article 16.

However, it did not put an end to the demand for including the OBCs in the various provisions relating to reservation in services. The issue was raised, within the Constituent Assembly itself, at later stages. A precise demand of this kind was more

⁸⁸ This, in fact, is a position that he takes post Poona Pact in the late 1930s and declares himself the leader of depressed classes. Even before that Ambedkar was skeptical towards the idea of Bahun as he held caste to be an obstacle in uniting different communities' politically: caste prevent people from following a leader from another caste even if the latter is much more superior. They tend to follow their own caste, even if he is not competent. Babasaheb Ambedkar Writing and Speeches (1928) Government of Maharashtra, Vol. 19, p. 388.

⁸⁹ Ambedkar experimented with many political possibilities starting from Indian Labour Party to siding with non-Brahmin leaders before he founded the Scheduled Castes Federation when he declared himself to be the leader, exclusively of the Scheduled Castes. However later on, Ambedkar upon the insistence of Ram Manohar Lohia, was ready to consider a dalit-OBC unity but with the sudden death of Ambedkar in December 1956, it never became reality and the dialogue between Ambedkar and Lohia ended without any attempt to execute the idea.

appropriately raised by Punjab Rao Deshmukh,⁹⁰ who on many earlier occasions had shown his concern for the welfare of the OBCs. And when it became clear that the idea of reservations was restricted to SCs and STs, he made an attempt to include OBCs in such definition. When draft Articles 286 (Functions of Public Service Commission's), 296 (Claims of Minority Communities to services and posts) and 299 (Special officers for minorities) were proposed for discussion, amendments were proposed to include the OBCs here along with SCs and STs. The debate on the draft articles 286, 296 and 299 then laid the ground for carving out exclusive policies for only SCs and STs, where extensive arguments were made by different members to restrict quota only to SCs/STs.

⁹¹ The support of upper caste members in assembly for Scheduled Castes was very much in line with the Indian National Congress's policy. This position on issue of reservation also proved politically very sound for at least the Congress party. Indeed this clientalistic approach continued even after independence and transformed into the making of a successful electoral strategy for Congress Party.⁹²

Genesis of Article 340 and the Unfinished Agenda of OBCs Empowerment

Article 340, based on which two Backward Classes Commissions were set up at the national level,⁹³ which ultimately resulted in the extension of reservation for OBCs in the

⁹⁰ Punjab Rao Deshmukh became the first president of All- India Backward Class Federation Jan 26 1950.

⁹¹ See for instance, Hirday Nath Kunzru, CAD Vol. VII, p.680; Ari Bahadur- Gurung, CAD Vol. VII, p.685; R M Nalavade (Bombay) at CAD Vol. VII, p.686; and Dharam Prakash, CAD Vol. VII, p.687.

⁹² This relation that Congress developed with Scheduled castes has been termed by Paul Brass as 'coalition of extreme' in Paul Brass, 'The Politicisation of the Peasantry in a North Indian State- Part II', Journal of Peasant Studies, vol.8, no. 1 October 1980, pp.3-36.

⁹³ The First Backward Classes Commission, constituted in 1953, headed by Kaka Kalekar and the Second Backward Classes Commission, constituted in 1978, headed by Bindeswari Prasad Mandal. It may be noted that between the two, we had a plethora of such commissions constituted by the various State Governments for effecting reservations in State Government jobs addressed such questions as the relationship between caste and social classes and backwardness, the criteria for ascertaining backwardness and all these in relation to the Constitution. These will be discussed in elaborate detail in the next chapter.

Central Government jobs, indirectly provided for the much needed OBC mobilization in the late 1980s. This Article forms the premise for deciding who were the backward classes and how to identify them. In addition, it lays the foundation for affirmative action in favour of the 'Socially and Educationally Backward Classes' (SEBCs) by the state.

Notwithstanding the complexities involved in this categorization, it is interesting to note that there wasn't much of a debate over the inclusion of this Article in the constituent assembly. It could be because the language used in this made it mere pious declaration rather than an enforceable right. Also, unlike Article 16(4), which directs the state to ensure reservation, Article 340 was only about setting up a commission and that too if the President thinks so. This was clear from the language used in the Article. It read:

The President *may* by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

Now as discussed in the previous section, the issue of reservation, of any kind, was left to be decided by the Sub-Committee on minority rights. After the discussion and drawing from memorandum, and replies received to a questionnaire submitted to different members it was decided upon to discuss the following four items:

- (1) Representation in Legislatures; joint versus separate electorates and weightage;
- (2) Reservation of seats in the Cabinet
- (3) Reservation in services;

- (4) Administrative machinery to ensure protection of minority rights (party covered by making certain fundamental rights justiciable)⁹⁴

Starting from the debate on the Objective Resolution, the issue of representation in legislatures and reservation in the cabinets involved only the SCs, STs and religious and political minorities. It was only in the reservation in services, where there was a scope for OBCs, that the concerns of this category of citizens were discussed and this too happened in the later stages of constituent assembly debates. The debates were centered on the four items and proposals were put forward by different members. In this, Munshi made a proposal that "there should be a provision for the setting up of a statutory commission to investigate the conditions of the socially and educationally backward classes, to study the difficulties under which they labored and to recommend to the Union or the unit Government, as the case may be, the steps that should be taken to eliminate these difficulties and the financial grants that should be given and the conditions that should be prescribed for such grants."⁹⁵ This proposal was accepted by the sub-committee, as it was, and this more or less formed the basis for Article 340. However, when introduced in the house, there was still some confusion on the point as to whether such definition will include term 'minority' too.

Even though this article is seen as specific to the demands of the OBCs, such clarity was not there when it was introduced; the consensus was that it will be a general article that is supposed to take care of any minority that was backward.⁹⁶ Finally this article was included, as proposed by Munshi, in the section on Working of Safeguards,

⁹⁴ Shiva Rao Vol. 2. p.392.

⁹⁵ Shiva Rao Vol. 2. p. 400.

⁹⁶ While submitting the report on minority committee Sardar Patel states that as a fundamental duty of the state to take special steps to bring up those minority which are backward and for that reason such clause is included. It is clear from his argument that class when used their included minority and the term was not restricted to SCs, STs and backward classes.

where though the term backward classes, it was used to include both the minorities and certain classes. Any clarity was gained only in later stages as the constituent assembly decided to restrict the reservation only to backward classes.

The draft constitution, thus prepared by Ambedkar, came to be adopted and the issue of the appointment of a Commission to investigate the condition of the backward classes was kept in Article 301, in the section of special provisions for minority. The Article read as follows:

- (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given, and the order appointing such Commission shall define the procedure to be followed by the Commission.
- (2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they proper.
- (3) The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before parliament.⁹⁷

Pandit Thakur Das Bhargava stressed that Article 301 is one of the most important provisions of the constitution. He said, ``left to myself, I would call it the soul of the Constitution...there are backward classes some of whom have had reservation given to them so far as representation is concerned, but the other classes have not been given such reservations but they are equally backward.’’⁹⁸ This support was to do with

⁹⁷ Shiva Rao, Vol. 3, p.633-34.

⁹⁸ CAD Vol. VIII p.946.

fact that it was a toothless article, unless legislature used it as a tool to take forward the agenda of social justice.⁹⁹

However, a final attempt to elaborate the definition of Article 340 (which was Article 301 in the draft) came from P.S Deshmukh. He proposed an amendment for introducing a new article 340 (a) making it binding on each and every state to come up with a list of such backward castes. It read as follow:

- (1) The President may after consultation with the Governor or Rajparmukh of a State, by public notification, specify the castes, communities or parts of, or groups within castes or communities which shall, for the purposes of this constitution, be deemed to be Backward Classes in relation to that State.
- (2) The Parliament may, by law, include in or exclude from the list of Backward Classes, specified in a notification, issued under clause (1) any caste or community or part of or group within any caste or community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

This amendment was not even debated and it was withdrawn subsequently because there was hardly any support for it. Moreover, this was when the members in the Constituent Assembly had run out of enthusiasm for such intense debates that marked the early days of the assembly and instead they seemed to be in a hurry to adopt the Constitution. But, in fact, the principles enunciated in these clauses come very close to the role that has now been assigned to the National Commission for Backward Classes.¹⁰⁰

Ultimately, Article 340 was adopted leaving it to the president and effectively in the hands of the party enjoying a majority in Parliament to decide even as to decide on the setting up of a Commission to study the conditions of the backward classes. So, rather

⁹⁹ This support from Pandit Bhargava was surprising as from the start he was against the idea of reservation. In later stages of assembly he moved an amendment proposing deletion of clause that granted reservation in services.

¹⁰⁰ It was one of the recommendations of Mandal Commission to setup a National Commission for Backward Classes that will maintain list of backward classes at both state and central level.

than making it enforceable, as done in the case of SCs and STs, reservation for the OBCs in government jobs was left to remain a pious wish. Their condition might have been little better than the SCs but they also needed some special measures and by denying this, the members of the Constituent Assembly were still sticking to the logic that the exclusion of the depressed classes was the only sin that Indian society had committed. This, in turn, helped in establishing the hegemony of the idea that any extension of reservation to the OBCs will be unfair and will be against the right to equality. This understanding, among the upper castes, whose dominant presence in the media and the other articulate sections of society was pronounced, was one of the reasons why the Mandal Commission's recommendations, when implemented, was met with violent protests. The understanding so created at the national level was that untouchability is a sin and any reservation has to be restricted to the SCs and the STs. Article 340 of the Constitution was so worded, that it had to derive its strength more from the political process rather than from the constitution itself.

Debate on reservation in services and treatment of OBCs

Reservation in services was one issues where the argument for and against were based on the consideration as to whether it was secular or communal and claims and counter claims were posed by members representing different groups and community. The arguments used during the course of debate, both in favor and against the reservation, have since then become folklore and are repeated to this day.¹⁰¹ In addition, this matter held a historical importance for the backward classes. As it raised the question of

¹⁰¹ The reluctance of the upper castes to provide reservation, by diluting the principle of merit, is on the basis that it affects efficiency. These were, in fact, central to the slogans and arguments against the Mandal Commission Report in the 1990s and even today.

Brahmin monopoly in services, the political consciousness for reservation in services was generated, primarily among the elite sections among lower castes and provided the impetus for backward caste mobilization in Madras, Mysore, and Bombay which was later on replicated in other parts of India.

Even though, it concerned the elite among the lower castes, in the beginning, it was not just about getting a few posts for their concerned community.¹⁰² The idea was to change the power structure that for too long was tilted in favour of the upper castes and administrative jobs became an important tool to bring that change.¹⁰³ It also had to do with the fact that there was already an elite section among the backward classes that had benefited from the British policies of representation and reservation. It was also linked directly to the access to political power.

Such a mobilization, indeed, was also necessary to create more heterogeneity in the administrative structure given the fact that representation in the middle and higher echelons of the administration enhanced the esteem and prestige of a community as such. Not to gloss over the fact that corruption and monopoly created by this institution was also a source of oppression. This was one concern that was highlighted by many members in the Constituent Assembly. Thus, administrative services became the institution from where power was wielded by the upper castes to further oppress the

¹⁰² In fact, the system of reservation that was first introduced in princely state of Mysore and Kohlapur and extended to Madras and Bombay. This was further popularized by Periyar who went on to quit Congress party over such issue. In fact for Ambedkar bureaucracy was the way one way to access power and become the governing community. This issue has been dealt in greater detail in previous Chapter.

¹⁰³ This was one of the arguments that were popularized during Mandal politics by V.P Singh and others. While defending his decision of implementing Mandal commission recommendation he logically argued that if equality has indeed to be realized then we have to ensure equality of results and take concrete measures for the same. Mere provision in the Constitution that we are equal does not make everyone equal. Till power is shared unequally inequality will remain. See V.P Singh, 'Affirmative Action in India, Mainstream, XXXIV (24), 1996, p.11.

lower castes.¹⁰⁴ The other argument put forward, mainly by members of the Indian National Congress, was about the need to maintain the efficiency in administration that for them was the backbone of the nation. They were opposed to any kind of reservation in these services by diluting merit.¹⁰⁵ It was during the course of these debates that Deshmukh proposed the idea of providing reservation on the basis of population; proportional representation in services, in other words.

The debate that followed highlighted the general view of the assembly on the issue of reservation and especially its extension to the OBCs. And in this, the dominant view was that such reservations will lead to the dilution in efficiency and merit; this, in fact, also found resonance in the media, among the intellectuals and most importantly among the upper caste members in the Assembly.

The discourse is angled on these two contradictory views that came up during the debates on draft article 286, 296 and 299.

The draft Article 286, on Public Service Commission was worded more or less similar to the provisions of the Government of India Act, 1935. The policy providing for reservation to various communities was reproduced in clause (4) of Article 286. It read: ``Nothing in this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Union or a State.``¹⁰⁶

¹⁰⁴ Such points regarding the corruption that has crippled in administration and how they are used to subjugate masses were raised by Phool Singh, CAD Vol. IX, p.615 and Yashwant Rai, CAD Vol. IX, p.619.

¹⁰⁵ This was in fact more less party line to oppose any kind of reservation in Public services. However later on it was accepted in case of SCs and STs.

¹⁰⁶ Shiva Rao Vol. 3, p. 629.

To this, an amendment was proposed by Ambedkar, making clause (4) in continuance to Article 10(3) of draft constitution. It read:

Nothing in clause (3)¹⁰⁷ of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class citizens in the Union or a State.¹⁰⁸

Further, to this amendment, Deshmukh proposed two major amendments. One was about changing the language of clause (3) by substituting the word 'shall' with 'may'. Deshmukh feared that if in clause (3) the word 'shall' is used, then the Public Service Commission will deny reservation to backward caste candidates. He argued that there would be very little latitude left for the Governments of the various States as well as to Parliament to vary the terms and conditions of recruitment to Public Services.¹⁰⁹ Deshmukh's second amendment to Ambedkar's amendment was to insert a new clause to be numbered as clause (5). This proposal followed the formula that was applied by Madras Government in Communal G.O. of 1927 and 1947, where various communities were given quota in accordance with their population. It read as follows:

Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments are made and posts are reserved for purposes of giving representation to various classes according to their numbers in the Union or a State.¹¹⁰

The philosophy behind the amendment was to make sure that all classes and communities get a fair representation in services. In this regard, he argued:

The Backward Classes are likely to be defined in a very limited and restricted manner; it is not the claim of only Scheduled Castes that they are backward, it is not the tribal people alone who should

¹⁰⁷ The clause (3) provided for consultation of Union Public Service Commission or the State Public Service Commission on issues relating to post and services to which clause (4) was an exception. See CAD Vol. IX, p.597.

¹⁰⁸ CAD, Vol. IX, p.598.

¹⁰⁹ Ibid. p.600.

¹¹⁰ Ibid. p.603.

be considered backward; there are millions of others who are more backward than these and there is no rule nor nay room so far as these classes are concerned.¹¹¹

This apprehension, infact, was proved right in Independent India as no reservation was guaranteed to the OBCs in services and the only beneficiaries were the SCs and the STs.

To these pro-reservation ideas of Deshmukh some contradicting arguments were placed by the members opposing reservation; these were based on the rationale of merit and efficiency in administrative posts and services.¹¹² Deshmukh held out that such premises were most unfortunate. He held out:

People's capacities cannot be measured by mere passing of examinations or obtaining highest possible marks. But those communities, who had the advantage of English education, because they were prepared to be more servile than the rest, think it is a preserve of theirs, and whenever anybody gets up and speaks on behalf of the millions who have had no chances of education, they consider it as a threat to their monopoly.¹¹³

Notwithstanding this, members regarded such measures as communal and a threat to the nation. Among them was R.K. Shidva (Central Province & Berar) who labored hard to brand these articles as a replication of the colonial policies.¹¹⁴ So any demand that was not in conformity with that of the Indian National Congress was rejected.¹¹⁵ One such view that was held out as a 'consensus' was a notion of secularism that premised a

¹¹¹ CAD, Vol. IX, p.604.

¹¹² To this Nazirudin Ahmed argued that the special treatment which I would suggest would be that with regard to those classes some minimum standard of efficiency should be laid down for a job, because we cannot demoralize the efficiency of the public services. See, CAD, Vol. IX, p.606.

¹¹³ Ibid. p.601.

¹¹⁴ He said that it is high time that we do away with such representation. It is obvious in that in that case we would shift the centre and focus of our loyalty and allegiance. It would shift from that to the nation as a whole, to loyalty and allegiance to the interests of group or a class or caste. Our allegiance to the nation would become only secondary. See CAD Vol. IX, pp.622-23

¹¹⁵ In this Nigam argues that constituent assembly debates worked in certain codes. Rochana Bajpai uses the term vocabularies to explain a somewhat similar concept

homogenous idea of a nation.¹¹⁶ Deshmukh did respond to this with equally strong remarks that such an approach was only leading to the imposition of the will of one community. He pointed out that ``even today in the whole department of education there is hardly a person belonging to any other community except one particular community. There are departments after departments where ninety per cent and more of the incumbents come from a specific community.’’¹¹⁷

Supporting Deshmukh, Phool Singh (United Province), came out with an interesting and strong argument in favour of reservation to the backward classes. He said:

Much has been made of merit in this case; but equal merit pre-supposes equal opportunity, and I think it goes without saying that the toiling masses are denied all those opportunities which a few literate people, living in big cities enjoy... this cry, this bogey of merit and fair-play is being raised by those who are in an advantageous position and who stand to suffer if others also come into the picture... it is not the question of competition. If you want to run the country, properly, if the administration is to be efficient as my friends want it to be, then you must have people in the job who know something about the job and who come from masses.¹¹⁸

In the end, the amendment proposed by Ambedkar was accepted as it was, arguments by Deshmukh were rejected and the draft article 286, as amended, was adopted to be renumbered as Article 320.

However, despite the fact that Deshmukh’s amendment was rejected, his disagreement with other members on the idea where reservation is denied on the logic of merit and efficiency is a great contribution. Now, a careful reading of the debates also show that the discourse generated different meanings to such concepts as equality, secularism, etc., in the context of reservation in case of OBCs. In this process, some ideas were given the dominant status, whilst other alternative discourses were

¹¹⁶ For few it also meant not to raise any demands that will divide Indian society especially Hindu society as was one in British time after Montague Chelmsford reform and later on by the Government of India Act.

¹¹⁷ CAD, Vol. IX, p.603.

¹¹⁸ Ibid. p.616.

marginalized and subjugated. Having said that, such discourses in the assembly were not always one sided; they also offered the sites where hegemonic practices came to be contested, challenged, and resisted.¹¹⁹ It must be stressed here that it was, partly, because of these interventions that when again this article was debated few changes were made making it more continuous with clause (4) of Article 16.

During the second reading of draft constitution, this question came up again in the context of Article 320. And T.T. Krishnamachari proposed an amendment at this stage. It reads:

Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335.¹²⁰

Straightaway this amendment was opposed by Deshmukh and he further demanded the addition of the words `backward classes' in Article 335. He said that it will be very curious because in Article 16(4) we have the word backward classes whereas in Article 335 there is no mention of backward class; we have only two groups -- the Scheduled Castes and Scheduled Tribes. "It would be absolutely incongruent and inconsistent he stressed."¹²¹ This, in fact, was a logical argument as Article 335 provided a guarantee for reservation in posts and services and not using the term backward classes in such an important Article ought to be challenged.

¹¹⁹ This discourse than should be seen in continuance with the colonial practices of legitimizing and delegitimizing reservation in the interest of united nation. In this Foucault specifically looked at the social construction of madness, punishment and sexuality. See M Foucault, Politics and the Study of Discourse in the Foucault Effects: Studies in Governmentality ed. Graham Burchell (1991), Collin Gordon and Peter Miller, Chicago: University of Chicago Press, 53-72.

¹²⁰ CAD, Vol. XI, p.547. The article 335 dealt with the claims of SCs and STs in services and posts.

¹²¹ Ibid. p.547.

In reply, Krishnamachari argued:

I may mention that 16(4) is an enabling provision in regard to special representation for backward classes. 335 is an enabling provision in regard to taking into consideration of the claims of Scheduled Tribes and Scheduled Castes. These two enabling provisions are brought together in this particular clause.¹²²

This appeared a noble thought and the Assembly rejected Deshmukh's contentions again. Thus, whereas in case of SCs and STs a constitutional guarantee was given in Article 335, the same was denied to the OBCs. Deshmukh was so agitated that he argued again:

If backward classes was to include not only Scheduled Castes as well as the economically and educationally backward other castes, and if you are now going to exclude the backward classes simply because they have not formed themselves into one group or agitated I have nothing to say; but if you are going to drive them to that situation I do not think it will be good for the nation or for you.¹²³

Having raised his demands consistently in favour of the OBCs and his views having been rejected consistently by the stubborn members of drafting committee, this time Deshmukh withdrew his amendment.

A look at the data in the following table (Table 2.1) clearly shows that what Deshmukh and such others apprehended over the issue OBCs reservation in services and posts were not mere visceral reactions.

Table 2.1

Caste wise breakup of the Hindu Members of the Constituent Assembly

Caste	No. of representatives
Brahmans	56
Kayasthas	15
Banias	09

¹²² Ibid. p.548.

¹²³ CAD, Vol. XI, p.548.

Rajputs, etc.	11
Marathas	03
Reddys	03
Others	02

Source: Yadav, K. and Singh Rajbir (1994), *India's Unequal Citizens: A Study of Other Backward Classes*. New Delhi: Manohar Publication, 36-37

The dominance of the Brahmins in the assembly must have raised these doubts as to how such an assembly will take care of the claims of the OBCs and was it wise to leave them to determine the future of the nation on a matter of such critical importance. The independent Indian state was bound to be dominated by the upper caste elite and hence the imperative for reservation on caste basis. Inequality in the economic and political realms, after all, flows out of social inequality in the situation that prevailed in our society. It must be added, however, that there were non-OBC members too who raised the concerns of the OBCs in the assembly.

The discussion, meanwhile, ended abruptly when the Chairman, Dr. Rajendra Prasad, applied the guillotine and the final draft of the Constitution included the Backward Classes too along with the Scheduled Castes and Scheduled Tribes in Article 320, which read as follows

- (3) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.¹²⁴

This drive of creating exclusive rights for the SCs and the STs went one step further with an amendment to Article 296 and 299 of the draft constitution. These articles have previously dealt with the claims of the minorities in services and appointment of a

¹²⁴ See Article 320(4) of the Constitution.

special officer for the minority; it was further amended to specify only the SCs and the STs only. In this, attempts made by some members to be included the concerns of the OBCs was rejected with the argument that Article 16(4) already gives the provision for reservation for backward classes and the question as to who all constituted such classes will be defined under Article 340. This argument was repeated so many times that all arguments in favour of including the OBCs was silenced, if not brutally, but then systematically. In fact, many amendments proposed by Deshmukh were withdrawn for the same reasons.

In this, the original Article 296 of the draft constitution dealt with the claims of the minorities in posts and services. Ambedkar proposed an amendment to Article 296, which read:

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.¹²⁵

A major controversy erupted to this amendment. The first and foremost objection was raised on behalf of the minorities, a category now excluded from the ambit of reservation as a whole.¹²⁶ To this objection, Munshi's reply was very clear that there was no question of providing safeguards for any religious minority. The negotiations proceeded on the footing that except the backward classes, who are economically and socially backward, and the Scheduled Castes and the Scheduled Tribes have a special

¹²⁵ CAD, Vol. X, p.229.

¹²⁶ These guarantees were restricted to only SCs and STs excluding the minority from original clause. As far as minority are concerned partition played an important role and other the idea of secularism was more acceptable where reservation for minority had little or no acceptance. It also important to see that who proposed these amendments, as the discourse was controlled by few and any variant to these ideas was rejected. Rochan Bajpai, *Constituent Assembly Debates and Minority Rights*, Economic and Political Weekly, XXXV (21-2), 27 May 2000, pp. 1837-45.

claim of their own and that no other minority should be recognized in the Constitution.¹²⁷ This interpretation of the backward classes was on a faulty basis in that it saw backwardness only within the Hindu community and the distinctions within the religious minorities was overlooked. This issue was taken up by members of the minority community (few in numbers after the Muslim League had walked out of the Assembly even at the outset) and consisted only of the Sikh community. Such members, however, went at length to explain the distinctions within the religious minorities. These, however, were summarily ignored.¹²⁸

Secondly some members thought that because Article 16(4) uses the term backward classes, which again includes not only the SCs and the STs but also the OBCs, and they expected that the term backward classes ought to be included in this Article too. In this, the concerns of the OBCs were best articulated by Guptanath Singh (Bihar) who proposed an amendment to the amendment proposed by Ambedkar to Article 296. It read:

In the proposed Article 296, for the words ‘The claims of the members of the Scheduled Castes and the Scheduled Tribes the words The claims of members of the Scheduled Castes, the Scheduled Tribes and such other caste who are educationally and socially backward be substituted.¹²⁹

¹²⁷ CAD, Vol. X, p.261.

¹²⁸ In this Hukum Singh stated: “I do not grudge this special care of state being directed toward the Scheduled. Rather, I would support even greater concessions being given and more attention being paid to backward classes. My only object is that there should be no discrimination. That is not the intention of the article either. But, as I have said, so far the SCs have been understood by general masses to exclude the members of the same castes professing Sikh religion. We should be particular in guaranteeing against any misconstruction being placed or any discrimination being exercised by those who would be responsible for actual working of it. Under the present article, it is the ‘educational and economic interests’ that are to be promoted and therefore it should be made clear that it is to be done for all backward classes, and not for persons professing this or that particular religion or belief.” See CAD, Vol. X, p.235.

¹²⁹ CAD, Vol. X, p.240.

He made it clear to which class of people this reservation was addressed to, that is the agricultural, pastoral or artisan classes, which he highlighted do 'not belong to Scheduled Caste or Scheduled Tribes but were equally backward.¹³⁰

Another amendment to this article was proposed by Barjeshwar Prasad (from Bihar) asking to address the claims of the backward classes other than the SCs and the STs. He proposed that a new clause be added to Article 296 that:

The provisions in clause (2) of this article shall apply in relation to such other Backward Classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and Tribes.¹³¹

However it was idle to expect that these changes will be made in the Article given the fact that the views of the house or the members of drafting committee had already been made up: That the constitution is not going to guarantee reservation to any class or caste except for the SCs and the STs.¹³² Later on, H.V. Kamath (a Congress member leaning towards the Socialists) explored this issue by saying there is no doubt over the apprehensions among the backward classes. However nothing new was offered and the same arguments were repeated that it will be the duty of the state and President to identify such backward classes in accordance with Article 340. The prevailing sense was that:

This is not a mere directive principle of state policy; this is in chapter III on Fundamental Rights. When this is guaranteed to them, no backward class of citizens need to be apprehensive. If there is no representation for them in the services they can take the Government to task on that account. I think this would be an adequate safeguard for them so far as their share in the services is concerned.¹³³

¹³⁰ Ibid. p.242.

¹³¹ Ibid. p.237.

¹³² In this R.K. Shidva argued that any reservation beyond SCs and STs is unacceptable. See CAD, Vol. X, pp. 244-5.

¹³³ CAD, Vol. X, p.245.

In the end, all the amendments against Ambedkar's draft were rejected and the draft Article 296 was adopted, renumbered as Article 335.

The last article where the issue of backward classes came to be debated was Article 299 of the draft constitution. The article, as in the draft constitution, was about special officers for minorities for the Union and the States. An amendment to this was proposed by K.M. Munshi, which read as follows:

- (1) There shall be a Special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.
- (3) In this article, references to the Scheduled Castes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 301, by order specify and also to the Anglo-Indian community¹³⁴.

Surprisingly, the backward classes found mention in this Article. One reason might have been to argue that now reservation is only for backward classes and minorities are being kept out. This article dealt with the administrative machinery to be put in place for the protection of the political rights that were guaranteed to the backward classes. But the fact that a similar change were not made in draft article 296 made it almost irrelevant. Again, this article comes into force only when such measures are provided to the OBCs and no such commitment was made in case of OBCs elsewhere in the Constitution.

It meant two things: Either that the framers of the Constitution were confused about who were the OBCs and that this confusion will be cleared after the formation of the Government under the Constitution; or that they thought that unlike the SCs and the STs,

¹³⁴ Ibid. p.251.

the OBCs do not suffer social injustice and if in future, the President thinks so, he can constitute a backward classes commission that will investigate the condition of the socially and educationally backward classes and seek measures to ameliorate their conditions. In fact, the second logic is further extended by saying that the OBCs are advanced and are actually a majority, constituting more than 50% of the population and so it is not logical to give reservation to such a large majority.

Even though this article was just about creating some institutions that will look into matters related to issue of SCs and STs and also the backward classes that were supposed to be defined by President, it created an uproar in the Constituent Assembly. The first one to oppose this idea, that in any case was minimal and merely administrative in nature, was Thakur Bhagwan Das, who in earlier debates had held Article 340 as the soul of Indian constitution; however, in the present instance, he opposed any mention of the OBCs. His argument was repetitive and in conformity with that put forward by many Congress members that the Scheduled Castes and the Scheduled Tribes must be given more rights than the backward classes as they are more backward.¹³⁵

Soon R.K. Shidva joined him and argued that he too was against the term backward classes used perpetually in the Constitution. ``The sooner we do away with this, the better for our country, the better for our position in world. Beyond Scheduled Castes and Scheduled Tribes, I do not want any kind of reservation for anybody. If there is any class which feels that their interest have not been justly represented in the services, they should go to the proper and find remedies,`` he argued.¹³⁶

¹³⁵ CAD Vol. X, p.548.

¹³⁶ CAD, Vol. X, p.254.

To assure these members that this article is not a justiciable right but again just a pious wish, he argued that the safeguards contemplated in Article 299 are not fundamental rights which are attached to every citizen. They are only 'safeguards', safeguards meaning political safeguards for the protection of certain well defined sections of the citizens.¹³⁷ It is clear, from these, that this article was to be applicable only to those classes which are guaranteed some sort of rights. So automatically OBCs were out of any reckoning.

The fact is that these provisions remained non-functional until the implementation of the Report of the Second Backward Classes Commission (The Mandal Commission) in August 1990. Although the category of OBCs were carried into the Constitution since its mention in the Objective Resolution, the issue of special privileges for the OBCs was not clearly placed anywhere in the Constitution. Though Congress members agreed on certain measures for the SCs, the same was not the case for the OBCs. Infact, the use of the expression 'backward,' to some, sounded un-modern and an admission of a blot on the nation! They were willing only to keep open an effort to define backwardness. In this case, the SCs and the STs were clearly defined, thanks to the British introducing such categories in the decennial census since 1881, leaving only the OBCs to be defined; and the Constitution, spelt out the framework in this regard as based on social and educational backwardness.

In the end it is important to highlight that in a hierarchical system of caste there was no denial of the fact that the Dalit suffered the most not only in the hands of the upper castes but sometimes, also, at the hands of the OBCs. But this cannot be the basis

¹³⁷ Ibid. p.261.

to argue against the fact that the OBCs too were victims of the same caste system; they were, indeed, exploited in the economic and social sense of the term. So, the opportunity that the state has to offer to the citizens was so to be distributed that OBCs also get their due share. Any exploitation, if left uncured, just because of the fact that something more severe exists goes against the idea of justice.

Deshmukh's speech, during the third reading of constitution, sums up the disappointment of the OBCs with the kind of solution that they were given. He said:

It is enough to say that the people, who are known as the backward communities of India, have not been treated fairly as I would have liked them to be. There would have been no harm if my suggestions in this respect were accepted, but if it was not found acceptable for incorporation in the Constitution, I hope the sympathetic attitude which may pass hereafter or the policies we may pursue.¹³⁸

However, no such government came that showed the sympathetic attitude towards the OBCs or even had the character to implement the policies that were there in constitution. The answer to this puzzle was finally carved out of the constitutional limit and in the political aspiration of the Socialist Party (that was formed out of the Congress Socialist Party in 1948) that made OBC reservation possible in the long run.

This historical reality clearly established that there is no equality in society and that social inequality cannot be eradicated by just introducing a general provision on equality in constitution. The resources have to be equally distributed and to undo discrimination there must be positive discrimination in favour of certain classes. The attempt was to also highlight the hierarchical nature of the Indian society and oppression faced not only by the SCs but by the OBCs too, especially in services which were crowded by the Brahmins. This was not to be achieved communally but by making sure

¹³⁸ CAD, Vol. XI, p.778.

that the OBCs, who constitute 52% of the population got their due in services according to their population.

Conclusion

The one achievement of our Constitution, adopted on November 26, 1949, was that it clearly provided for positive discrimination for the OBCs as much as it did for the SCs and the STs. In principle, it promised to provide both equality and justice to those sections of people who have suffered due to the caste system. But in practice, the language of the very Article 16(4) read along with Article 340, proved a problem in case of OBCs. Article 340, that was supposed to clear the ambiguity on the issue of backward classes, itself proved a problem. The interpretation of the Article was bound by the clutches of the legislature, which rather than accepting the miseries of OBCs were denying such a reality, and this process continued at the national level till the early 1990s.

This argument is supported by the fact that Congress regime was almost non-responsive to the Kaka Kalekar Commission Report and it took more than 40 years for the recognition of a certain section of the society as OBCs and to accept that they were kept backward. In this, three factors within the Indian National Congress played an important role: First that Jawaharlal Nehru believed in class rather than caste as the source of oppression and inequality.¹³⁹ Secondly, the understanding of a section within the Indian National Congress was affected by Gandhi's views and approach to untouchability and even while this issue connected to the depressed classes were seen important, the party then converted this understanding to suit a political project in the

¹³⁹ Nehru ideology that modernity will take care of social evils including caste system proved wrong as the major changes concerning OBCs arrived only with fall of Congress and with the rise of various social justice parties in the mid -70s and 80s.

context of electoral democracy and soon sought to develop a clientele relation. Thirdly, the right-wing within and outside Congress, committed to an idea of India based on Hindi-Hindu-Hindustani, was reluctant to give concessions to any caste except the Scheduled Castes.¹⁴⁰

Meanwhile, the approach of Ambedkar to the concerns of the OBCs within the Constituent Assembly, raises a point in this context. The one reason to doubt is the fact that he did not clearly demarcate the boundaries between the SCs and the OBCs in Article 16(4) and opted to leave it to the sweet will of the Legislature to decide who was backward as far as OBC goes.¹⁴¹ Even though the Constitution accepted the fact that there are certain classes other than the SCs and the STs that need some special privileges, the makers of the Constitution were hesitant to use caste as a criterion. So Article 340 held little or no relevance as long as the party in power held a different view than that. This, indeed, is what we saw happening in case of the OBCs; in other words, it required a Janata Party in 1977 to constitute the Second Backward Classes Commission and the Janata Dal in 1990 to implement its report. This reality, then made it imperative for the OBCs to find the solution to this problem by carving out a political space to ensure justice.

¹⁴⁰ The Hindu wing genuinely felt that an injustice has been done to untouchables and to eradicate this and for bringing back them to fold of Hindu religion it was important to provide reservation.

¹⁴¹ The one reason for not giving any clear cut reservation to OBCs was might be because there were very few pan Indian categories and the understanding of OBCs varied from local condition. Which Ambedkar himself acknowledges and therefore keeps local test for backwardness. But this was kept as a mere pious wish in the hands of legislature. However the same was not done in the case of SCs.

The other important issue before the Constituent Assembly was about the way the backward classes was placed in the various articles; of significance is the fact that this was based on different interpretation of the category in different articles. This led to confusion and created more problems for the OBCs since a lot was left to depend on the approach of the Indian National Congress; the confusion was confounded given the fact that the party was indeed a melting pot of individuals holding distinct and often conflicting views on the subject. In other words, the Congress was indeed a crucible of conflicting views insofar as the criteria to be used for identifying backwardness. Thus, notwithstanding the clarity in Article 340 – that backwardness shall be determined on the basis of social and educational status – the dominant sections within the Indian National Congress insisting on taking the economic status as criteria to suit the concept of class; this indeed was in sync with the views of the dominant sections of the intelligentsia at that time. Here was a consistent effort to divorce economic status from the social status and the task of pointing to the nexus between the two and more importantly to underscore that economic inequality flowed out of social inequality had to wait until the Mandal Commission submitted its report.

This fact and the hesitation to acknowledge the nexus and also to accept that economic inequality flowed out of social inequality was evident in the response of the Nehruvian regime to the recommendation of the Kaka Kalekar report. Indeed, it was true that Kalekar himself held out against caste being considered a criteria for identifying the backward classes through his dissenting note to the report. However, the trajectory since then with the various commissions in the different States since the Union Government rejected the report of the First Backward Classes Commission and left the States free to

pursue the course in any which way they chose and the judicial interventions in that trajectory clearly confirm what was apprehended in the Constituent Assembly. All these will be dealt with, elaborately, in the next chapter of this thesis.

For the concerns of this chapter, the point is that even though general policy in Constituent Assembly was to build a consensus over controversial issues, as Nehru himself sought while moving the objective resolution, the discourse on the OBCs question turned out to be dominated by the Indian National Congress' position and alternative ideas, if any were suppressed. In other words, the process of exclusion, insofar as the OBCs were concerned, was allowed to persist.¹⁴² Members like K.M Munshi forced their way and voices of the OBCs were silenced; it is also evident that those who did this resorted to place the SCs on a pedestal and held that central to all discussions on reservation in services. Another prominent aspect of the debate, especially on rights, was the foregrounding of the individual against those of a class of people or social groups. One of the pronounced realities of Indian society – where oppression was rooted in social contexts and the important role of caste identities in perpetuating such oppression was glossed over, particularly in the case of the backward castes. Interestingly, those who argued against the principle of social justice in this regard also invoked the view that such divisions on social lines were a legacy of the colonial policies. So any convention that was not in continuity with the argument of nationalist leaders was rejected as communal or adversary to the idea of nation building

¹⁴² This was reversed only when socialist leaders brought caste to the center of Indian politics.

The term backward class, in the end, meant so as to include the SCs and the STs constitutionally and any group except these so included has to go through the backwardness test automatically attaining the definition of OBCs. So the most apt definition of OBC will be that whosoever in the opinion of state is socially and educational backward. But not to give them any guarantee in such Articles as 335 and 320, as provided to the SCs and the STs, was again a gross injustice to the OBCs. Also the problem of seeing caste as something to do with only Hindu religion rather than widening the concept led to restricting the definition of backwardness.¹⁴³ The hesitation to accept that class exists because there is caste led the Congress to interpret backwardness merely on the basis of economic criteria.¹⁴⁴

This 'original sin,' so to say, led to a long wait and protracted legal battles before the nexus between social exclusion and economic deprivation was acknowledged. Notwithstanding this, Article 16(4), providing for reservation in public employment for backward classes and the specific mention there of the 'Other Backward Classes' did lay the basis for reservation to the backward caste in services, even if that had to wait for many decades.

¹⁴³ Any clarity on this issue came only after Mandal Commission and later on with Indra Sawhney vs. Union of India where backwardness within minority was also kept under the understanding of Article 16(4). This issue will be dealt in upcoming chapters.

¹⁴⁴ In Triloki Nath Vs. State of Jammu & Kashmir (SCR 103A 1960 SCI, 1969) the court held that "In its ordinary connotation the expression 'class' means a homogenous section of the people grouped together because of certain likenesses or common traits, and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race religion and the like". Later on in Indra vs. Sawhney Union of India the Hon'ble Supreme Court has clarified that a "caste" may constitute a "class". That is how the SCs/STs/OBCs have been treated as a "class" which has further been considered as "Backward" and reservation provided under Article 16(4).

Of importance here, from the scope of this thesis, is that fact that the making of the independent Indian National State was not left to the confines of the Constitution. Instead, there is an intricate relationship between the electoral politics and the interpretation of the constitution; and the experience has been that the constitutional guarantees have not been free from the pulls and the pressures in the popular domain, especially in the context of the universal adult franchise and a Parliamentary Democracy that the Constitution put in place. This was particularly a fact insofar as the agenda of social justice was concerned. From an approach that held caste based reservation as *un-secular* and *un-modern* and the summary rejection of all arguments for caste based reservation in services to the OBCs on these grounds, the Republic has now moved to a stage where such arguments, even if heard, are no longer dominant in the political discourse. In the process, social justice of an Indian variety, different from the *Rawlsian* approach to it (which perhaps dominated the thinking at the time of drafting the Constitution), was brought into place.¹⁴⁵

¹⁴⁵ It must be noted here that John Rawls had put forth his Theory of Justice only in 1971 and this was more than a couple of decades after our Constitution was drafted. However, it is accepted among scholars that The *Rawlsian* theory of justice is rooted in the principles of Immanuel Kant's philosophy and that the Indian Constitution, as did such law in the post-war period were rooted in *Kantian* principles of justice.

CHAPTER III

Quest for Equality: Legislative and Judicial trajectory of OBCs

“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.” Anatole France (1894)

It is apt to begin this inquiry by posing an important question as to what extent did the idea of equality penetrate into the judiciary and legislature post-independence; for these, indeed, were the two important institutions where equality in relation to the policies of preferential treatment was debated. More importantly, what form of equality did the nation devise for its citizens and the process it followed to achieve it¹. Perhaps, these matters were best debated in the events that followed after V.P Singh, then Prime Minister, declared to implement the Mandal Commission report in August 1990. It was fascinating to see how the debate on equality, which by far had remained limited to the judicial interpretation and to the report of the enquiry commission, reached the public domain and altered the dominant narrative of the nation in relation to equality. More importantly, events surrounding Mandal created a platform from where the idea of the nation was contested, where on one hand the upper caste elite was trying hard to maintain the status quo and on the other backward classes (castes) were firm to break the

¹ This chapter reflects on two important themes of equality that were evoked as the reservation was debated in the independent India a) longstanding culture of declaring everyone equal (formal equality) and b) the creation of equality in relation to the idea of justice- as fair distribution of resources that demanded some form of ameliorative actions (substantive equality). These two different blocks of understanding flourished from two distinct events in post-colonial India- Karachi resolution and Poona Pact (1932). While Karachi resolution was a mere declaration for equality and guarantee on fundamental rights for every Indian citizen. The agreement of Poona pact between Gandhi and Ambedkar was the point where themes on equality were refashioned and extended further to achieve the idea of social justice by including the principle of positive discrimination. These conflicts are already dealt with some details in Chapter 2 and this exercise will be continued in the present chapter.

monopoly, in a contest where both sides claimed their action to be legitimate and necessary to uphold the principle of equality. The whole point of discussion is that can equality just stay as a means of assurance or does it warrant considerations or the recognition of differences and equitable treatment of those differences.

The above statement is an important tool to trace the post- colonial history of OBCs and the idea of social justice as it evolved over the four decades until the partial implementation of the Mandal Commission Report in August 1990 and the Supreme Court upholding it, with some qualification, in 1992 in the Indra Sawhney case.

Equality, Caste and Positive discrimination

As discussed in Chapter 2 of this thesis, the constituent assembly debates had achieved clarity over the fact that the policy of positive discrimination is an important instrument to create equality in services and educational institution. This is clear with a reading of Articles 16(4) and 15(4), both of which were added by the Constitution (First Amendment) Act, 1951.² So, what prevented the Indian state from implementing these constitutional rights, which so clearly acknowledged the fact that the OBCs have been excluded historically from laying claim towards the resources?

This anomaly or as some may call it injustice was the outcome of an embargo, imposed by dominant sections within the assembly, over invoking the category of caste while debating policies of preferential treatment. This in turn was made possible through persistent vocabularies of Nehruvian secularism, socialism, and modernity that harboured

² It is necessary to consider the Constitution (First Amendment) Act, 1951 as essentially a creature of the Constituent Assembly given that the amendment was carried out by the assembly (and did not wait for the First Lok Sabha to be elected) and the amendment was passed on June 2, 1951.

certain strategies of exclusion and selection³. The above-mentioned themes created a secular- Indian subject that was set free from the group- based identities. This indeed was a utopian state that never existed in reality; however the rhetoric of secular- citizen was legitimately built in the post-colonial India, which conveniently excluded subaltern identities, caste being one of them. Therefore far from abolishing social imbalances, such strategies sought to render these imbalances invisible⁴.

As for instance, both Articles 16(4) and 15(4) were kept there in the Indian constitution to address the social imbalances created by the discrimination based on the caste. Ideally, this would have meant that caste (status) as a category was temporarily recognized to address the historical discrimination faced by the OBCs. However, since such a classification was in conflict with the idea of secular- citizen/subject, the Indian state declined to extend reservation to OBCs⁵. This does not mean that caste was not subjected to any debate; it is only meant to convey that the nature and outcome of the discourse was controlled by the nationalist imagination, where caste was only a private, social or religious issue⁶. Therefore the public and political expression of caste was rendered as illegitimate to such an extent that even a fair and reasonable programme, constitutionally sanctioned, were portrayed as divisive and hence inimical to the integrity

³ See Deshpande, Satish (2003), *Contemporary India Sociological View*, New Delhi: Penguin Books, p.146.

⁴ See, Ganguly Debjani (2005), *Caste Colonialism and Counter Modernity: Notes on a postcolonial hermeneutics of caste*. London & New York: Routledge, p.66.

⁵In this regard, Satish Deshpande has argued that for achieving the purpose of positive discrimination state entered into conflicting processes where at one hand the institution of caste was delegitimized and on the other hand it was recognized to redress the historical discrimination faced by lower castes. See, Deshpande, Satish (2013): "Caste and Castelessness in the Indian Republic: Towards a Biography of the 'General Category,'" *Economic & Political Weekly*, Vol. 48.

⁶ See Joshi, Sanjay (2001)*Fractured Modernity: Making of a Middle Class in Colonial North India*, New Delhi: Oxford India Paperbacks

of the nation⁷. So, anything that was not in conformity with the political language of secularism and socialism as popularized by the Congress hardly transformed into a policy and another alternative lexicon, even if available, was easily side-lined under the rhetoric of a secular nation⁸.

The above-mentioned dispute was clearly reflected in the way Nehru and his colleagues in Congress held on to an adamant position over the caste and how it should not be used as a criterion for determining backwardness. As to Nehru and many others in Congress, in a planned economy the impetus should be on overall economic development of the communities, giving birth to debate of caste vs. class of a very different sort from what went at the judicial level⁹. It was about choosing one between the two forms of inequalities or more importantly to look at each other as exclusive categories and in isolation.¹⁰ It may be argued that placing class (economic deprivation) above caste (historical discrimination) as the source of discrimination and deprivation was done because the political leadership at that time was influenced by the success of socialism in other countries, particularly in the West; but such a restricted understanding arose from a perception of caste as an *un*-secular category, whereas classification based on economic

⁷ Starting from the early 90s when the Mandal affair was at peak a large body of work has been produced that has looked into the treatment of caste in the postcolonial India. See Guru (2001); Pandian (2002); Omvedt (1994). Most of these theses emerged as the critique of nationalist historiography and reflected on the representation of caste in the hegemonic nationalist discourse.

⁸ These alternatives were put forth at larger level by Lohia, placing the reservation at centre of India politics coupled with other constructive social justice programmes. Some of these aspects will be discussed in upcoming his chapter.

⁹ The term class is used to mean as pure economic category and not as Marxist jargon associated with the class struggle.

¹⁰ Nehru and many of his colleagues in Congress were convinced by the point that state led socialism was enough to tackle any form of inequality; this was one of the reasons that Nehru laid great impetus on the Zamindari abolition and in fact first amendment paved the way for this cause, where Nehru had played an instrumental role. And this was also the reason that even though Nehru had acknowledged the constitutional policy of reservation in the constituent assembly debate and later during the amendment of Article 15, politically he never endorsed it as a mechanism to tackle caste or class inequalities.

criteria would have satisfied both the liberals and conservative sections within and outside the Congress party.

Having said that, it must be stressed such vocabularies on caste were contested and another set of ideas made persistent attempts to delegitimize the artifacts of the modern nation those ideas were critical of the dominant emancipatory discourse. These were those people who had opposed the Congress variant of nationalism and perceived the nation as a tool to create equitable resources by addressing the past as well as the present discrimination, wherein invoking ‘communal’ identities such as caste became necessary¹¹. Therefore, as much as caste was held captive under the slogans of modernity and the secular nation, it also provided a vital space for making wide- reaching claims over the idea of citizenship¹², equality¹³ and justice¹⁴. In other words, caste became a fundamental instrument to deny and demand reservation in case of OBCs¹⁵. Satish Deshpande, for instance, argues that much of the post-colonial history of the OBCs signifies their struggle to claim constitutional legalities, reservation being one of them¹⁶. This chapter traces the trajectory of this debate that helps to understand the making and un- making of OBCs in India.

¹¹ It has been widely argued by the scholar that the bourgeois nationalism failed to adequately represent the other side of social struggle that is anti- caste movement. This form of nationalism was rejected by those who argued. This issue was, later on, picked up by Periyar and Ambedkar reflected in their politics.

¹² See, Jayal. G. Niraja (2013), *Citizenship and its Discontents: An Indian History*, Cambridge: Harvard University Press.

¹³ Baxi Upendra (ed) (1978), *K.K Mathew on Democracy, Equality and Freedom*, Lucknow: Eastern Book Company

¹⁴ See, Shah, G. (1991) “Social Backwardness and Politics of Reservations”, *Economic and Political Weekly*, 26(11/12), p.601-610.

¹⁵ For instance, even with strict guidelines from the center not to use caste as a criterion to determine backwardness, the defiant states supported by the mandate of backward castes started forming lists of backward classes on caste criteria keeping the caste/ class question alive.

¹⁶ See, Deshpande, Satish and Zacharias, Usha (2013): *Beyond Inclusion: The Practice of Equal Access in Indian Higher Education*, Delhi: Routledge

The other theme of this chapter deals with the issue of judicial intervention and how the Indian judiciary formulated and answered various questions integral to the issue of reservation, the most important among them being the '**nature of backwardness**' in the case of OBCs, where the suitability of using caste as a category was debated at length. In doing so, the higher judiciary acted as part of the constitutional state and resented the conflation of 'class' as 'caste' by the political state of India.¹⁷ The conflict also arose from the fact that while explaining the constitutional logic of reservation, the higher judiciary in India has laid compelling claims towards equality (formal), merit and efficiency. In the process, the approach has been to transcend caste to claim formal equality that reflects the larger concern of the section that had not been 'beneficiaries' (the unreserved category). Similarly, in the majority of the court cases dealing with the issue of reservation, the Indian courts have regulated legislative or executive actions wherever they recognized caste to claim equality (substantive)¹⁸. Therefore the focus of this chapter is to examine these conflicting observations on the 'constitutional notion of equality'.

And in order to grasp these events, it is imperative to look into the techniques of interpretation that were used by the Indian courts while enquiring the relationship between the right to equality (Article 14), non-discrimination Articles 15(1) and 16(1), and positive discrimination Articles 15(4) and 16(4). The decades of judicial

¹⁷ Both the terminology 'Constitutional state' and 'Political state' has been used by Upendra Baxi to describe the conflicts between state and the law over the years as the nature and purpose of the reservation were debated by the Indian judiciary. See Baxi Upendra (2010): The judiciary as a recourse for Indian democracy, Seminar, 615.

¹⁸ In this Sudipta Kaviraj has argued that these conflicts are inherent to the relationship of Indian democracy and the social inequalities. See Sudipta Kaviraj (2000), Democracy, and Social Inequality, in Transforming India: Social and Political Dynamics of Democracy, eds, Francine R. Frankel, Zoya Hasan, Rajeev Bhargava and Balveer Arora, New Delhi: OUP, pp. 89-119.

enquiry shows that two set of interpretations emerged during the four decades before 1992 that were primarily used to ascertain the relation between the right to equality, non-discrimination and positive discrimination. These may be classified as:

1. A more conservative approach, where reservation was held as an exception to articles 15 (1), and 16(1) and
2. A more purposive reading of articles 16(4) and 15(4) as an emphatic statement to achieve equality.

What is important to understand here is that the Indian constitution was vague about its explanation on reservation in case of OBCs and the various legal positions held by the higher judiciary, at different times and space were only negotiations, which were temporary in nature. This ambiguity over the definition of the OBCs provided enough space to leave the exercise to the vagaries of political power to either implement the judicial verdict or to completely overrule the same. The events that led to the amendment of Article 15 are the testimony of the above statement. The Indian experiment of reservations in case of OBCs go beyond the constitutional correctness, and instead was exercised as a right by the lower castes, when and where they were successful in pushing their collective will through their elected representatives.¹⁹

SECTION I

The Constitution First Amendment: Clarifying the Intent

While the Indian constitution, as adopted on November 26, 1949, clearly fell short in creating any sort of clarity over the OBCs, much was left to the judicial understanding to decide over the various issues involved with the idea reservation as such and not merely

¹⁹ See, Dahl, Robert (1988), 'Procedural Democracy' in Democracy, Liberty & Equality, New Delhi: Oxford University Press.

in case of the OBCs. The first challenge in this regard came up from the state of Madras. In a couple of cases -- Venkataraman vs. State of Madras and Champakam Dorairajan vs. State of Madras -- the Constitutional validity of Communal G.O, 1931, of the Madras Government was challenged and even held unconstitutional.²⁰ While in case of the Venkataraman vs. State of Madras, the court had only questioned the definition of backward classes under Article 16(4), which in fact relates to government jobs²¹, the dispute in the Champakam Dorairajan case was centered upon the idea underlying the policy of positive discrimination itself vis a vis Article 14 of the Constitution. It will be pertinent to go into the case in some detail.

In June 1950, two separate petitions were filed by two Brahmins, Champakam Dorairajan and R. Srinivasan, arguing that the Madras Communal G.O. providing for rotation (of seats) on the basis of caste that was followed in the admission to engineering and medical colleges was repugnant to the fundamental rights guaranteed under the Articles 14, 15(1) and 29(2) of the Constitution²². The petitioners contended that there was no provision for reservation in educational institutions in Article 15 of the

²⁰ In accordance to the communal G.O of 1947 a compartmental reservation scheme was followed where for every 14 seats to be filled by the Selection Committee, candidates were selected on the following basis: Non- Brahmins (Hindus) 6, Backward Hindus 2, Brahmins 2, Harijans 2, Anglo- Indians and Indian Christians 1 and Muslims 1. See Saraswati, S (1974), Minorities in Madras State: Group Interests in Modern Politics. New Delhi: Impex, p.104.

²¹ In Venkataraman v. State of Madras court ruled out that Art. 16(4) expressly permits reservation of posts in favor of backward classes but not with regard to those not regarded as backward. The court argued: While reservation of posts in favor of any backward class of citizens cannot be voided, reservation of posts between Hindus, Muslims, and Christians infringes Arts. 16(1) and 16(2). This is not a reservation for backward classes but the distribution of posts on the basis of community, a ground prohibited by Art 16(2). See Venkataraman v. State of Madras, A.I.R 1951 SC 229.

²² In accordance to the communal G.O of 1947 a compartmental reservation scheme was followed where for every 14 seats to be filled by the Selection Committee, candidates were selected on the following basis: Non- Brahmins (Hindus) 6, Backward Hindus 2, Brahmins 2, Harijans 2, Anglo- Indians and Indian Christians 1 and Muslims 1.

Constitution similar to Article 16(4)²³. Taking note of this, the court interpreted that educational institutions were intentionally kept out of the constitutional scheme of reservation. The court held:

Seeing, however, that clause (4) was inserted in Article 16, the omission of such an express provision from Article 29(2) cannot but be regarded as significant. It may well be that the intention of the constitution was not to introduce at all communal considerations in the matters of admission into any educational institution maintained by the state or receiving aid out of State funds.²⁴

Along with this, the Court also held that the classification in the Communal G.O. was based on religion, race and caste which are forbidden under article 29(2)²⁵. In response, the state argued that 'having regard to the provisions of Article 46²⁶, the state is entitled to maintain the Communal G.O. fixing proportionate seats for different communities and if because of that order, which is thus contended to be valid in law and not in violation of the constitution, the petitioners are unable to get admissions into the educational institutions, there is no infringement of their fundamental rights'²⁷. This argument from the state was rejected on the ground that the fundamental rights are sacrosanct and cannot be infringed by any legislative or executive act or order,²⁸ making it clear that the constitutional direction for reservation in the educational institutions could

²³ See, C.R. Srinivas v. the State of Madras, 1951 SCR 271 and State of Madras vs. Champakam Dorairajan (A.I.R 1951S.C. 226)

²⁴ State of Madras vs. Srimathi Champakam Dorairajan A.I.R, 1951 226.

²⁵ Article 29(2) states that no citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of the State funds on grounds only of religion, race, caste, language or any of them.

²⁶ Article 46 reads as follows: The state shall promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the scheduled castes and Scheduled Tribes, and shall protect them from social in Justice and all forms of exploitation.

²⁷ State of Madras vs. Champakam Dorairajan, AIR 1951SC 226.

²⁸ Similar arguments were produced in an analogous case State of Madras vs. C.R Srinivasan, where the Supreme Court held that Directive Principles being non- justiciable cannot override the Fundamental Rights. See C.R. Srinivas v. State of Madras, 1951 SCR 271.

not be supported through directive principle. It also meant that fundamental rights override all local conditions and acts that are not in conformity with these basic rights²⁹.

In the end, the Madras High Court held the Communal G.O, which distributed seats in State educational institutions according to the communities in certain proportion, as void on the grounds that it violated Articles 15(1) and 29(2). This meant that any reservation in an educational institution was now susceptible to challenge, as the reading of Clause (2) of Article 29 along with Article 15(1) made it unconstitutional to grant or continue with any kind of positive discrimination in educational institutions unless a similar article like 16(4) was introduced.

Litigating Positive Discrimination

While it was valid to reason out that it would have been better if such a provision was introduced for reservation in educational institution as there were for jobs and services (Article 16(4)), it is important here to stress that this was not the sole reason on which the Communal G.O was quashed by the court in the instant case. A closer reading of the arguments produced in the Champakam Dorairajan case shows that rather than looking into original intent or the purpose of Communal G.O. of 1931, which was to address the issue of historical discrimination, a certain ideology was put in place that guided the outcome in this case.

²⁹ Dissenting judgment in Madras and Punjab HC held that Directive Principles contained in Article 46 permitted reservation to BCs in the educational institution and that Art. 46 should be read an exception 29(2). This meant that Directive Principles override Fundamental Rights. However later in Shankari Prasad Deo and Others Vs. Union of India court reiterated to the position held in Champakam Dorairajan case that Fundamental Rights were sacrosanct and Directive Principles were, in fact, subordinate to them. See, AIR-1951- SCC- 458. See, Karnataka Backward Class Commission Report, 1975, Vol. 1, p.113.

The focus of the arguments in that case was to establish the primacy and precedence of the right to equality and non-discrimination, considered as the constitutionally established rights (Fundamental Rights) over and above the constitutional commitment to re-address the disability and disadvantage inflicted upon the Socially and Educationally Backward Classes (SEBCs). In doing so, it offered a rather unique understanding of the Constitution by allowing the upper castes to claim injustice in admission from the restricted premise of the fundamental right to equality and non-discrimination, without reflecting on the question as to how the Indian state was meant to fight caste discrimination. This again was reflected in some of the observations made by the court (Madras High Court), thus making it clear that it was more an attack on the idea of reservation. The court, for instance, observed:

The communal government order states that a limited number of seats are allowed to members of a particular caste, namely Brahmins. The qualifications which enable a Brahmin candidate to secure a seat in a college would necessarily be higher than the qualifications which would enable a person of another caste or religion to secure admission. There is thus clear discrimination³⁰.

Moreover, the above proposition makes it clear that for the court, in this case, the act of discrimination was the allocation of a 'limited number of seats to the Brahmins'. It did not occur to the learned judges that such an arrangement, as in the case of the Communal G.O., could not be termed as unconstitutional since one of the immediate purposes of the reservation was to contain the monopoly of few castes in education and services that in the case of Madras happened to be the Brahmins. It was evident that the main thrust of the court was to preserve the rights of the unreserved category by emphasizing the fundamental principle of non-discrimination and therefore treating backward classes on par with the Brahmins. The outcome of this judgment was that it

³⁰ Justice P.V. Rajamannar in *State of Madras vs. Champakam Dorairajan*, Air 1951 Mad120.

flowed that reservation leads to discrimination, restricting the candidates from a general category to compete on a limited number of seats and this approach was justified from within the four corners of the Constitution. The judgment clearly skirted the rationale behind the scheme of reservations, debated extensively in the Constituent Assembly before the policy of positive discrimination was built into it. The rationale for instituting such policy was already debated in the constituent assembly and settled with the adoption of a provision for reservation in the constitution. This was clearly glossed over by the court in the instant case.

Following this, adverse comments were made over the practice of lowering qualification marks for the reserved category students. The court held that though the government could prescribe qualifications and standards for admission of students, these should be reasonably relevant and must be the same for all citizens seeking admission to educational institutions³¹. Now one important aspect of reservation is to discriminate positively in favour of the backward classes, which, in the case of Madras Communal G.O., was done by lowering the qualifying marks for the reserved category students. The fact that the court held such an arrangement as discriminatory violated the whole premise on which reservation was based and for that reason, once again, the decision seems to be inconsistent with the constitutional logic of positive discrimination. Add to this the bizarre statement passed by Justice Patanjali Sastri, stating that the constitution itself maintains discriminatory status quo. He held:

It may be that through the fortuitous operation of a rule, which in itself is not discriminatory, a special advantage is enjoyed by some citizens belonging to a particular caste or community. This advantage is not taken away by Article 15(1). If for instance, students belonging to a certain community or caste by reason of their caste discipline, habits, and modes of life, satisfy the

³¹State of Madras vs. Srimathi Champakam Dorairajan A.I.R, 1951 226.

prescribed requirements in larger number than others, it is not permissible to shut them out on that score... It would be strange if, in this land of equality and liberty, a class of citizens should be constrained to wear the badge of inferiority because, forsooth, they have a greater aptitude for certain types of education than other classes.³²

The bogey of Merit

Another basis on which the court, in this case, failed to appreciate the importance of reservation, in creating equal access to educational institutions was rooted in the dogmatism attached to the 'theory of merit'. Interestingly, even the learned counsel appearing for the State of Madras conceded that these two applicants (Champakam Dorairajan and C.R. Srinivas) would have been admitted to the educational institutions they intended to join and they would not have been denied admission if selections have been made on merit alone³³. It was surprising that even the counsel appearing for the state deduced such reasoning of merit. It may be stressed here that such arguments that construct reservation as antithetical to merit were already discarded in the constituent assembly.³⁴

Merit, in this case, meant that the preference in admission should be given to those candidates who have secured more marks than the other. Much like an open market, which is supposed to treat everyone as equals irrespective of their status and their disabilities; merit, in this case, presupposes all those who have appeared in the examination are equal. Therefore, it proposes the theory of 'equal chance' for 'equal marks'. This is done irrespective of the fact that few of them have suffered historical discrimination which holds them in a position of disability as compared to others who have always held advantageous position due to the higher status of their caste, thereby

³² Justice Patanjali Sastri in State of Madras vs. Srimathi Champakam Dorairajan A.I.R, 1951 226.

³³ Ibid.

³⁴ This aspect has been already discussed in the previous chapter. See Chapter II.

setting a wrong precedent regarding the ‘merit theory’. This indeed was the main impact of this judgment, and the court was blinded by this premise. Besides this, what was extraordinary was that the court, in the Dorairajan case, allowed the petitioners to present their case even where they had not even applied for the admission in college.³⁵ And if they had never applied for the admission, the infringement of their fundamental right under Article 15(1) was always based on a hypothetical assumption that in case they had applied, their admission to college was not possible under the current scheme of reservation, even though there was no such instance of infringement of their fundamental right at any real point of time. In this regard, Kalpana Kannabiran has argued that such generosity by a court was surprising and could possibly be the first case of Public Interest Litigation (PIL).³⁶

Lastly, in any case, the constitutional interpretation should be able to look into the purpose underlying the provision or to at least try and identify the core value of the Article that is under consideration.³⁷ This, according to Kalpana Kannabiran was to ‘hold the possibility of looking at the impugned GOs and the social realities they were contesting. This construction of purpose could actualize the values and goal of the text, harmoniously with the values of the constitution, by reading the reservations as part of

³⁵ See Kannabiran Kalpana (2012) *Tools of Justice: Non- discrimination and the Indian Constitution*, London: Routledge, p.172.

³⁶ “From the affidavit filed in support of her petition, it does not appear that the petitioner had actually applied for admission in the Medical College. She states that on inquiry she came to know that she would not be admitted to the College as she belonged to the Brahmin community. No objection, however, was taken to the maintainability of her petition on the ground of absence of any actual application for admission made by her. On the contrary, we have been told that the State had agreed to reserve a seat for her, should her application before the High Court succeed. In the peculiar circumstances, we do not consider it necessary to pursue this matter any further. But we desire to guard ourselves against being understood as holding that we approve of a person who has not actually applied for admission into an educational institution coming to Court complaining of infringement of any fundamental right under article 29 (2)”. See, *State of Madras vs. Srimathi Champakam Dorairajan A.I.R.*, 1951, 226.

³⁷ Barak Aharon (2005) *Purposive interpretation in Law*, New Jersey: Princeton University Press, p.27.

the spirit to equality of opportunity in employment’³⁸.Also not to forget that the commitment to readdress the social injustice was an integral part of the social contract, which imposed an obligation on the Indian state to discriminate positively in favor of lower castes’.³⁹

Turmoil in Madras

This decision of Supreme Court, which curtailed the legality of preferential treatment to only government employment, led to an uproar in the Southern States, especially in Madras, where the Congress party was already facing tough times from a strong anti-Hindi campaign.⁴⁰ To register their protest against the judicial decision, August 14, 1951, was observed as Communal G.O Day, throughout the State⁴¹. The anger against the judicial decision also gave impetus to the demand for a separate *Dravidanadu* state, mounting more pressure on the Congress. The strongest opposition to this came from E.V.Ramasami Naicker, who had in the past had accused the Congress of presenting a ‘Brahminical constitution’.⁴² He accused the drafting committee that was responsible for preparing fundamental rights as having committed the original sin.⁴³ In fact, one of the

³⁸ Kalpana, pp.169-70.

³⁹ Keating Christine (2011) *Decolonizing Democracy: Transforming the Social Contract in India*, University Park: Pennsylvania State University Press

⁴⁰ Even though Nehru believed that issue of language has to be resolved by consent rather than confrontation; Congress party had many Brahmin leaders who consistently tried to impose Hindi as the national language of India. It was strongly opposed in southern states as an imperialistic exercise. In fact, it took a militant turn when few of them started demanding separation of Dravidian people from the Indian State. On the Question of language see Ramaswamy, Sumathi (1997) *Passions of the Tongue: Language Devotion in Tamil India, 1981-1970*, Berkley: University of California Press

⁴¹Yadav. K.C. (1994) *India’s Unequal Citizens: A Study of Other Backward Classes*, New Delhi: Manohar Publication p.130.

⁴² Earlier when the Indian constitution was passed Naicker has refused to recognize the constitution, which according to him was a tool of Brahmin tyranny. See L. Hardgrave (1969), *Religion, Politics and the DMK in Donald and Smith South Asian Politics and Religion*, Princeton, New Jersey: Princeton University Press. p.223.

⁴³ These charges were true at some level as in the five-member drafting committee 3 of them were Brahmins that is, Alladi Krishnaswamy Iyer, T.T. Krishnamachari, and Gopalaswamy Iyengar. Other two

members of the drafting committee, Alladi Krishnaswami Iyer, had represented the case of Brahmin boys in the court and argued against the very policy of reservation which he, along with his colleagues, had pledged for only a few months back in the Constituent Assembly.

This, along with the issue of property rights demanded quick action from the Interim Government headed by Jawaharlal Nehru, which did 'not wait for the general elections that were due next year'.⁴⁴ To undo the judicial decision, the Constituent Assembly was turned into an Interim Parliament with the purpose to amend the constitution. Nehru explained this urgency in the House by saying that the House knows very well and there is no need for trying to hush it up, that this particular matter in this particular shape arose because of certain happenings in Madras.⁴⁵

While it was true that the political impact of the decision in the Champakam Dorairajan case was confined only to the state of Madras, overall the issue had larger implication. Such a concern was registered by few members, who were of the opinion that such lacuna in the constitution is going to cause trouble in the other parts of India, especially in the southern and western parts of India, where reservation was primarily distributed on communal lines⁴⁶. P.S. Deshmukh, a Congress member in the assembly from Central Provinces and Berar, pointed out that the problem was not confined to Madras and was bound to arise elsewhere as soon as the backward classes become more

members were Dr. Ambedkar (SC) and Mohd. Sadullah (Muslim). Such crowding of Brahmins in decision-making committees was seen with suspicion by Naicker.

⁴⁴ See Ananth Krishna *The Indian Constitution and Social Revolution: Right to Property Since Independence*, Sage, New Delhi, 2015.

⁴⁵ *Parliamentary Debates*, Vol. XII- 13 (Part II) at col. 9615.

⁴⁶ As Shankariya has pointed out that it is not only the Madras Government that is concerned with this but the whole South India- the State of Mysore, Travancore- Cochin and even Bombay. See *Parliamentary Debates*, Vol. XII- 13 (Part II) at col. 9000.

aware and assertive.⁴⁷ Therefore amending Article 15 became vital and an obligation of sorts that Nehru had talked a few months back during the constituent assembly debate⁴⁸.

The question arises as to whether Article 29(2), ruling out reservation in educational institutions, was kept there on purpose or was it just an act of negligence from a body that worked for three years? So it makes sense, from the concerns of this chapter and this thesis, to go back into the constituent assembly debates and search how such an article was left to stay when the constituent assembly had explicitly debated over the principle of positive discrimination and finally decided in favor of it? In this, it is relevant to stress that originally the draft prepared by the Sub- Committee on Fundamental Rights had kept a clause for providing special facilities for the backward sections in the field of education which was later on deleted and thereby technically restricting reservation only to posts in services.⁴⁹ It was surprising that when the massive debate was generated on the issue of discrimination in public services for backward classes the same did not occur over the issue of reservation in educational institutions, given the fact that the deprivation in services arose out of deprivation in access to education.

⁴⁷ Ibid.

⁴⁸ In fact Nehru was of the opinion that constitution need to be amended under special condition that might arise he said that while we want this Constitution to be as solid as and as permanent a structure we can make it, nevertheless there is no permanence in constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth of a living vital organic people, See CAD, Vol VII, p.323. This position is reflected in Nehru speech during 1st amendment involving the Article 15(4) where he in spite of his prejudices against the caste chooses to include 'social and educational backwardness' instead of 'economic backwardness'. See, Parliamentary debates, Vol. XII- 13 (Part II) at 9830.

⁴⁹ Clause 25 as prepared by sub- committee on Fundamental rights: Equal opportunities of education shall be open to all citizens: Provided that nothing herein contained shall preclude the state from providing special facilities for educationally backward sections of the population. See Shiva Rao Vol. 2, p.141.

Although there was an early attempt to guarantee education to all with special care to the backward classes, this concern was not translated into an Article in the final draft of the Constitution. However, it can hardly be said that the members would have opposed reservation in educational institution as such a provision was consistent with the general principle of non-discrimination. In fact, the argument of merit and efficiency that was used against reservation in jobs and services quite easily suited to those in the educational institutions too; and the same is true vice-versa too. Interestingly, the first recorded act of discrimination by using state machinery was brought out when a Mahar boy was denied to get admission into a school but then it never occurred to anyone that it was hence imperative to have a special clause regarding reservation in educational institutions. It is important to stress here that this indeed was exploited by the upper caste petitioner to render reservation in educational institutions an illegality.

Infact, Article 29(2) that came in the way of implementing the Madras Communal G.O. was not part of the draft constitution and came to be added only through an amendment proposed in the Constituent Assembly by Pandit Thakur Das Bhargava to draft Article 23. The amendment read as follows:

- (4) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only religion, race, caste, language or nay of them.⁵⁰

While proposing the amendment, he argued that in educational matters, he cannot understand, ‘from the national point of view, how any discrimination can be justified in favor of a minority or majority.... *There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions is concerned*

⁵⁰ CAD, Vol. VII, p.897.

‘he held (emphasis added by author).He went on further to say that this is a charter of liberties for the student- world of the minority and the majority communities equally.⁵¹

This clause which very clearly outlined that there will be no discrimination in the educational institution, without any mention of positive discrimination, was accepted without any opposition. It never occurred to any member in the assembly that such a provision will come in the way of reservations in educational institutions. As a result, the constitution itself denied the right to positive discrimination in favor of the backward castes, a right that was guaranteed when the Fundamental Rights sub-committee submitted its report. However, on the flip side, it was necessary to have such an article of non-discrimination unless and until there were also provisions for positive discrimination for the backward classes.

Addition of Article 15(4): Skepticism and Apprehension

Fresh from the debate in the constituent assembly over the issue of ‘backward classes,’ the Interim Parliament (which, incidentally was constituted by the same old Constituent Assembly) reflected both skepticism and apprehension over the amendment of Article 15. The first sign of uncertainty appeared in the select committee, whose report, even while unanimously recommending for the amendment of Article 15 and 29 (for insertion of clause 4)⁵²,also expressed its fear regarding the policy of reservation, holding that the new provision is likely to be misused. Prime Minister, Nehru, however, countered this apprehension with the following words:

⁵¹ Ibid.

⁵² Originally the draft prepared for Art. 15(4) would have added to Art. 15(3), the words "or for the educational, economic or social advancement of any backward class of citizens which authorized special provision for women and children. Mentioned in Second Backward Class Commission Report (1980), Government of India, Vol. III to VII, p2.

We earnestly hope that if and when this provision is passed, it will not be misused. Nobody can give a guarantee against misuse we can only try our best to create a condition where such misuse may not be made. What I wish to assure this house we are alive to the possibility that this article may be used for a purpose to which we are opposed. May I add that when we talked with certain members, including CM of Madras, they told us that they realize and appreciate our difficulty and assured us that they had no desire to use it in any objectionable way.⁵³

Nehru further argued, that “while it is quite valid and to bow to the decision of the High Court of Madras in this matter, the fact remains that we have to deal with the situation where for a variety of causes for which present generation is not to blame, the past has the responsibility, there are groups, classes, individuals, and communities....who are backward. They are backward in many ways- economically, socially, educationally- sometimes they are not backward in one of these respects and yet backward in another. The fact is therefore that if we wish to encourage them in regard to these matters we had to do something special for them.”⁵⁴

Unlike the Constituent Assembly debates, where the question of OBCs ended without reaching clarity over the notion of ‘backward classes’, this time Nehru played a proactive role by pressing on the inclusion of ‘Socially and Educationally Backward Classes’ into the new Article. At many levels, the parliamentary debates on Article 15(4) were an extension of what went in the Constituent Assembly. As once again, voices were raised by different members of the Parliament, who were convinced that caste based determination of backwardness gives undue advantage to that particular community and leads to infringement of individual rights. K.T Shah (identified with the then communist party in many ways) was one who led these voices and argued with much conviction for

⁵³ Nehru Speech moving the resolution for the Const. 1st Amendment Bill, See, Jawaharlal Nehru (1967) Jawaharlal Nehru’s Speeches Aug. 1949- Feb. 1954, Government of India, Vol. 2, p.517.

⁵⁴ Parliamentary debates, Vol. XII- 13 (Part II) at 9006.

the inclusion of economic backwardness instead of social and education⁵⁵. To which Nehru responded:

But if I added economically I would at the same time not make it kind of cumulative thing but would say that a person who is lacking in any of these things should be helped. Socially is a much wider word including many things and certainly including economically.⁵⁶

In the end, Ambedkar's argument succinctly summed up the necessity of amending Article 15 of the Constitution and he observed that the amendment was needed precisely because "what are called backward classes are . . . nothing else but a collection of certain castes."⁵⁷ Clause 4 of Article 15, thus read as follows:

Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

The addition of Article 15(4) was important in two respects; firstly it widened the scope for positive discrimination in favor of the 'backward classes' which were previously restricted to only to public employment under Article 16(4). Secondly, the introduction of words 'Socially and Educationally Backward Classes' meant that Article 15(4) was in conformity with the language used in Article 340 of the Constitution. This further meant that any reservation that the state might intend to introduce for the OBCs should be based on the social and educational backwardness; therefore, backward classes mentioned in Article 16(4) need to be defined in those two parameters only. The only question now left for the Parliament was to decide upon the process to identify such backward classes. One accepted view was that since the language of Article 15(4) was drafted in a manner that it connected it with the Article 340, any design proposed by the

⁵⁵ Parliamentary debates, Vol. XII- 13 (Part II) at 8121.

⁵⁶ Ibid. at 9830.

⁵⁷ Ibid. at 9616.

President for the backward classes under Article 340, after the commission's recommendation, will be the final word on the backward classes.⁵⁸

Also, the judicial decision that led to the first amendment in relation to the scheme of reservation bore the testimony of the conflict between the will of the legislature to protect programmes on social justice and the judicial interpretation of the constitutional scheme of reservation. However, even though the First Amendment annulled much of what was said in the Champakam Dorairajan case, some general observations made in regard to reservations made their way to judicial understanding in subsequent cases too and thus setting a wrong precedent on the dubious theorization of merit and feeding out and into the paranoia against caste based reservations.

Meanwhile, it is necessary to stress at this stage that the First Amendment also reflected the intent of the Indian state to create an egalitarian society; for that matter it conveyed the will that this end was sacrosanct to the idea of the nation for which even a possible infringement of the Fundamental rights was justified. In that sense, even the other important part of the First Amendment that added Articles 31-A and 31-B, restricting the scope of the Fundamental Right to Property was in many ways an act to curtail the rights of the individual with a purpose to create a more egalitarian society⁵⁹. It

⁵⁸ These arguments were placed by Shakardas Bhargava and Ayyangar and were well supported by few other members. See Parliamentary debates Vol. X II- 13 (Part II) at Col. 9719 & 9817.

⁵⁹ Major changes were introduced in property rights declaring that no law providing for the acquisition of any estate or any rights there under or for the extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any of the provisions of Part III. Although this Article was subsequently substituted by another slightly differently worded Articles by the subsequent Fourth Amendment Act of 1955 in which protection to the laws mentioned therein was granted Only against inconsistency with or taking away or abridging any of the rights conferred by Articles 14, 19 or 31, it is Perfectly clear that the Parliament was deliberately providing for complete extinguishment of a fundamental right by legislation of a particular description while at the same time providing for mere abridgment of a fundamental right to a specified extent by legislation of another description. See Ananth Krishna (2015), op. cit.

further meant that the constitution, at best, should serve as a tool to further equality, even if such instruction has to come from the directive principles. More importantly, it sent a clear message that legislature deemed it important to continue with reservation as a way to create an equal opportunity society in one of un-equals.

Crucial Progress

The debate on Article 15(4) once again reflected how problematic it will be to carve out the category of 'SEBCs' through the wish of the legislature that had its own prejudices against the usage of caste for defining backwardness and more importantly the overwhelming reluctance among the ruling elite to do so. In this regard, Nehru's speech during the amendment of Article 15 bore the testimony of the conflict over the 'nature of backwardness'. During the debate, various criteria were floated that could possibly be used to define backwardness and the battle was finally fought on the two premises of caste and class.⁶⁰ On the flip side, even with the conflicting opinions presented over the issue of OBCs, the First Amendment proved to be both revolutionary and progressive in its content by clarifying the intent of the Indian state insofar as reservation was concerned. At a certain level, the First Amendment that introduced Article 15 (4) to the Indian constitution was the first committed step towards the question of OBCs' empowerment. It was also an attempt to move away from only caste based determination of backwardness (historical discrimination) to socially and educationally backward classes that proved to be both the source of clarity and contention. Once again, it was left

⁶⁰ Even though education (literacy) and occupation regularly featured in the debates over the suitable criteria for determining backwardness in case of OBCs, caste, and poverty (economic) remained much more controversial category at both judicial and political level.

to the discretion of the state to decide on the issue of OBCs, where Articles 15(4) and 16(4) were to be the guiding principle.

The next few segments will describe how the state failed to carry forward the progress that was achieved by way of the First Amendment and look into whether the judiciary was able to fill those gaps as the discourse now shifted to one between judiciary and legislature.

Kaka Kalekar Commission

The First Amendment only provided protection to the existing policies of preferential treatment, as the majority of issues related to OBCs were yet to be settled. In this direction, the First Backward Classes Commission was constituted in 1953, which popularly came to be known as Kaka Kalekar Commission after its Chairman.⁶¹ The terms of reference for the commission were to devise the suitable criteria for determining the socially and educationally backward classes and to prepare a list of such classes⁶². For this purpose, the commission prepared a questionnaire that was circulated among the various state governments. Surprisingly, the same 20-page questionnaire, comprising 182

⁶¹ The other members of the Commission were: N.S. Kajralkar (M.P.); Bheeka Bhai (M.P.); S.S. Chaurasia; Rajeshwar Patel (M.P.); A. Quiyam Ansari (M.L.A.); T. Mariappa (M.L.A.); L.Jagannadh; A.S.Namdhari (M.P.); N.R.M.Swami (M.P.); and Arunagshu De (member secretary)

⁶² The terms of references of the Commission were as follows:(a) To determine the criteria to be adopted in considering whether any sections of the people in the territory of India (in addition to Scheduled Castes and Scheduled Tribes specified by notifications issued under Article 341 and 342 of the Constitution) should be treated as socially and educationally backward classes; and, in accordance with such criteria, prepare a list of such classes setting out also their approximate number and their territorial distribution.(b) to investigate the conditions of all such socially and educationally backward classes and the difficulties under which they labor; and make recommendations (i) as to steps that should be taken by the Union or any State to remove such difficulties or to improve their conditions; and (ii) as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made;(c) to investigate such other matters as the President may hereafter refer to them, and (d) to present to the President a Report setting out the facts as found by them and making such recommendation as they think proper. See Report of the Backward Classes Commission, 1955, Vol. 1, p.3.

questions was circulated to the general public that proved to be more of a hassle⁶³. It also conducted an extensive tour of the country to generate on the spot evidence; subsequently (two years later) the following set of criteria were prepared for the identification of backward classes:

- (i) Low social position in the traditional caste hierarchy of Hindu society.⁶⁴
- (ii) Lack of general educational advancement among the major section of a caste or community.
- (iii) Inadequate or no representation in Government service.
- (iv) Inadequate representation in the field of trade, commerce, and industry.⁶⁵

The commission brought out a list of 2399 castes and communities, which constituted about 32 percent of the total population and out of them one-third were listed under the 'most backward' category⁶⁶. However, the report lacked clarity over how the list was prepared by using the above mention criteria's for backwardness.⁶⁷ Apart from this, the state-wise backward caste list prepared by the commission was imported from the list prepared by the Ministry of Education for the grant of scholarships.⁶⁸ The same list was used, with slight modification, and no effort was made on the part of the commission to create a fresh list. However, the commission did request the Government of India to resume the colonial practice of caste enumeration of population, a practice discontinued in 1931, in the 1961 census so that accurate data can be obtained. The Commission,

⁶³ Ibid. Vol. 1 p.6.

⁶⁴ Caste status was used as the key indicator to identify backwardness and the report also recognized the social hierarchy among Muslims and Christians. Particularly, in the case of Muslims, the commission recorded that there are a number of communities among them [Muslims] that are suffering from social inferiority in their own society and consequent educational backwardness. Such backward communities are included in the list of other backward communities. Ibid. Vol. 1, p.125.

⁶⁵ Ibid. p.166.

⁶⁶ Second Backward Class Commission Report, Government of India, Vol.1, p.2.

⁶⁷ Ibid.

⁶⁸ The list prepared by the Ministry of education was actually for the educationally backward classes that were done without any proper survey. Ibid. Vol. 1, p.2.

meanwhile, estimated the OBCs in the population based on projections. It must be stressed here that these computations of the population and percentage of the OBCs are not of all 2,399 castes declared to be OBCs by the Commission but 837 castes only. The actual would be much higher than these figures.⁶⁹

Table 3.1 Estimated Population of OBCs, 1951

State	Total	Estimated % of OBC	
	Population	Population of OBCs	Population
1. Assam	90,43,707	28,65,934	31.6
2. Bihar	4,02,25,947	1,53,21,746	38.1
3. Bombay	3,59,56,150	1,10,09,745	30.6
4. Madhya Pradesh	2,12,47,533	79,02,586	37.2
5. Madras	5,70,16,002	1,26,80,945	22.2
(Including Andhra)			
6. Orissa	1,46,45,946	13,56,373	9.3
7. Punjab	1,26,41,205	25,56,087	20.2
8. Uttar Pradesh	6,32,15,742	2,60,10,161	42.6
9. West Bengal	2,48,10,308	22,66,445	9.1
10. Andhra		Added in Madras	
11. Hyderabad	1,86,55,108	1,37,66,090	73.8
12. Madhya Bharat	79,54,154	19,36,980	24.4
13. Mysore	90,74,972	59,63,902	65.7
14. Pepsu	34,93,685	4,42,397	12.7
15. Rajasthan	1,52,90,797	34,31,326	22.4
16. Saurashtra	41,37,359	12,16,475	29.4
17. Travancore- Cochin	92,80,425	9,12,272	9.8
18. Ajmer	6,93,372	2,97,699	42.9
19. Bhopal	8,36,474	2,94,534	35.2

⁶⁹ Report of Backward Classes Commission, 1955, Vol. III, pp. 14-15.

20. Himachal Pradesh and Bilaspur	11,09,466	3,15,101	28.4
21. Coorg	2,29,405	63,727	27.2
22. Delhi	17,44,072	3,17,906	18.2
23. Kutch	5,67,606	2,01,170	35.4
24. Manipur	5,77,635	35,490	6.1
25. Tripura	6,39,029	69,432	10.9
26. Vindhya Pradesh	35,74,690	13,76,307	38.5
27. Andaman & Nicobar Islands	30,971	—	—
India	35,68,29,485	11,35,10,830	31.81

Source: Report of Backward Classes Commission, 1955, Vol.III, pp. 14-15.

The commission made two major recommendations as part of remedial and corrective measure to readdress backwardness in case of OBCs:

- a) Reservation of 70 per cent seats in all technical and professional educational institutions and
- b) to enable the OBCs to come on a par with the high castes in the government/ local bodies services, the following reservations be made for them for some time: Class I: 25%; Classes II & III: 33 1/3%) and Class IV: 40%⁷⁰. However, the commission did not provide any explanation of the rationale behind the recommendation of different proportions of quota for different posts.

⁷⁰ Ibid. Vol. 1, p.140.

Even with these shortcomings, the fact it had accepted caste to be the main cause for backwardness and recommended for a generous quota along with the suggestion of introducing land reforms was unusual⁷¹. In fact, over the years, these positive aspects in the report were picked up by many caste organizations to demand reservation for OBCs, most prominent among them being the All India Backward Class Federation (AIBCF).⁷² However, in reality, the report was marred by internal contradiction as half of the members of the commission disowned the report. The major conflict was over the identification of backward classes and the reservation given to them.⁷³ For instance one of the members Anup Singh stated that ‘my fundamental opposition is to the reservation of seats in the government services. I am convinced that the concessions of reservations in the name of caste or class will weaken the sense of oneness and might culminate in dissociation’.⁷⁴

Similarly, another member Arun De argued that the reservation would make people more caste- conscious, if concessions are given on caste basis... list of such backward classes could be prepared not on caste but on the occupational basis or other similar consideration.⁷⁵ G.P. Shah also presented his case by opposition reservation; he held that no reservation in government services or educational institutions on caste basis

⁷¹Besides recommending generous quota to backward classes commission also held that special economic measures be taken to uplift the OBCs economically through such programmes as extensive land reforms, reorganization of village economy, Bhodaaan movement, development of livestock, dairy farming, cattle insurance, be- keeping, piggery, fisheries, development of rural housing, public health and rural water supply, adult literacy programme, etc,

⁷² See Jafferlote Christopher (2003), *India’s Silent Revolution: The Rise of Low Castes in North Indian Politics*, Permanent Black: Delhi, p.231.

⁷³ See Backward Class Commission Report, Vol. 3, Minutes of Dissent.

⁷⁴. Instead of giving reservation to the backward cases the member suggested that the classes who have traditionally enjoyed a privileged position and who have neglected some classes owe a moral debt to them. The classes in the seat of authority must voluntarily shed the sense of superiority and help the neglected one. See Backward Class Commission Report, Minute of Dissent, Vol. 3, p.4.

⁷⁵ Ibid. pp. 5-6.

should be permitted.⁷⁶ T. Mariappa contributed towards the list of dissenters by complaining that the report did 'not include 'Vokkaligyas' and 'Lingayats' living in the urban area to the list of OBCs, pertaining Mysore state.'⁷⁷

Dissenting Reservation

Once the report was completed, the Chairman also joined the list of dissenters, criticizing the report that he had compiled over the last two years. Kalekar wrote resolutely about his discontent with the report in his forwarding letter to the President.⁷⁸The 23-page long letter was written after the report was completed and one can only be suspicious of this sudden change in Kalekar's intentions, who choose not speak his mind while he was drafting the report.⁷⁹ His own reason for taking such a step at this stage of the report hardly made any sense 'It is only when the report was being finalized that I started thinking anew and found that backwardness could be tackled on a basis or a number of bases other than that of caste'.⁸⁰

Further, more than a note on the assessment of work done by the commission (which it was supposed to be), the letter to the president was a testimony of how biased and prejudiced the chairman was against the backward classes in general and the reservation in particular. This becomes clear from the suggestions that Kaka Kalekar

⁷⁶ In my view, a larger share in the economic prosperity of the country as a whole is much more urgent and important than reserving a share in government appointments for any backward community. Further reservation of posts on community basis should be allowed for any group. It is simpler to treat all classes on equal footing than to permit differential treatment on caste basis among the three groups of backward classes viz., SC, ST and OBCs.

Ibid., p.8.

⁷⁷ Ibid. p.16.

⁷⁸ See Backward Class Commission Report Vol. 1, Forwarding letter of the Chairman, pp. i-xxxiii.

⁷⁹ Once the report was compiled Dr. Rajendra Prasad has asked Kaka Kalekar to give his views over the policy of reservation and the report compiled by the commission. Mentioned in Yadav and Singh (1994) India's Unequal Citizens: A Study of Other Backward Classes, Manohar Publication: New Delhi, pp.60.

⁸⁰ See Backward Class Commission Report, Forwarding letter of the Chairman, Vol. pp.vi-vii.

made in regard to reservation for OBCs in services: ‘I am definitely against reservation in government services for any community for the simple reason that the services are not meant for the servants but they are meant for the services of the society as a whole. *I believe that in Class I and Class II services, the backward classes will stand to gain, both morally and materially if they do not demand a reservation percentage in the vacancies and simply rely on the fair-mindedness of the administration*’⁸¹ (emphasis added by author). This indeed was an honest admission of the fact that the lower castes were engaged in the low paying jobs, which according to the chairman should continue. Similarly, the Chairman was not particularly pleased with the reservation in educational institutions and he argued that the ‘opinion about the inferiority of certain communities, has not necessarily retarded the progress of those communities, either educationally or economically. If such communities have neglected education it is because they had no use of it. Now they have discovered their mistake, it is for them to make the necessary efforts for making up the headway’.⁸²

Besides this, most of his arguments were very much in line with the Congress ideology, suggesting that the category of Other Backward Classes, if at all needed, should be defined by using economic criteria⁸³ as caste based quota would cultivate communalism and constituted a threat to the unity of the nation and narrow down the

⁸¹See Backward Class Commission Report, Vol. 1, p. viii.

⁸²Ibid. p- vii.

⁸³ The Chairman suggested: “Families whose income is less than Rs. 800 a year do need special help irrespective of the community to which they belong. Such poor and deserving may even belong to the upper communities or educationally backward but otherwise prosperous people of the dominant communities among the backward classes. The extreme poor cannot be denied special help simply they happen to belong to a certain community”. Ibid. p. viii.

aspirations of the people⁸⁴. Along with this, the Chairman submitted dictates on self-styled Gandhian philosophy of reconciliation and constructive programmes.⁸⁵ Such opinions were expressed, even after knowing that the Indian state has agreed to fight caste through constitutional means.⁸⁶ In fact, at one point he seemed to support the prevailing hierarchy in the caste status:

We are not blind to the good intentions and wisdom of our ancestors, who built the caste structure. It was perhaps the only way, through which they could teach the nation to forget and rise above racial clan-ship, tribal and similar biological groupings of society and to accept a workable arrangement of social existence based on cultural hierarchy and occupational self government.⁸⁷

It was tragic that the chairman, Kaka Kalekar, who was given the responsibility to study the difficulties under which OBCs suffered was critical of giving any kind of reservation for the backward classes. In the end, rather than doing the job that he was assigned to, the Chairman of the First Backward Classes Commission imposed his own wish list of who, according to him, were backward, in which he included almost everyone suffering from any kind of disability and not just social deprivation.⁸⁸

⁸⁴ Likewise, Kakelar reminded that the 'nation has decided to establish casteless society, which demanded that backwardness should be studied at the level of individual, and, at most that of family'. Ibid. p. xiii.

⁸⁵ While the chairman of the commission accepted that OBCs suffered from disability, according to him reservation was not the best solution and in fact suggested that the backward groups have to be trained to be self-reliant with Shramdan while superior groups have to be trained to share their possessions with the lower groups by Bhodaan or Sampatidaan. Ibid.p-v.

⁸⁶ Mr. Kaka Kalekar was perhaps the most unsuitable personality to head the backward class commission. Unlike the Chairman of other backward class commissions who believed in the policy of reservation and held caste as an important criterion Kaka Kalekar was opposed to such policy measures. For instance, P. Nettur Damodar, L.G. Havanur, Sathi and lastly the Mandal all of them at the certain level were associated with demands raised in favor of reservation for backward classes.

⁸⁷ See Backward Class Commission Report, Forwarding letter of the Chairman, Vol. 1, p.iii.

⁸⁸ This list consisted of women, residents of rural area, those who are driven to the necessity of working with their own hands, those laboring under the sun and in open air, unskilled workers, landless peasants, those who do not have enough or any capital, those who are working as mere clerks, those with poor and uneducated parents, those who lack ambition and have no opportunities, those who have no means to support, the inhabitants of backward regions, the illiterates, those incapable of understanding the modern world and using its avenue for social mobility and those who believe in magic, in superstition and in fatality, See pp. xiv-xv

The only person in the commission who sounded sensible towards the demand of OBCs was S.D.S Chaurasia, who went as far as demanding reservation of seats for backward classes in the legislatures, much like as there was for SCs and STs.⁸⁹ Besides that, he was highly critical of Kaka Kalekar and his presence over such an important post, given his prejudice against the affirmative action for lower castes.⁹⁰ Similar doubts can be raised on the choice of members,⁹¹ and why no acceptable backward caste leader was given the job to head the commission⁹². This went against the grain of the same congress party that had readily agreed to bring someone like B.R. Ambedkar as Chairman for the framing of the Indian constitution and proudly propagated that as its achievement and claimed to reflect its commitment to social justice. No such benevolence was shown this time when an important report was to be made to decide the fate of more than half of the

⁸⁹ Kaka Kalekar Vol. III, p.67.

⁹⁰ To support his argument Chaurasia produced the document of a conversation between Kaka Kalekar and backward class representative during a public meeting at Gwalior;

Ganpath Singh: Just now you said that backward classes should not be given special political representation. But problem is that everywhere there is domination by high castes. The government should think that exploitation that is going for thousands of the year must be stopped.

Chairman: If this is so, there is only one solution to that the right to vote given to them should be taken away. As those have voted in their hands have elected high castes as their representatives.

Ganpath: They do not have that much brain to use their votes properly.

Chairman: If they do not have that many brains then it is dangerous to give reins of government in their hands. If you are given weapons and you are not able to use them properly then these will have to be snatched from you. Extract from Verbatim report dated 7/3/1954 of the commissions' sitting held at Gwalior during the examination of Kachi, Ahir and Teli Samaj. This debate is only a reflection of the general approach that the Chairman had over the issue reservation and caste-based discrimination and not a noted proof for that. Note, the original conversation is in Hindi and text produced above is translation to that. See Backward Class Commission Report, Vol. 3 Notes on Dissent, p.63.

⁹¹ For instance, the only SC member in the commission was a congressman N.S. Kajrolkar. He has opposed Ambedkar in politics of Maharashtra and was Congress Chambhar leader, who went on to defeat Ambedkar in the first general election from North Bombay constituency. See Gokhale Jayashree (1993) From Concessions to Confrontation: The Politics of an Indian Untouchable Community, Popular Parkashan. p145.

⁹² In this speech of Chaurasia confirms to this point: The appointment of Shri Kaka Kalekar, as Chairman of this Commission, however, was not very much welcomed by the backward class people in general since they expected some backward class man to hold this office, but I welcomed it as I thought he being a great disciple of Mahatma Gandhi, must be above casteism and, therefore much preferable than others. See Vol. 3 Minute of Dissent, p.17.

Indian population. On the other hand, it is also true that OBCs lacked a spokesperson like Ambedkar.

In the end, the commission failed to show any serious commitment towards the cause of OBCs. The commission did 'not bother itself to take any clue from the constituent assembly and the parliamentary debates, where the issue of backward classes was debated at length, and it was settled that there were sections other than SCs and STs that needed to be brought under the purview of reservation. The report produced by the First Backward Classes Commission failed to reflect upon the sufferings of the backward classes and more importantly to their aspiration to gain access to the portals of higher education and services, something they were denied for so long. But then, could we blame someone like Kaka Kalekar, who himself was a product of his time, where caste was to be practiced in the socio-economic domain but not to be talked or discussed by the state authorities, a rotten mentality that has survived through years of indolence and ignorance of our social realities.

Government reaction

The First Backward Classes Commission Report was submitted directly to the Home Minister, Govind Ballabh Pant and was rejected immediately by this Congressman, on the ground that the commission had not applied any objective tests for the identification of the 'Backward Classes'.⁹³ Ultimately the Kaka Kalekar report was placed before Parliament, along with the memorandum on Action Taken, which was prepared by

⁹³ Even though the report was never officially debated in the parliament, in 1964 motion was moved to discuss the Kaka Kalekar report. After the delay of one year, the report was up for debate that took place in November 1965, where B.P Maurya has challenged the official view on the reservation, only to be dismissed by the government. Mentioned in Second Backward Class Commission Report, Vol. I, p.45.

Pant.⁹⁴ The document was highly critical of the report in general and caste based reservation in particular, therefore leaving no room for any discussion and as a result, the report was not debated by Parliament addressing its merits or demerits.⁹⁵ Finally, the only official response towards the First Backward Classes Commission Report was a sermon drafted by Pant, who argued:

The Commission has not been able to evolve the required objective tests or criteria for identification of OBCs; that going for the caste as the basis of the backwardness of the OBCs, the Commission had taken a retrograde step: it cannot be denied caste system is the greatest hindrance in the way of our progress towards an egalitarian society, and the recognition of the specified caste as backward may serve to maintain and even perpetuate the existing distinctions on the basis of caste. That if such large number of caste/communities as the Commission had recommended were to be regarded as backward, the really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance, nor would such dispensation fulfill the conditions laid down in Article 340 of the Constitution. If the special needs of the backward classes could not be intensively and effectively served by appropriate shifts of emphasis or by rearrangement of priorities within the framework of the existing programmes being taken care of by the Planning Commission.⁹⁶

It was not surprising that the Indian state responded in such a manner, especially given the fact that Pant himself had been skeptical towards the policy of reservation and had, in the past, argued against it in the constituent assembly, raising the rhetorical concern over the citizen as the soul of nation and projecting reservation as antithetical to the idea of citizen. As the report was rejected, Pant added one more reason for not extending reservation to OBCs, by appropriating the Nehruvian agenda of socialism, which according to him will take care of differences that there are in the society. He added:

⁹⁴ Pant was critical of reservation even during the constituent assembly debates and in fact played an important role in advisory committee, where the issue of backward class was debated. See Chapter 2 where it has been dealt in greater details.

⁹⁵ Mentioned in the Second Backward Class Commission Report Vol. 1, p.2. Also See, Article 340(3) which states that "The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament. It is completely at the discretion of parliament and more importantly for the ruling government to discuss it or not.

⁹⁶ See The Memorandum of Action Taken on the First Backward Classes Commission Report, 1956, Government of India, Ministry of Home Affairs.

Large sums of money have been spent by Governments both at the Centre and in the States on the work of reconstruction and development during the period of the first Plan, resulting in the expansion of employment opportunities in the public services and elsewhere, and in the raising of the per capita income. The benefits of this nationwide endeavor have been shared by all citizens. The old conditions under which people suffered and backwardness thrived no longer find approbation in our land. With the establishment of our society on the socialist pattern to which we all are pledged social and other distinctions will disappear as we advance towards that goal.⁹⁷

One Step Forward Two Steps Back

So, eventually what was gained after the First Amendment, with the insertion of Article 15(4) was lost when the apathetic state and the Kaka Kalekar report reversed it and denied what was a legitimate demand of OBCs. However, it is necessary to stress here that it was totally a matter of state discretion, under Article 340 of the Constitution, for the state to constitute a commission or not and that Jawaharlal Nehru chose to exercise that power and set up the First Backward Classes Commission is significant; whether a better report might have forced the state to take action is just a matter of debate.

However, one handicap to the identification of backward classes of that sort was the outcome of a decision by the Nehru Government in 1951 with regard to the census; the independent Indian government reversed the policy of collecting information on the basis of caste at the time of taking the general Census, restricting such exercise only to the SCs and STs. It may be noted that the 1931 census contained data on OBCs and the census of 1941 was not conducted due to the War. The moving force behind this decision to stop with enumerating the Backward Castes was Sardar Vallabhai Patel, who by now had shown consistency to lay all the blame on the colonial government for dividing the nation on lines of caste and used it as a convenient logic to eliminate any engagement over the issue of caste. Therefore a statistics that would have possibly highlighted the

⁹⁷ See, Memorandum on the report of the Backward Classes Commission, Delhi: Ministry of Home Affairs.

suffering of backward castes and must have made people like Patel uncomfortable was easily eliminated.⁹⁸

Meanwhile, after discarding the Kaka Kalekar report, the task to identify backward classes was left with the Deputy Registrar of India, who was asked to conduct a pilot survey to see if backwardness could be linked to occupation, instead of caste.⁹⁹ Staying strictly within this guideline set by the home ministry, the Deputy Registrar suggested that the backward class list should be prepared by using the criterion of low occupation. The final report submitted after the pilot survey further proposed inclusion of income criteria so that well off among the backward classes can be excluded.¹⁰⁰ These suggestions, along with other conclusions, were circulated to the various state governments and as expected many of them showed their disagreement to adopt a reservation policy based on the occupation criterion and instead suggested to include caste as a criterion. Eventually, as the attempt to build any consensus over a non- caste criteria failed, the central government took the decision not to draw any backward class list at the national level¹⁰¹. However, in August 1961, the Union Home Ministry addressed a missive to all state governments, who were left free to form their own list,

⁹⁸ The fact that Patel played an important role in discontinuation of caste census is mentioned in Karnataka Backward Class Commission Report. Even before the operation for enumeration of caste census (1951) could begin Patel has rejected the idea in 1950 and argued “formerly there used to be elaborate caste tables which were required in India partly to satisfy the theory that it was a caste-ridden country and partly to meet the needs of administrative measures which depended upon caste division. In the forthcoming census this will be no longer be a permanent feature”. It has been further argued that early studies in Indian sociology conducted by likes of Ghurye also had an impact on building a negative image regarding the collection of caste census and governed found enough support in such arguments. See, Karnataka Backward Class Commission Report, 1975, Vol. I, pp.332-3.

⁹⁹ See, Memorandum on the report of the Backward Classes Commission, Delhi: Ministry of Home Affairs, p.2.

¹⁰⁰ Ibid.

¹⁰¹ This decision was circulated by the Home Ministry. Jawaharlal Nehru, *Letter to Chief Ministers*, New Delhi, 27 June 1961, in Parthasarathi (ed.), *Letters to Chief Ministers 1947-64*, Vol. V, 1968, New Delhi: Oxford University Press, 1989, pp. 456-457.

with a direction to determine backwardness by using economic criteria.¹⁰² Even though it was not a compulsory guideline to be followed, the fact is that the Union Government did make its intent clear by stressing that the words socially and educationally were explicitly used in the constitution for this purpose.¹⁰³

This way, the Indian state abdicated from its responsibility of steering attempts at the centralization of the reservation policy in case of the OBCs.¹⁰⁴ This now meant that the Union, as for the time being, had no commitment for reservation in case of OBCs, leaving it to the various states to decide on the extension of reservation beyond SCs and STs. In the end, starting from the appointment of Kaka Kalekar as the Chairman of Commission, to report that was submitted and the cold response it got from the Congress government amounted to one step backward to the commitment that the government had shown by moving the First Amendment to the constitution. No doubt, the report assisted to the excuses used by a government to deny reservation to OBCs.

State Intent

Before proceeding to the next section that deals with the issue of judicial intervention, it is important to explore the general intent of the Indian state concerning the OBCs. To see whether any other policy programmes, beside reservation, were initiated in favor of OBCs, on the lines on which Pant had argued while rejecting the Kaka Kalekar report. In this, if the acts of the Planning Commission is to be taken as a parameter to assess the

¹⁰² Mentioned in Report of the Backward Classes Commission, First Part, Vol. 1, Government of India, New Delhi, p.2.

¹⁰³ The cabinet note argued that “While the state government has the discretion to choose their own criteria for defining backward classes, in the view of the Government of India it would be better to apply economic tests than to go by caste. As the State governments may adhere to their own test, any All India List drawn up by the Central Government would have no practical utility. Mentioned in Mandal Commission Report

¹⁰⁴ See, Galanter (1984)

intentions of state, then starting from the first five-year plan to the third five-year plan of Nehru government, except for a few passing mentions of concern, the Indian state failed to devise any major programmes in the favor of OBCs; as a matter of fact, it even refrained from any serious attempt to define backwardness.¹⁰⁵ Not only did the government fail to create any organizational structure that would have helped to address the issues concerning the OBCs and with no proper institution to look into the grievances of OBCs both at the central and state level, the OBCs were left to the dictates of a hostile Home Ministry.¹⁰⁶

Overall, the Congress government led by Nehru was only willing to grant some small concessions to OBCs, which included increasing the amount of scholarships from the First Five Year plan to the next five-year plan.¹⁰⁷ Even here, the money allocated was far less when compared to the allocation for the SCs and STs, notwithstanding that the proportion of the OBCs to the total population was more than that of the SCs and STs. Interestingly, in the Third Five-year Plan, the government did accept its failure to bring any serious changes to the condition of the backward classes and stressed the necessity for assistance to backward classes.¹⁰⁸ This formal recognition, however, did not produce any constructive change in the government policies as their general apathy towards the

¹⁰⁵ “The term backward class is difficult to define. Backwardness is expressed in the lack of adequate opportunity for group and individual self-development, especially in economic life and in matters of health, housing, and education. It is measure in levels of income, the extent of literacy, and the low standards of life demonstrated by living condition”. See First Five Year Plan, p.634.

¹⁰⁶ The first Backward Class Commission has also recommended the government to set up a body that will look into the grievances of backward classes.

¹⁰⁷ Even these small concessions were granted only after it was demanded by the Backward Class Association headed by Deshmukh. See Nehru J (1984) Selected Works of Jawaharlal Nehru Part 1 March 1951- 30 June 1951, Jawaharlal Nehru Memorial Fund

¹⁰⁸ The third Five Year plan report highlighted to the point that the decade-long programmes directed towards the upliftment of backward classes have been a failure. To which even a suggestion was made to restructure programmes and policy especially for the backward classes. See Third Five Year Plan, Planning Commission, Government of India.

OBCs continued. This became clear in the manner in which the state reduced the overall funding during the Fourth Plan. The projected expenditure on OBC in the Fourth Plan was 8 crores on education, 2 crores on economic development, and 1 crore on health and housing, etc. There were no such provisions under this heading in the Fifth Plan.¹⁰⁹

Table 3.2 Amount allocated for the welfare of SCs, STs, OBCs and Denotified Tribes in First Three Five Year Plan.

Category	Five Year Plan		
	Ist (Rs. crores)	IInd (Rs. crores)	IIIrd (Rs. crores)
STs	19.83	43.00	60.43
SCs	7.08	27.66	40.40
Denotified Tribes	1.10	2.89	4.00
OBCs	2.03	5.86	9.04
	30.04	29.41	111.87

Source: G.R. Madan (1981), *India Social Problem: Social Disorganization and Reconstruction*, Vol. 1, New Delhi: Allied Publisher Private Ltd., p.257.

Furthermore, notwithstanding the Constitutional promise the Indian state had made under Articles 16(4) and 15(4), the Union government consistently pitched for including economic criteria for defining backwardness during this period.¹¹⁰ For instance, in 1959, the Union Government constituted a committee to study the 'Social welfare' and the welfare of 'backward classes'. The major concern here was to evaluate the success of the existing programmes, mostly to do with the grant- in aid scheme for SCs, STs and

¹⁰⁹ Galanter (1984), p.55.

¹¹⁰ Letter of Minister of Home Affairs to Chief Secretaries of All State Governments/Union Territories, 14th August, 1961.

OBCs.¹¹¹ The report failed to add anything new to the debate except making the same old recommendation for removal of backwardness through economic improvement programmes.¹¹² Similarly, in 1960, yet another report produced by Jayaprakash Narayan, concerning the welfare of weaker section of the society; a suggestion was made in this to shift to the economic criterion for determining backwardness. After making his mind clear on reservation, as a true Gandhian, JP laid stress on the role of voluntary organization for various social welfare projects.¹¹³ There was some consistency in the government argument produced through various agencies, reports and even the scant debate that took place in Parliament to somehow argue against caste based reservations.¹¹⁴

A letter from Jawaharlal Nehru to Chief Ministers, in June 1961, sums up the story of government intentions over the issue of reservation in case of OBCs and the various reasons for doing so:

I have referred above to efficiency and to our getting out of our traditional roots. This necessitates our getting out of the old habit of reservations and particular privileges being given to this caste or that group. The recent meeting we held here, at which the Chief Ministers were present, to consider national integration, laid down that help should be given on economic considerations and not on caste. It is true that we are tied up with certain rules and conventions about helping the

¹¹¹ See, Report of the Study on Social Welfare and Welfare of Backward Classes Vol1. Committee on Plan Projects, New Delhi, July 1959, pp. 1-2.

¹¹²The committee advocated for economic by arguing: "A landless laborer requires relief regardless of the community to which he belongs. The same principle holds good for those who are homeless jobless, in ignorance or in disease. We are therefore in favor of abolishing the entire category of so called OBCs. Instead, we advocate that on basis of economic criteria a programme of state assistance may be introduced". *ibid.* p.7

¹¹³ J.P has broken from the socialist that were now headed by Lohia, who was more radical over the issue of backward classes and favored reservation on caste basis as a policy to readdress historical discrimination. In fact, the one reason Lohia parted away from J.P was due to the later decision to become an ally to congress and not act as an opposition. See Limaye Madhu (1988) Birth of Non- Congressism: Oppositional Politics, 1947-1975, Delhi: B.R. Publishing Corporation.

¹¹⁴ In 1964 motion was moved in Lok Sabha to discuss the kaka kalekar report, only to be debated in the next year. During the debate B.P Maurya, a backward caste member challenged the state opinion that economic disparities were the causes of backwardness. However the response of the government to this was same that the classification of backwardness on caste basis will perpetuate caste. Mentioned in Jaffrelot (2011) p.228.

scheduled castes and tribes. They deserve help but, even so I dislike any kind of reservation, more particularly in Services. I react strongly against anything which leads to inefficiency and second-rate standards. I want my country to be a first class country in everything. The moment we encourage the second-rate, we are lost. The only real way to help a backward group is to give opportunities for good education; this includes technical education which is becoming more and more important. Everything else is the provision of some kind of crutches which do not add to the strength or health of the body. We have made recently two decisions which are very important one is, universal free elementary education, that is the base; and the second is scholarships on a very wide scale at every grade of education to the bright boys and girls, and this applies not merely to literary education, but much more so, to technical, scientific and medical training. I lay stress on the bright and able boys and girls because it is only they who will raise our standards. I have no doubt that there is a vast reservoir of potential talent in this country if only we can give it opportunity. But if we go in for reservations on communal and caste basis, we swamp the bright and able people and remain second-rate or third-rate. I am grieved to learn how for this business of reservations has gone a based on communal consideration. It has amazed me to learn that even promotions are based sometimes on communal or caste considerations. This way lies not only folly but disaster. Let us help the backward groups by all means, but never at the cost of efficiency. *How are we going to build the public sector or indeed any sector with second-rate people?*¹¹⁵

Modern Meritocratic Society

The Nehru government showed a clear ideological inclination to establish a meritocratic norm in the Indian society by subduing the policies of social justice. It was clear that the rhetorical construction of modernity in India, even though distinct from one that evolved in the western nations, was founded on the same utopia of ‘true meritocracy’ by talent.¹¹⁶ Not only the post-colonial state was committed to the principle of ‘individual merit’, this concept was legitimized under a constant rhetoric of building a casteless society. This, according to Satish Deshpande, was ‘presumptive castelessness’ as, ‘it did not require the upper castes to “give up” their caste in reality; it simply assured them that they would be presumed to be casteless as long as they did not invoke their caste explicitly...caste was henceforth to be recognized only as a source of disadvantage or vulnerability, not as a

¹¹⁵Jawaharlal Nehru, *Letter to Chief Ministers*, New Delhi, 27 June 1961, in Parthasarathi (ed.), *Letters to Chief Ministers 1947-64*, Vol. V, 1968, New Delhi: Oxford University Press, 1989, pp. 456-457.’ These comments were made after an event on the national integration where Nehru and other Congress members have condemned casteism as the antithesis to social progress.

¹¹⁶ The term meritocracy was coined by the English sociologist Michael Young, while writing a satire on the state of English society and general shift from the egalitarian values. See Young Michael (1958, 2011), *The Rise of Meritocracy*, Transaction Publishers, London.

source of privilege or advantage. And when it invoked as a liability (as in social justice legislation), it was promptly imprisoned in the straitjacket of a regrettable and hopefully short-lived exception to the meritocratic norm'.¹¹⁷

The danger here is to endorse the idea that the advantage bestowed upon to the students from the unreserved category is in no way unjust towards the student from the backward classes and that nation can progress and achieve equality even if there are no reservations or means to do away that historical advantage. Having said that, it is also true that no nation can achieve absolute equality; and overcrowding of few castes in both the education and jobs was reflection of the fact that such merit was result of social disparity created through years of careful selection and exclusion.¹¹⁸

SECTION II

Regulating Caste: Affirmative Action Policy and Judicial Review

Before we conduct an enquiry into the tussle that went on between the higher judiciary and the legislature over the issue of reservations, it is important to go to back to the point that was raised at the start of this chapter about the possible areas of conflict between the existing schemes of reservation, which relied on the communal units, to distribute quota and the constitutional guidelines as interpreted by the judiciary which the state governments were supposed to enforce. At the time of independence, there were only few states where reservation was functional and accepted as a state policy, whereas in other

¹¹⁷ See Deshpande Satish (2013) 'Towards a Biography of the 'General Category' Caste and Castelessness', *Economic and Political Weekly*. Vol. 48, Issue No. 15

¹¹⁸ To this Lohia argued that "Caste restricts opportunity. Where caste prevails, opportunity and ability are restricted to ever-narrowing circles of the people, equal opportunity can further widen the gulf. Groups whom centuries have made able are in a position to make near-monopolistic use of equal opportunity. India's experience is conclusive proof that caste turns a country into the arid deserts of intellectual inadequacy". See Lohia R.M.; Marx, Gandhi and Socialism, p.35.

states there was either a complete absence of any form of reservation or else they had some sort of financial assistance programmes for the backward classes.¹¹⁹ It was the former category of states that faced the earliest challenges from the judiciary and in response to that several backward class commissions came up, to draw a list of beneficiaries that will be in consonance with the constitutional scheme of reservation.

The earliest source of contention was the continuance of the colonial formula that was framed in a manner that rather than being exclusive to a few communities/castes, it accommodated any category except the Brahmins, who, no doubt, dominated both the educational and government services for which reservation was instituted in the first place.¹²⁰ However, in most of the states, this policy ended up creating a system of proportional reservation, where even en block reservation was given to religious groups and socially and economically dominant castes were accommodated. Contrary to this, the Indian constitution made an attempt to reduce that cause for bitterness by creating a policy that was based on rationale rather than political pulls and pressure or patronage that can maintain equilibrium between the principle of equality and positive discrimination as they were seen as separate from each other.

The important aspect of the debate started to appear in the form as to whether such reservation policies were inconsistent with the constitutional scheme, communities or caste included in the list of OBCs can be taken out of the reservation scheme on the basis of a scrutiny of the data. The judicial opinion, at times, was confusing and

¹¹⁹ The following states had implemented scheme of reservation in the colonial India: Madras, Mysore, Travancore, and parts of Bombay. In the rest of India, there was no definitive policy of reservation and some scholarship and grants were provided to some of the backward class students. See Galanter (1984)

¹²⁰ The point of Brahmin monopoly in education and service in the colonial India has already been elaborated in the previous chapters.

inconsistent with one another. Surprisingly, with time, as more cases came up for judicial scrutiny, different shades of the argument on reservation began coming up even while there was no clear mechanism to define who constituted the OBCs; and it compounded the confusion. On the other hand, it is also true that the issue of reservation cannot be made free from judicial intervention; however, what is important here is to settle the few basic issues associated with the reservation. Among them, few important issues were the relevance of caste, the debate on the reservation as anti-meritarian and the rule of exception and whether the constitution imposes a duty on the state to implement reservations.¹²¹

Permissibility of Caste

As the constitutional validity of reservations was settled after the First Amendment to the Constitution, the debate started to shift on what can be the possible ways to determine backwardness. In this, the practice of caste based reservation became one of the most contentious and controversial issues. As far as the judiciary was concerned, the main point of conflict had to do with the question of whether caste (rank), i.e. high and low status of a caste, can be used as a criteria for backwardness or whether the caste status needed to be supported by other important criteria (such as education and social backwardness), to establish its backwardness.¹²² The controversy was further escalated when it was questioned whether caste can constitute a class.

¹²¹ There is various kind of technicality attached with issue reservation, which cannot be avoided while dealing with the issue. However as the purpose of this section is to look into the judicial response towards the extension of reservation in favor of OBCs, Further whether four decades of judicial inquiry has provided any help towards the cause of establishing an egalitarian society. For a more in-depth study on the various issues attached with schemes of reservation and the judicial response See Galanter (1984). Also Pre Mandal booklet by L.G. Havanur is yet another important text in this regard.

¹²² Galanter (1984), pp. 189-90.

In this regard, the first inquiry started from the state of Mysore (before it became part of Karnataka in 1956) which had a long history of reservation beginning right from the implementation of the Miller Committee Report in 1919. This colonial arrangement that declared every community except the Brahmins as backward was continued with the reorganization of state in 1956.¹²³ The first challenge came in 1958 and the Mysore High Court held that reservation, as it prevailed, was inconsistent with the constitutional scheme.¹²⁴ Soon after this, the state of Karnataka came up with a new order which was almost a replica of the old scheme, except that this time, along with the Brahmins, few other communities like the Baniyas, the Kayashthas, the Parsees and the Christians were also kept out from the list of backward classes. Along with this, another order was passed in May 1959 that provided 45 per cent of compartmental reservation for the various classes already included in the list of SEBCs.¹²⁵ Both these government orders were challenged in the Ramakrishna Singh vs. State of Mysore case on the ground that the scheme of such reservation was unconstitutional.

The High Court held that inasmuch as the impugned notifications contained a list of backward classes including 95% of the population of the State -- all Hindu communities other than the Brahmins, Baniyas and Kayasthas and all other non- Hindu communities in the State except Anglo-Indians and Parsees had been treated as backward classes -- it resulted more in a discrimination against the few excluded communities

¹²³ In 1956 erstwhile state of Mysore was merged with Coorg and parts of Bombay Hyderabad and Madras to form the present state of Karnataka. In 1958 the state of Mysore passed an order directing that all caste and communities except Brahmins be treated as socially and educationally backward classes for the purpose of admission in the educational institution.

¹²⁴ See, Karnataka backward class commission Vol. 1, p.123.

¹²⁵ In total 164 communities were included in the list of backward classes that expanded into fourteen categories each given different quota for the reservation that included the objectionable inclusion of Muslims, Indian Christians, Sikhs and various sub- castes of the Hindu, e.g., Lingayat, Kuruba, Kansara, Vokkaligayas, Bhants. The order merely recites that after consideration the government has come to the conclusion that communities mentioned in the annexure thereto belong backward classes. See p.444.

constituting about 5 per cent of the total population rather than making provisions for the socially and educationally backward classes, it was un-constitutional.¹²⁶

Besides this, the Mysore High Court, in this case, spoke out over the accuracy of the data and raised objections that the classification of backwardness was not supported by any statistics.¹²⁷ To which, the state responded that English literacy was taken as a criterion to determine the backwardness.¹²⁸ This, in fact, was an old system followed right from the submission of the Miller committee report in 1919 and was hardly revised. Even though the court, in this case, agreed with the view that the only possible test for determining educational backwardness was the literacy test, it went on to reject the list on backward classes as the data used by the Mysore government, in its opinion, was highly questionable as it was never revised subsequently. This, in the court's view, meant that incidence of discrimination needed to be proved by statistical differences in access to services, education and income. In later cases, this very scrutiny of data by the court became the central argument to reject the idea of reservation in totality. This aspect will be discussed later on in this chapter. For now, it is pertinent to state that ultimately the court held that the government had committed a fraud of the powers conferred on it by the Constitution, and both the orders were struck down.

However, what is important to our concerns, is that the court in this case upheld caste as a relevant criteria for determining backwardness. Justice Das Gupta, while

¹²⁶ Ramakrishna v. State of Mysore, AIR 1960 Mys 338.

¹²⁷ In the previous case Keshava Iyengar vs. the State of Mysore when a similar issue was raised and reservation was challenged on the ground of data, court had declined to challenge the validity of state orders.

¹²⁸ This data was further based on the data procured from the general census of 1941.

responding to the petitioner's contention that caste cannot be used as a criterion for backwardness, held:

I am also unable to accent the contention of Mr. Venkataranga Iyengar that backward classes cannot be determined on the basis of castes and that they must always be determined on territorial, economical, occupational or some such basis. In my opinion, it cannot be said, with any such rigidity, that determination can, in no case, be made on the basis of castes.¹²⁹

Nagan Gowda Committee

The judgment in the Rama Krishna case triggered the need for a much-needed inquiry, making Mysore the first Indian state to constitute a committee to identify the socially and educationally backward classes under the chairmanship of Nagana Gowda. The committee was asked to submit two reports - interim and final.¹³⁰ In its interim report, the committee recommended that the backward classes should be listed only on the basis of their caste or community based on their status of lower and higher in the caste hierarchy and their backwardness has to be judged on the basis of the percentage of literacy among the members of these communities and their representation in government services.¹³¹ The educational backwardness was further to be based on the performance of a community in the state examinations in general and their level of literacy in particular. So, the Vokkaligyas, excluding the Bhunts, were treated as socially backward as among the Bhunts the standard of education was above the state level.¹³²

¹²⁹ Justice Das Gupta in *Ramakrishna v. State of Mysore*, AIR 1960 Mys 338.

¹³⁰ As the old reservation scheme was quashed interim report was to be used for the admission in an educational institution for the current year. See, *Thimmaiah, G* (1993), p.87.

¹³¹The Nagan Gowda committee suggested following criteria to determine backwardness:

(i) Social backwardness of the community should be judged by the status accorded to the community in general (apart from individual), (ii) Its general educational backwardness should be judged on the basis of some of the fixed standard of education, (iii) the representation of the community in government services also be taken into account. See, *Mysore Backward Classes Committee: Final report*, 1961, p.3.

¹³² *Ibid*, p. 21.

The interim report was released, reducing the quota to 22 per cent for the OBCs and 18 per cent for the Scheduled Castes and Scheduled Tribes, in jobs and educational institution. It was further decided that those communities whose average falls below 50 percent of the state average in the criteria identified should be regarded as most backward classes, creating two categories of the backward classes. The other major recommendation of the committee was to exclude the Lingayat community in its entirety, from the scheme of reservations. This move was highly criticized both within and outside the government and the leaders from the Lingayat community demanded that they must be reinstated in the backward class list.¹³³ Therefore, when the final report was considered by the government, not only did the state overlook the recommendation of the committee to exclude Lingayats but it also raised the percentage of reservation for OBCs to 30 per cent, adding both the Lingayat and the Bhunts to the list of OBCs.

This was done by lowering the ‘percentage of literacy’ which was used as one of the criteria to define backwardness. However, the other castes like the Stanis and Nayars, who fared at par or even lower with the Lingayats and the Bhunts on such standards as literacy were not included in the OBC list.¹³⁴ It was clear that none of this was done by using any intelligent rationale but rather due to the political logic to woo and appease the dominant sections of the society, a politics that might have started in Mysore but

¹³³ Mentioned in Smith E. D (1967) *India as a Secular State*, Princeton Legacy Library, p. 319.

¹³⁴ It identified literacy as the sole criteria for backwardness and to further include the politically influential Lingayats government very cleverly declared that all castes whose average was even just less than the State average of 6.9 per thousand should be regarded as backward classes. Thimmaiah, G (1993) pp. 91-92.

continued in other parts of India as reservation became the focal point for the political struggles of the lower castes.¹³⁵

Coming back to the report, it did try to address the immediate issue of quota but failed miserably in making any substantial inquiry into the condition of the backward classes.¹³⁶ Also laying too much focus on the necessity of data and statistics proved that the ambiguous nature of data can be easily utilized by the 'borderline' communities which were much better placed in the caste hierarchy and had the political clout to manipulate the data.

The whole episode was a lesson in the politics of OBCs and the role quota based reservation was to play in the coming years. It also highlighted how widening the corridor of reservation can be helpful in the expansion of political fortunes of parties. In the end, there was no rationale or logic that was followed by the state but it was the push and pressure of politics that decided the fate of the backward castes and a farcical criterion was created to incorporate the dominant castes into the fold of backward classes.

Partha Case

The above-mentioned Government Orders that made the reservation of seats in professional and technical education in favour of backward classes other than SCs were

¹³⁵ The concept of dominant caste was used first by M.N. Srinivas, who explained it "a caste may be said to dominant when it preponderates numerically over the other castes and when it also wields preponderant economic and political power. A large and powerful caste group can be more easily dominant if its position in the local caste hierarchy is not too low". M.N. Srinivas (1987), *The Dominant Caste and Other Essays*, Delhi: Oxford University Press, p.18.

¹³⁶ As the committee did 'not conduct any socio-economic survey it was clear that the caste was included in the backward class list were based on some subjective assumptions. Even after knowing that High Court in Rama Krishna case has rejected caste-based reservation as the state failed to provide any data which could have supported the backwardness of concerned castes. For a detailed critique on this lines, see Karnataka backward class commission Vol. 1, pp.113-118.

questioned in the Partha vs. State of Mysore and the contention was that it was unconstitutional. In this case, two set of objections were raised by the petitioners:

- a) on whether communities or castes can be listed as backward classes and
- b) the criterion used by the government was not reasonable and the data used to support the backwardness was questionable.¹³⁷

Apart from points of law, it came out, once again, that the data was cardinal to prove that the said caste or communities were indeed backward and can, therefore, constitute a 'constitutional class'.¹³⁸ Further, in conformity with the earlier High court judgment in the Rama Krishna case, the Court held caste as an important criterion for defining backwardness as long as it was backed by social and educational backwardness. It held:

If however, a group of persons clearly identifiable by their caste is really backward socially and educationally, and is on that basis given the benefit of certain reservations, the ineligibility of a person belonging to another caste to secure those reservations is clearly not based on the ground of caste but is a consequence of the reservation properly made in favour of a backward class, Such a classification will be open to challenge only if it can be shown that the criterion adopted for determining their backwardness is useless as a test of backwardness, so that the preference given to them will virtually amount to a preference on the ground of caste alone, the description as backward being illusory or fictitious.¹³⁹

To a great degree, the judicial decision in both Rama Krishna and Partha partially approved the use of caste while determining backwardness, when and where it was supported by sufficient data; this ultimately meant that the caste question in determining backwardness should be given importance. Both these cases, then, were important in laying down the role of caste in determining backwardness, which was further elaborated

¹³⁷ S.A. Partha and Ors. Vs. The State of Mysore, AIR 1961 Kant 1961.

¹³⁸ Ibid.

¹³⁹ Ibid

at length in *Balaji vs. the State of Mysore*, where the government decision was taken after the Nagan Gowda committee stood challenged.¹⁴⁰

The importance of the Balaji judgment lies in the fact that it influenced the outcome of many backward classes commission report and the opinion of the judiciary for decades. And more importantly, the decision in the Balaji case seemed to provide the basis for both the sides of arguments- one in support the idea of caste based reservations and that which completely argued against the possibility of using caste as an important criterion. In fact, the arguments that were made in the Balaji case laid the foundation of the modern discourse on the caste based reservation that spanned for more than three decades since then.

It is relevant, at this stage, to list down few important issues that were raised in the Balaji case and shaped the contours of the debate over the issue reservation in concern to OBCs:

1. What were the criteria for identifying the social and educational backwardness?
2. What was the role of caste in determining social backwardness?
3. Was the sub- classification of backward classes into categories valid?
4. Was the quantum of reservation excessive?

Nature of Backwardness: Conflating Caste and Class

By the time the Balaji judgment came out, the central government had spelt out its reluctance towards holding caste as a criteria for reservation; it is also a fact that some prominent sociologists (and political scientists) had begun speaking on similar lines as

¹⁴⁰ M.R. Balaji & Others vs. the State of Mysore, AIR 1963 SC 649.

the government and the media (only the print media had existed then) had served as a platform to hold out against caste based reservations.¹⁴¹ It was under these circumstances the judiciary tried to give its opinion on the various issues involving the policy of reservations for the OBCs. The most important among them was to check the validity of caste based reservation. While the court in the Balaji case had maintained the general hostility towards caste, it did spell out that caste can constitute a constitutional class if proved to be socially and educationally backward.¹⁴² However, in doing so, the higher judiciary had introduced the 'rule of caution' by arguing against the sole and dominant use of caste as it was feared by the court that in that case the classification merely based on caste will end up perpetuating caste.¹⁴³

Besides this, the other reason put out by the court to rule out caste as the sole criteria to determine backwardness was based on the argument that the caste was not practiced among religious groups other than the Hindus and therefore it will lead to their exclusion from the backward class list.¹⁴⁴ Even this interpretation was based on a faulty

¹⁴¹ In his book *Competing Inequality* Galanter, gives an account of opposition towards caste based reservation among the scholars and even some of the newspaper has reflected the same concerns. See, Galanter (1984) pp.72- 82.

¹⁴² While clarifying that the impetus for reservation comes from the preamble of the constitution the court in Balaji case permitted the use of communal units such as communities, which included caste also. The court argued: "It is for the attainment of social and economic justice that Article 15 (4) authorizes the making of special provisions for the advancement of the communities there contemplated, even if such provisions may be inconsistent with the fundamental rights guaranteed under Article 15 or 29(2)". M.R. Balaji & Others vs. the State of Mysore, AIR 1963 SC 649.

¹⁴³ The court argued: "Therefore in dealing with the question as to whether any class of citizens is socially or educationally backward or not, it may not be irrelevant to consider the caste of the said group of citizens. In this connection, it is, however, necessary to bear in mind that the special provision is contemplated for classes of citizens and not for individual citizens as such, and so, though the caste of the group of citizens may -be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the castes themselves". See, AIR 1963 SC 649.

¹⁴⁴ To this court arguedif the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognize castes in the conventional sense known to Hindu society. How is the one going to decide whether Muslims, Christians or Jains or even Lingayats are socially backward or not?

assumption that the caste-like system prevailed only among the Hindus and the court, in this case, failed to understand that caste as an institution was prevalent among the Muslims also.¹⁴⁵ It was one way to deny the existence of caste among the other religious groups.

More importantly, the court, in this case, failed to appreciate the crucial distinction between caste as a unit of backwardness and caste as a ritual category. In other words, the court did not care to clarify as to whether it allowed choosing caste on the basis of their ritual and social standing or it only permitted to use caste as units if they were held backward by evidence gathered by the state government. However, even though there was no attempt by the judiciary to explain the difference between the former and the latter usage of caste, it is clear from reading the judgment that that court imposes a ban on the latter understanding of caste in this exercise and allowed caste as a unit to be used to measure the backwardness in case of OBCs.¹⁴⁶

Besides this, the judicial confusion over caste also stemmed from emphasizing on poverty as the court made an attempt to define backwardness in the case of OBCs. This rather than being a constitutional compulsion was indeed ideological in nature, which becomes clear from the arguments that were made in the Balaji case, pressing for the need to study poverty alongside the social backwardness; in this scheme, social backwardness stemmed out of poverty. The learned judges elaborated on this arguing that the problem of determining who are socially and educationally backward classes are

The test of castes would be inapplicable to those groups. M.R. Balaji & Others vs. the State of Mysore, AIR 1963 SC 649.

¹⁴⁵ For further details on caste hierarchy within the Muslims See, Azra Khanam (2013) Muslim Backward Classes: A Sociological Perspective. Sage Publications India Pvt. Ltd.

¹⁴⁶ See Galanter (1984), p.191.

undoubtedly very complex....*Social backwardness is ,in the ultimate analysis, the result of poverty, to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward* (emphasis added by author). They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens.¹⁴⁷

The language used while interpreting the nexus between backwardness and caste certainly opened the possibility for either a complete elimination of caste or over-reliance on the other hand, on non-communal criterion. Further, such understanding seemed to be give primacy to poverty over caste and created an illusion that both poverty and caste-based discrimination might result in the same kind of disability and disadvantage, paving the way for many to assume further that reservation should be given on economic basis. It is worth stressing here that while moving the motion for the amendment of Article 15, Nehru had rejected without ambiguity the plea to introduce economic backwardness and also mentioned the reason to do so by saying that social backwardness is a much broader term.¹⁴⁸

Nowhere, in this case, was it argued as to whether the caste-based classification of OBCs will be logical in the present circumstances and whether it could question the upper-caste privileges in education and services. In place of that, a fear was perpetuated that caste based reservation will come in the way of creating a casteless society. There was no elaboration as to in what form caste could possibly become communal, if it was

¹⁴⁷ Ibid.

¹⁴⁸ Discussed in the previous section of this Chapter.

used to provide access to backward classes in education and services. The difference was between addressing the crucial simple usage of caste in the day to day life and to address the discrimination that is attached to the system of caste. This was not seen as important.

Right to Equality and Positive Discrimination

The court, in the Balaji case, committed another error by promoting the ‘rule of exception’, where it held the Constitutional provisions on affirmative action -- 15(4) and 16(4)) -- as subordinate to the general Article on Equality – Article 14 -- and non-discrimination – Articles 15(1) and 16(1).¹⁴⁹ This approach was infirm from two important premises. Firstly, the object of the law being to achieve equality that was laid out in the Article 14 and the direction to do so was explicitly mentioned in both the provisions on non-discrimination and positive discrimination was not taken into consideration. Secondly, it is clear from a reading of Article 15(4), which says that nothing in this article it meant that classification of classes under the article 15(4) should not be held discriminatory or as an exception to the article 15(1).

In addition to these, the interpretation of treating one above the other stood against both the constitutional and the general idea of equality, treating policies of preferential treatment not as a way to further the equality among the citizens but as a privilege given to the backward classes in the form of exception against the provision of equality and non- discrimination. This creation of two sets of citizen, one who availed

¹⁴⁹ The court observed: . . . it must not be ignored that the provision which is authorised to be made is a special provision, it is not a provision which is exclusive in character so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of society at large would be served by promoting the advancement of weaker elements in the society that Article 15 (4) authorises special provision to be made. But a provision which is in the nature of an exception completely excludes the rest of the society that clearly is outside the scope of Article 15 (4). See AIR 1963 SC 649.

reservation and therefore constituted an exception to the society in general as against those who were not entitled to reservation was not new and were, in fact, rooted in the arguments that were framed in the Champakam Dorairajan case.¹⁵⁰ Here, it is important to highlight that Article 14 is a general statement on equality and claims for only formal equality or in other terms, it is a declaration of equality before the law, irrespective of the fact that society, in general, has not achieved equality in terms of the treatment meted out to the different sections of the society. Contrary to this, both Articles 15(4) and 16(4) provided the means to achieve substantive equality and some sort of justice to those who might have been discriminated in the past and continue to suffer disability in the present. However, this was not an error in the constitutional interpretation as much as the ideological leaning towards the ‘meritocratic norms’ which become clear when the court passed a comment on merit and efficiency, following the wrong trend by projecting reservation as anti meritarian.¹⁵¹

This position is further clarified when the decision in the Balaji case imposed a 50 per cent mathematical limit on reservation by saying that Article 16(4) exists as an exception to 16 (1). This meant that a restriction was imposed on the reservation, as a rule, even without confirming as to whether the general category constituted the other half of the total population. Thus also helping in promoting the myth that the un-reserved

¹⁵⁰ The irregularities in the judicial interpretation have been highlighted in the Havanur Commission Report, especially the attempt to build a relation between reservation and article 14. See Karnataka Backward Class Commission Report, Vol. I., pp. 93-154.

¹⁵¹ Arguing against reservation court in Balaji case observed: The demand for technicians scientists, doctors, economists, engineers a experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by wholesale reservation of seats in all Technical, Medical or Engineering colleges or institutions of that kind. See AIR 1963 SC 649.

groups are bigger in number than those who avail reservation. It is pertinent to recall this aspect of the judgment verbatim:

A special provision contemplated by Article 16(4) like reservation of posts and appointments must be within reasonable limits. The interests of weaker sections of society which are, a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserve practically all the seats available in all the colleges, that clearly would be subverting the object of Art. 15 (4). In this matter again *we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case* (emphasis added).¹⁵²

No novelty was shown while interpreting Constitutional provisions of such importance, whose purpose was quite clear and even if there was any ambiguity left, the Constitution First Amendment had cleared it, which in an emphatic way gave the constitutional mandate to make reservation in a way that can create equal opportunity for those who were excluded from both services and educational institutions.

Not only did the apex court promote the language of the state by holding reservation as anti-meritarian and as an exception to equality and positive discrimination, it also prevented any possibility of reform in the reservation model as it canceled the sub-classification within the category of OBCs. The sub- classification was logical to address the issue of heterogeneity among the OBCs and also to check that the reservation benefits were not eaten up by a single group. However, the court was least impressed with these arguments and instead observed that if backward classes are categorized there are chances that the advanced sections will enjoy the privileges.¹⁵³ Further, according to the court, backwardness cannot be relative; however, this argument has been overruled in

¹⁵² AIR 1963 SC 649.

¹⁵³ Holding such a classification as unconstitutional, court held that Art. 15(4) authorizes special provision for the really backward classes. In introducing two categories of Backward Classes, what the impugned order, in substance, purports to do is to devise measures for the benefit- of all the classes of citizens who are less advanced, compared to the most advanced classes in the State, and that, in our opinion, is not the scope of Art. 15(4). See, AIR 1963 SC 649.

later judgments.¹⁵⁴ While it can still be argued that the court in this was right to strike down the rule of comparing the backwardness in relation to forward classes but the denial of categorization within backward was unfortunate.¹⁵⁵

In terms of the final verdict, the Balaji case set a pattern wherein rather than directing the state to eliminate those flaws which were objectionable it completely rejected the scheme of reservation for the OBCs. This was done even after the state of Mysore had pleaded before the Supreme Court to apply the ‘Doctrine of Severability’ and strike down only the invalid portion of the Government Order so that the remaining part of the order could have been implemented. But the Supreme Court declined to do so and the order was rejected *in toto*.¹⁵⁶

In the end, the contribution of Balaji was twofold; first it clearly laid down the principle of backwardness in conformity with the constitutional guidelines that it is social and educational; and secondly to initiate the debate on caste/class in which it was neither in favour of caste nor completely denied the importance of caste while determining backwardness, particularly in case of Hindus. However, such was the tone of the Balaji judgment that it was misinterpreted for very long by completely denying any reservation on caste basis. Its effect, however, was not limited to the judiciary, but even the several backward class commission reports, since then, seemed to be hesitant to go by the caste criteria alone and consequently increasing impetus was laid on the economic criteria. The

¹⁵⁴ Almost after a decade such classification was held important.

¹⁵⁵ The principle of relative backwardness was attacked once again in Balaji after it was struck down in Rama Krishna, where court has held “The concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included... backwardness under Art. 15(4) must be social and educational”. See, Ramakrishna v. State of Mysore, AIR 1960 Mys 338.

¹⁵⁶ AIR 1963 SC 649.

conflict was further escalated between the state and the judiciary. It was not that only expensive schemes that were struck down; even the minuscule reservation like one that existed in Bihar were successfully challenged.¹⁵⁷ The basis was that caste cannot be the sole criteria and by using caste to determine backwardness there is always a possibility of perpetuating caste. This was the common theme on which court has decided to strike out reservation in any Indian state. More importantly, it is interesting to note here that how well Balaji suited to any extreme view, meaning that over the years multiple meaning of caste and class developed, where the least effort was made by the Indian judiciary to identify it with the purpose of reservation.¹⁵⁸

The legal obstructions in the way of defending the reservation scheme made the Mysore government to switch over to an income-cum occupation test, ignoring caste completely. A new order declaring as Backward Classes those families who had an annual income of less than Rs. 1,200 and pursued the following occupations was devised based on the following criteria:

1. Actual cultivator;
2. Artisan;
3. Petty businessman;
4. Inferior service (i.e. Class IV in Government service and corresponding class or service in private employment) including casual labour, and
5. Any other occupation involving manual labour.¹⁵⁹

¹⁵⁷ See, AIR 1965, Patna 372.

¹⁵⁸ The same has been argued by Parmanand Singh that "The cognitive distortions of Balaji has resulted in the emergence of an ambiguous doctrinal frame which presents multiple and competing meanings of castes and classes". See Parmanand Singh, *Caste Class: The Doctrinal puzzle from Balaji to Vasanth*, 1986) 1 SCC (Jour) 36 at p.37.

¹⁵⁹ See *Shetty vs. State of Mysore*, A.I.R. 1969 Mys.48.

The validity of this government order too was challenged on the ground that the impugned order has ignored caste while determining the backwardness; therefore it did not benefit the really backward classes for which reservation is constituted. Taking an exception to the Balaji reading, the court in the D.G Vishwanath vs. State of Mysore case held caste as an important criterion which cannot be excluded while defining the backwardness.¹⁶⁰ The court, in this case, further held social justice as an important feature of the Indian constitution and warned against any form of over-reliance on the merit theory. It was one of the rare judgments which interpreted reservation as an important policy to achieve social justice. It is pertinent to cite the relevant portion of the judgment:

It is dangerous to be blind to the appalling conditions of many sections of the people and that unaided many sections of the people who constitute the majority in the state cannot compete with the advanced sections of the people, who today have monopoly of education and consequently have predominant representation in Government services as well as in other important walks of life..... we have pledged ourselves to establish a welfare state. Social justice is an important ingredient of that concept. That goal cannot be reached if we over-emphasise the Merit theory.¹⁶¹

Blunders of Chiterlekha Judgment

The above-mentioned decision of a court that held caste as the most important factor in determining backwardness was challenged in the Chiterlekha vs. the State of Mysore, where the court went to completely denying caste once again. Chiterlekha was perhaps the most conservative judgment, where all the advances made in the previous cases were reversed and the apex court mis-interpreted the Balaji judgment on the relevance of caste

¹⁶⁰ The court held caste to be an important criterion to determine backwardness in case of Hindu community and argued: "As the government has ignored caste and residence basis altogether in the instant case, the court felt that the classification of backward classes adopted did not really help the really backward classes among the Hindus. See, A.I.R. 1964 Kant. 132.

¹⁶¹ D.G Vishwanath vs. Chief Secretary to the State of Mysore. AIR 1964 Kant 132.

in preparing the list of backward classes.¹⁶² A reading of judgment in the Chiterlekha case makes it clear that such an understanding was based on a selective reading of Balaji on caste based classification of backward classes. It is important to highlight that while in the Balaji case, the judiciary was hesitant on using caste as the sole criteria for determining backwardness, in the Chiterlekha case it was the complete denial of doing so.¹⁶³

It was surprising that the court could find support for its reasoning in the constitution, which nowhere had imposed a prohibition over the usage of caste in granting reservation. It held:

We would hasten to make clear that caste is only a relevant circumstance in ascertaining the backwardness of a class and there is nothing in . . . which precludes the authority concerned from determining the social backwardness of a group of citizens if it can do so without reference to caste.¹⁶⁴

However, this was not the first time such regressive arguments were made in the court. They were recited before in the Champakam Dorairajan case, where the judiciary ruled out reservation in educational institutions on a specious argument that there was no explicit mention of caste in the constitution. This was repeated in the Chiterlekha case almost a decade and half later and notwithstanding the Constitution First Amendment in 1951:

The important factor to be noticed in Article 15(4) is that it does not speak of castes, but only speaks of classes. If the makers of the Constitution intended to take castes also as units of social and educational backwardness, they would have said so as they have said in the case of the

¹⁶² See Galanter (1984)

¹⁶³ Court made the suggestion that the list of backward classes can be prepared by totally keeping caste outside the consideration by opting for other relevant criteria: While this Court has not excluded caste from ascertaining the backwardness of a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of class. To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but, it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of the person on the basis of other relevant criteria. See, Chiterlekha vs. State of Mysore, AIR 1964 SCR (6) 368.

¹⁶⁴ Chiterlekha vs. State of Mysore, AIR 1964 SCR (6) 368.

Scheduled Castes and the Scheduled Tribes. Though it may be suggested that the wider expression 'classes' is used in cl. (4) of Art. 15 as there are communities without castes, if the intention was to equate classes with castes, nothing prevented the makers of the Constitution from using the expression "backward classes or castes."¹⁶⁵

While it is true that there is no explicit use of word 'caste' in the constitution, caste as such was not eliminated from the purview of Article 15(4); if that being the case nobody had stopped the constituent assembly from introducing economic backwardness instead of social and educational backwardness. Also, it was dangerous to propose that such forms of inequality (social and educational) had no relation with caste. In addition, since most of the arguments made in Champakam Dorairajan case were overruled by the First Amendment, it essentially reflected that reservation primarily was meant to eliminate caste differences from the institutions of importance.

To further establish their point that caste cannot constitute a class, the court argued that the juxtaposition of the expression "backward classes" and "Scheduled Castes" in Article 15 (4) also leads to a reasonable inference that the expression "classes" is not synonymous with castes.¹⁶⁶ This anomaly that the backwardness in case of OBCs cannot be treated the same way as it is with the SCs/STs was introduced in the Balaji case and was recited in the decisions that followed Balaji and Chiterlekha judgment.¹⁶⁷ As far the constitution is concerned, it nowhere treats SCs and STs equally with the OBCs, a point that becomes clear from the constituent assembly debates that the special provision contemplated for SCs and STs were not to be granted to any other sections of the society. In fact, for OBCs it was more of a question of disability and disadvantage that they suffered. Secondly, the list of SCs and STs were maintained by the President's

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ S.A. Partha and Others vs. State of Mysore, AIR 1961 Kant 220.

Order whereas it was settled that the OBCs were to be determined at the local level.¹⁶⁸ Therefore, it would have been harsh for the OBCs if the rule of comparison was applied, as the kind of backwardness from which the SCs suffered was very different from the OBCs. However, judiciary is not one to be completely blamed for such understanding. One has to be critical of the political state also in the way it handled the reservation scheme continuing with the much flawed and criticized preferential policy till 1977.¹⁶⁹

Devdasan: Rule of Exception

The judiciary kept on refashioning new understandings out of the Balaji judgment, making it further difficult to create a policy that could have been effective to its best. The new addition to this was the decision in the Devdasan vs. Union of India case; here, the apex court further went on to elaborate the rule of exception, completely isolating the principle of equality from the clause of positive discrimination, which negated the spirit of the constitution.¹⁷⁰

The question dealt with in the Devdasan case was whether the impugned provision on reservation of posts made by the Government of India in favour of Scheduled Castes and Scheduled Tribes offended Article 16(4) of the Constitution. This was again an important case that brought out an essential facet of equality over the issues of carry forward rule and reservation in promotion. The general rule was that reservation was limited only at the stage of recruitment, until the decision of the Supreme Court in

¹⁶⁸ This comparative exercise was first conducted in the Balaji. See AIR 1963 SC 649.

¹⁶⁹ In late 70s backward class movement went through major shift, breaking themselves from the clutches of more dominant castes. In Karnataka, backward caste movement was led by Devraj Urs, who forged a coalition of caste/ communities other than Brahmins and Lingayats (dominant caste). Even before him L.G Hanuvar a strong proponent of different backward caste ideology has raised his voice and finally, it was supported by Devraj government by constituting a commission under the chairmanship of L.G Hanuvar.

¹⁷⁰ T. Devadasan vs. The Union of India, AIR 1964 SCR (4) 680.

the General Manager Southern Railway vs. Rangachari case where it was declared that reservation was permissible in posts to be subsequently filled in by through promotions.¹⁷¹ It is important to outline that popular means adopted to deny this right was to de-reserve the unfilled vacancies in the reserved category in a current year and those were then filled by the eligible general category candidates. Even though this particular case did not directly concern the issue of OBCs representation in services, it does clearly show how the judiciary has come in the way of instituting a more meaningful policy of positive discrimination in the cause of social justice.

Relying heavily on a reading of the Balaji decision regarding the relationship between Articles 14 and 15(4), as an article of separate importance, the same was applied to Article 16(4). This judicial position was further appropriated and emphatically elaborated, where the court held:

To hold that unlimited reservation of appointments could be made under cl. (4) would in effect efface the guarantee contained in clause (1) or at best make it illusory. No provision of the Constitution or of any enactment can be so constructed as to destroy another provision contemporaneously enacted therein... the over-riding effect of clause (4) of clause (1) and (2) could only extend to the making of a reasonable number of reservation of appointments and posts in certain circumstances.¹⁷²

Such understanding is the result of a selective reading of the Article 16(1) as separate from much important and a binding clause 16(4), raising doubt over the intention of the court that argued:

¹⁷¹ The majority (Gajendragadkar, Sarkar, and Das) held that articles 16(i) and 16(2) of the Constitution are intended to give effect to Art. 14 and Art. 15(1) Of the Constitution and these Articles form parts of the same constitutional code of guarantees and supplement each other. Article 16(i) should, therefore, be construed in a broad and general, and not pedantic and technical way. So construed, "matters relating to employment" cannot mean merely matters prior to the act of appointment nor can 'appointment to any office' mean merely the initial appointment but must include all matters relating to employment, whether prior or subsequent to the employment, that are either incidental to such employment or form part of its terms and conditions and also include promotion to a selection post. See General Manager Southern Railway vs. Rangachari, AIR 1962 SCR (2) 586.

¹⁷² AIR 1964 SCR (4) 680.

We would like to emphasize that the guarantee contained in Article 16(1) is for ensuring equality of opportunity for all citizens relating to employment, and to appointments to any office under the state. This means that on *every occasion for recruitment the State should see that all citizens are treated equally*. The guarantee is to each individual citizen and, therefore, every citizen who is seeking employment or appointment to an office under the State is entitled to be afforded an opportunity for seeking such employment or appointment whenever it is intended to be filled. In order to effectuate the guarantee each year of recruitment will have to be considered by itself and *the reservation for backward communities should not be so excessive as to create a monopoly or to disturb unduly the legitimate claims of other communities* (emphasis added).¹⁷³

It was naïve on the part of the court to construct a statement on equality that treats every individual as equal when the state, in its constitutional scheme, had made an evident statement in the form of Article 16(4) and 15(4) to provide preferential treatment to those which the state deems as backward. Further, the presence of these two articles right after the Article 14 was testimony of the fact that the state acknowledged the discrimination and the monopoly of few castes in education and services. Thus, Articles 15(4) and 16(4) were the modus operandi to create equal citizens.

As discussed in Chapter 2 of this study, the strongest opposition against reservations has been based on the argument of merit and efficiency. It was one of the dominant and reoccurring themes in the constituent assembly debates, which at one point seemed to be settled in principle as Article 16(4) provided for reservation in posts and services. At the constitutional level such an argument on efficiency drew their support from the Article 335.¹⁷⁴ However, Article 335 is a general article on the maintenance of efficiency in administration and nowhere did it seem to suggest that reservations lead to lowering of standards and efficiency in administration. Further, rather than constructing Article 16(4) in the light of the established fact of monopoly of few in services as has

¹⁷³ Ibid.

¹⁷⁴ Article 335: The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

been the case; the court was more concerned as to whether the scheme of reservation has unnecessarily trampled on the interest of the non-beneficiary sections of the society.

Justice Subba Rao's Intervention

Justice K. Subba Rao was the sole dissenter to the majority verdict in the Devdasan case, that fixated reservation as the exception to the general article on equality. While upholding that there is a conflict between Article 335 and Article 16(4), Justice Subba Rao held that 'It is inevitable in the nature of reservation that there will be a lowering of standards to some extent' and he went on to add 'but on that account the provision cannot be said to be bad, inasmuch as in that case, the State had, as a matter of fact, prescribed minimum qualifications, and only those possessing such minimum qualifications were appointed'.¹⁷⁵

The significant point is that not only did Justice Subba Rao also upheld the wholesale classification of a caste as backward saying 'if the whole or a substantial portion of a caste is socially or educationally backward, then the name of that caste will be a symbol or a synonym for a class of citizens who are socially and economically backward and thus within the ambit of [Article 15(4)]'.¹⁷⁶

Triloki Nath

The search for a more neutral and non-communal criteria continued in the Triloki Nath case, where once again the court reasserted the position held in Balaji case.¹⁷⁷ In this case, the state of Jammu and Kashmir had listed backward classes based on

¹⁷⁵See Justice dissenting judgment in Devadasan, AIR 1964 SCR (4) 680.

¹⁷⁶ This position was that has been further elaborated in Thomas and Vasanth Kumar case to be discussed later in this chapter.

¹⁷⁷ Triloki Nath Tiku & Others. Vs. State of Jammu & Kashmir, AIR 1967 SCR (2) 265.

occupation.¹⁷⁸ The one important contribution, in this case, was that the court declared that the caste or community in concern has to satisfy the condition of backwardness and thereafter the principle of representation in services can be applied for measuring and classifying the said caste as backward. The court held:

It is, therefore, necessary to satisfy two conditions to attract clause (4) of Article 16 namely (i) a class of citizens is backward, i.e., socially and educationally, in the sense explained in Balaji case; and (ii) the said class is not adequately represented in the State service under the State.¹⁷⁹

The court, in this case, did not make any new observation into the Balaji dictum and failed to clarify what it meant by caste. Therefore, the judicial fallacy of proposing caste-based reservation as antithetical to the constitutional guidelines persisted. The judiciary continued to miss the point that the constitution was looking at a special kind of backwardness that could possibly be identified with the class of citizens when it laboured to give a definition to class in the course of its judgment. It said and erroneously so that:

In its ordinary connotation, the expression "class" means a homogeneous section of the people grouped together because of certain likeness or common traits, and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. But for the purpose of Article 16(4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent, place of birth, or residence cannot be adopted, because it would directly offend the Constitution.¹⁸⁰

Rule of Discretion: Judiciary Strikes Again

In a majority of court cases that dealt with the issue of reservation concerning OBCs, it was clear that while the judiciary had shown great vigilance to excessive reservation, it has mostly refrained from directing the state to implement reservation for OBCs. In turn, the rule of discretion was resorted to, leaving it to the craving of state to take a decision

¹⁷⁸ From the time reservation was introduced in the state of Jammu and Kashmir the government has relied mostly on occupational and territorial groups to distribute reservation in case of OBCs. See Karnataka Backward Class Commission Report. See, AIR 1967 SCR (2) 265.

¹⁷⁹ AIR 1967 SCR (2) 265.

¹⁸⁰ Ibid.

over the reservation for OBCs. This question, as to whether it is the duty of the state to make policies for reservation in favor of the backward classes or a discretionary power was taken up only in 1967, which was in the C.A. Rajendra vs. Union of India case. The bench, in this instance, unanimously rejected the contention that reservation is legally enforceable.¹⁸¹ This argument was deduced from the majority ruling in the Devadasan case, where the court had held that Article 16(4) did not confer any fundamental right on the backward classes for reservation in posts. Going further, the court made the statement that the government was even empowered to give up the policy of reservation, if adopted earlier, by a subsequent order.¹⁸²

Now it is relevant from the scope of this study to debate this aspect -- whether reservation was given in the form of a right which backward classes were entitled to claim or as a policy of discretion where the state was free to either uphold reservation or reject the idea wholesale if they deemed so – from a reading of the Constitution as an enabling document and an article of faith. In this sense, it may be argued that it was neither a right nor a discretion; the policy of affirmative action was part of the social contract made while framing the Indian constitution and the Indian state had an obligation towards the backward classes, to redress the disability and disadvantage that OBCs had suffered from in the past. This commitment to building an egalitarian society is reflected in the constituent assembly debates. Further, while the Article on equality of opportunity in posts and services was debated, Ambedkar made it clear that reservation

¹⁸¹ The court argued: There is no constitutional duty imposed on the Government to make reservation . . . Art. 16(4) is an enabling provision and confers a discretionary power on the State to make a reservation of appointments in favour of backward class of citizens which, in its opinion, is not adequately represented in the Services of the State. See, C.A. Rajendran vs. Union of India & Others, AIR 1968 SCR (1) 721.

¹⁸² AIR 1968 SCR (1) 721.

should not be left to the discretion of state.¹⁸³ However, Articles 15(4) and 16(4) qualify to be classified as Fundamental Rights simply on the face of the fact that they are in Part III of the Constitution and this ought to be considered as settled. On one hand, even if it is held that reservation in itself might not qualify as a Fundamental Right, it is a fact that the state is under direction, under the constitution to achieve equality and that direction comes from Article 14 and it is for that purpose that Articles 15(4) and 16(4) are placed along with the general article of non-discrimination. Therefore, the provisions of Article 16(4) cannot be constructed narrowly as a discretion because equality of opportunity is a commitment that constitution has imposed on the state.

The 'Rule of Caution' proposed by the court at this stage seems absurd for the following reasons:

- Firstly, as with the exception of a few states, reservation in case of OBCs was in vogue even before the Constitution came into place and
- Secondly, even with the old data, some of the states were able to show that lower castes faced disability as the monopoly of the upper castes in services and educational institutions continued.¹⁸⁴

In the light of these two contentions, would it not have been wise for the higher judiciary to direct the state to implement such policies and here the court must have acted as a vigilante. However, in most of the cases, the higher judiciary seemed to protect what

¹⁸³ See Shiva Rao Vol. 2. P.259.

¹⁸⁴ The backward class commission reports in Tamil Nadu and Karnataka have produced elaborate data in this regard that shows the dominance of upper castes in services and educational institutions. See Sattanathan Commission Report discussed above. Discussed in the next section.

they declared was the clause of equality and non- discrimination and refusing to recognize caste based discrimination as real and not a spectre.¹⁸⁵

Andhra: Enforcing the Balaji Ruling

The reservation policy in Andhra was stalled for long by the Balaji judgment. Since 1963, when the Congress government's decision to extend reservation to medical colleges was successfully challenged in court and the OBCs were denied reservation, based on the argument that the list prepared by the state government was solely drawn by using the caste criterion.¹⁸⁶ The court further held that in order to establish social and educational backwardness, the classification of backward classes has to be supported by data. In a very short time, the government came up with a new list, this time identifying 112 communities under the OBCs.¹⁸⁷ Even this Government Order went to the High Court leading to yet another rejection in 1968 as the state failed to follow the right procedures laid by the court in the previous case.¹⁸⁸

¹⁸⁵ Galanter has also pointed out towards this paradoxical view that was followed by the Indian courts.

"The Courts seem to infer that since there is no duty to confer any particular sort or amount of preferential treatment, there is no duty to confer any at all. In effect, they hold that a discretion sufficiently broad to allow a zero response to any individual claim is taken to imply a discretion to make a zero response to every claim. But this is somewhat paradoxical in view of the clear and explicit constitutional duty to make some special provision (Article 46) to advance the interest of the weaker sections". See, Marc Galanter, *Competing Equalities.* Law and the Backward Classes in India, Oxford University Press, Delhi (1984), p. 397.

¹⁸⁶ In *Sukhdev vs. Government of A.P.*, a single judge struck down a scheme of reservations in medical college admissions on grounds, inter alia, of the absence of evidence that the government had acted on concrete and reliable data or had held any inquiry to determine the social and educational backwardness of the listed groups. Dismayed by the fact that the list in question was 25 years old and that there were not even state averages against which to measure the listed groups, the court found this procedure a violation of article 15. See, *Shukdev vs. the State of A.P.*

¹⁸⁷ See, *State of Andhra Pradesh v. P. Sagar*, AIR 1968 SC 1379.

¹⁸⁸ AIR 1968 SC 1379.

P. Sagar Case

Hopeful of defending the government order, the state appealed to the Supreme Court, which upheld the High Court judgment.¹⁸⁹ In this case, the caste determination was held to be bad as the state was unable to indicate the rationality on which it had declared certain castes to be backward. The court observed that the expression classes meant a homogenous section of people grouped together because of certain likeness or common traits and identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like. Overall, the court, in this case, established a point that caste could be made a criterion for backwardness if a proper inquiry or investigation had been conducted by the state government before listing caste groups under Article 16(4) and 15(4). Surely, this was a correction of the earlier decision taken in the Chiterlekha and Devdasan cases.

However, some other observations made by the court, questioned the constitutional purpose of reservation policy, taking the clock back to the conservative approach that the judiciary had employed from the very beginning, where once again the rule of exception was applied to impose restrictions on reservation; however inability of the state to produce enough data also helped the cause. This was:

The assertion by the State that the officers or the State had taken into consideration the criteria which had been adopted by the courts..... or that the authorities had acted in good faith in determining the socially and educationally backward classes of citizens would not be sufficient to sustain such claim..... Article 15 guarantees by the first clause a fundamental right of far-reaching importance to the public generally. Within certain defined limits an exception has been engrafted upon the guarantee of the freedom under clause (1), but being in the nature of an exception, the conditions which justify departure must be strictly shown to exist.¹⁹⁰

¹⁸⁹ AIR 1968 SC 1379.

¹⁹⁰ Ibid.

Manohor Committee¹⁹¹

With the immediate effect of the judgment passed in the P Sagar case, the government of Andhra Pradesh was forced to constitute its first backward class committee to settle the various issues attached with reservation in case OBCs as raised by the Supreme Court. The committee was also aware of the fact that due the Balaji case reading, it has to consider the application of multiple criteria for the identification of OBCs. In doing so, the report laid great impetus on the poverty. Besides poverty, caste, occupation, and educational backwardness were identified as the main factors which lead to backwardness.¹⁹² The committee directly imported the Balaji principle where the court had argued that any reservation under 16(4) can be given only to those classes whose representation in services is well below the state average.¹⁹³

Based on the above-mentioned criteria, the committee prepared a list of backward classes and recommended 30 per cent reservation of seats for the persons belonging to backward castes. With that, it also recommended a review of the policy after 10 years and removal of those castes which had made progress during the period. Soon, the state government issued an order in September, 1970, reserving 25 per cent of the seats in medical college for the candidates belonging to various backward classes and this was in addition to the 14 per cent of seats for Scheduled Castes and 4 per cent for the Scheduled Tribes.¹⁹⁴

¹⁹¹ The state of Andhra Pradesh was formed from the erstwhile State of Madras in 1956.

¹⁹² The four criteria as outlined by the commission were: (i) General poverty of the class or community as a whole; (ii) Occupations the nature of which must be inferior, unclean, undignified and unremunerative or one which does not carry influence or power; (iii) caste in relation to Hindus; (iv) educational backwardness.

¹⁹³ Andhra Pradesh Backward Class Commission, 1969, p.107.

¹⁹⁴ See Government Order No. 1793/ Education dated Sept 23, 1970.

Even though the reservation stayed well below the limit of 50 per cent and list was prepared after conducting an inquiry into the condition of the backward classes, this order too was successfully challenged in the High Court and G.O. was struck down on the ground that listing of backward classes was done primarily based on caste.¹⁹⁵ However, this was reversed in *Balram vs. State of Andhra*, which has been discussed later in this section.

The Case of Forward among the Backwards: Deciding Who the Legal Claimants are.

As the judicial exercise to define the expression 'class' became more aggressive, different set of reasoning were provided to eliminate the wholesale classification of a caste as backward. To a large extent, such reasoning was first given birth in the *Balaji* case and further developed in the *Chiterlekha* case, where the court had asserted that there are economic differences within the given castes, which meant that caste cannot constitute a class. What followed after *Chiterlekha* was an argument that a caste can be a class only if the affluent sections or individuals among those who are identified under the backward classes are excluded from availing the reservation. Therefore, imposing a condition for backwardness where even if a caste was found to be socially and educationally backward (constitutional criteria), the states were directed to exclude those individuals or groups within castes which were economically forward as compared to the rest of the members in that group; a course that many states followed.

To a certain extent, the formulation of this idea to exclude the relatively wealthier and better off among the backward classes, distorted the purpose of reservation which

¹⁹⁵ See *State of Andhra Pradesh & others vs. U.S.V. Balram*, A.I.R. 1972 S.C. 1375.

was to address the social disabilities arising from the caste status. While income based exclusion occupied the center stage at a certain level, the debate also addressed the crucial issue of heterogeneity among the OBCs, with many states creating divisions among the backward classes. The debate of this kind emerged mostly in the Southern Indian states, which were reluctant to introduce income based exclusion, particularly in Tamil Nadu and Kerala, which were the first to address the issue of heterogeneity among the OBCs. However, both the states failed to abide by the judicial directions in this regard and opposed the income based exclusion.

Kumar Pillai Report¹⁹⁶

It is important to summarize here that unlike Mysore, where the reservation policy remained more or less static, the state of Kerala had made a series of changes in its original scheme of reservation which came into existence as early as in 1935.¹⁹⁷ The first change was initiated in 1952, where the old quota system was replaced by a scheme of communal reservation in the Travancore-Cochin State. With the reorganization of state, in 1956, further changes were made by raising the quota for backward classes from 35 to 40 per cent and introducing a system of sub- quota, as few communities were found cornering the benefits of reservation.¹⁹⁸

However, post Balaji, this scheme of reservation was challenged and cancelled by a single judge for the reason that no convincing material was furnished by the state

¹⁹⁶ After the name of Chairman who was a retired judge of the High Court.

¹⁹⁷ In 1935 Travancore government has appointed a Public service commission with a provision for proportionate representation in the lower grades of public services for all communities according to their number. A similar move took place in Cochin in 1937.

¹⁹⁸ Even though reservation scheme in Kerala has been in place since 1935 there was no reservation for Ezhavas in services, further this scheme was not applicable to promotion, to 11 state services, nine subordinate services. Mentioned in Communal Road to Kerala.

government, which could have proved that the castes/communities included in the list, were both socially and educationally backward. Besides this, the court also raised objection against the wholesale classification of caste/community as backward, where court argued:

That from the materials adverted by the state government themselves it was clear that the government had not validly determined as to who should be included in the backward classes. The basis to include the Ezhavas and the Muslims as a whole as backward classes were predominantly based on the caste and religion and no inquiry into their economic condition had been made. Consequently, the classification of backward classes was invalid under 15(4). The 35% quantum of reservation and the sub-division of that was also not valid.¹⁹⁹

The High Court judgment that invalidated the old scheme of reservation triggered the first inquiry for backward classes in Kerala. Besides this, the constitution of the Kumar Pillai committee was also influenced by a state level report submitted by V.K. Vishwanath in 1957. The Vishwanath report, apart from other recommendations, had suggested that the state government constitute a commission for backward classes.²⁰⁰

In 1964, the state government appointed a committee to identify the sections of the people, who could be treated as socially and educationally backward. The committee, headed by Kumar Pillai, however, was unable to take any position on the use of caste as a criterion for backwardness and instead relied on means-cum caste/community test to identify the backward classes.²⁰¹ The report was submitted in 1966 and its major recommendations were:

- a) To lower down the reservation quota from 35 per cent to 25 per cent²⁰²:

¹⁹⁹See, Jacob Mathew & others. vs. The State of Kerala, AIR 1964 Ker 39.

²⁰⁰ Mentioned in Mathew George (1989) Communal Road to Secular Kerala, New Delhi: Concept Publishing Company, p.152

²⁰¹ ibid

²⁰² ibid

- b) Only those individuals who are members of families with an aggregate annual income of Rs.4,200/- and belonging to the castes and communities listed by it, should be considered socially and educationally Backward Classes for the purposes of Article 15(4).²⁰³

This was not a new proposal in the state of Kerala. As early as in 1958, the Administrative Reforms Committee, headed by the State's Chief Minister, E.M.S. Nambodripad, had given similar suggestions and argued that the reservation benefit should be denied to those who were above a particular level of family income.²⁰⁴ It may be stressed here that both the communist government of Kerala and the Indian judiciary were erroneous when they, rather than identifying the groups that would be eligible for reservation, both insisted upon identifying the actual victims (individuals) of discrimination. Also, such an arrangement was possible only if the quota based reservation model was altered.

Coming back to the Kumar Pillai report, it was opposed tooth and nail by the Nair community, which particularly lobbied to impose restrictions on caste based reservation. However, in 1967, strong representations were made by the Indian Union Muslim League and the Akhila Kerala Ezhava Convention, forcing the state government to raise the bar on reservation to 35 per cent in the favour of the backward classes.²⁰⁵ And to calm down the Nair faction, the state government, once again led by the Communist Party with

²⁰³ Kerala Backward Classes Reservation Commission 1971, Volume 1, p 76.

²⁰⁴ The Administrative reform committee was formed in 1957, which alongside other issues had addressed the issue of reservation to which committee recommended:

(i) reservation for the scheduled castes and scheduled tribes should continue unchanged.

(ii) In the case of other backward communities, reservation should continue but the benefits should be denied to those who were above a particular limit of family income. Mentioned in George (1989) p166

²⁰⁵ The total reservation was divided among different communities as follows: Ezhavas- 13%, Muslims- 9%, Latin Catholic-3% Backward Christians- 1%, Other Hindus- 9%

Namboodiripad as Chief Minister, accepted the recommendation to impose income ceiling, but raising that from Rs. 4,200 to Rs. 6,000 per annum.²⁰⁶

A year later, in 1968, even this arrangement was challenged in the Hariharan Pillai case, where it was argued that the selection of candidates in jobs was done solely based on caste and religion. Another objection raised before the court was over the wholesale classification of caste/community as backward. However, the petition was dismissed by the Kerala High Court, with a direction to conduct a survey to determine backwardness.²⁰⁷ The court observed:

It may be true to say that the Ezhavas, Muslims and the Latin Catholics belong to communities that are socially and educationally backward. However the possibility of there being a section large or small in these communities who are advanced and who are not backward, socially economically or educationally, cannot be ruled out. If there is such a section no reservation can be made in favour of the members of that section. There was a possibility of socially, educationally and economically backward section in the so-called advanced communities (Latin Catholics, Ezhavas, and Muslims) and investigation should be made regarding this aspect. The state should undertake a detailed survey as early as possible to consider whether the backward classes have to be drawn from all weaker section of citizens irrespective of the religion and/or caste to which these sections may belong.²⁰⁸

The judicial decision made it clear that the generalized status of under-representation of caste/community in services was not enough to justify reservation and individual backwardness has to be taken into consideration. This was the second time that the court has questioned the basis to include the Ezhavas and the Muslims as a whole under the backward classes and insisting on the identification of economically backward groups among those listed under the backward classes. At the judicial level, the focus had shifted from determining the suitability of caste as criteria for backwardness towards the identification of who should be the 'Legitimate claimants', where the judiciary rigorously

²⁰⁶Nossiter. J.T (1982) Communism in Kerala: A study in Political Adaptation, University of California Press, Berkeley, p.35.

²⁰⁷ Ibid.

²⁰⁸V. Hariharan Pillai vs. the State of Kerala, AIR 1968 Ker 42.

monitored the classification of OBCs. This approach, would in time crystallize into the concept of 'creamy layer'.²⁰⁹

At the larger level, it was an attempt to manufacture the '**constitutional logic of reservation**' in the case of OBCs, where income based exclusion of wealthy among the backward classes became the rule and defiance could also lead to the cancellation of the reservation scheme as was seen in the case of Kerala. However, as pointed out earlier in this section, the states like Kerala refused to refashion reservation on this logic and instead proceeded with the policy of reservation without exclusion.

Damodaran Commission²¹⁰

Clearly, legislative actions were bound by such archaic judgments that invoked the importance of economic criteria while withholding the caste. The next inquiry in Kerala and the first backward class commission report came in the shadow of above judgment that had made a suggestion towards the exclusion of the advanced sections among the backward classes and also proposed reservation based on economic criteria. The Damodaran Commission Report, then, was to be within the framework to investigate whether or not the existing criteria for communal reservation and rotation in recruitment to government posts was still justiciable.²¹¹

²⁰⁹ The issue of creamy layer has been dealt in the next section of this chapter and later in Chapter 4 in the *Indra Sawhney vs. Union of India*. AIR 1993, SC 477.

²¹⁰ Nettur.P. Damodaran was parliamentarian in first Lok Sabha and then represented the Kisan Mazdoor Praja Party.

²¹¹ Kerala Backward Classes Reservation Commission 1971, Vol. 1, p. 4.

While emphasizing on the economic criteria, the commission identified multiple criteria for backwardness.²¹² The report concluded that the only legally defensible ways of determining backwardness was an economic one measured not by individual or family income or wealth but on the basis of the proportion of the families in each community with aggregate income of Rs. 8,000 or less annually according to their sample survey.²¹³

Amidst the opposition from the members of the backward classes towards the proposed income ceiling, the C. Achuta Menon government (Menon belonged to the CPI and the government was a coalition consisting the CPI, Congress, the Muslim League and many smaller parties) accepted the recommendation in 1973. This meant that the judiciary was able to swing the position of the state by imposing an income ceiling on the backward classes. However, this arrangement did not last for long as most of this was reversed, in December 1978, when the new CPI Chief Minister, Vasudevan Nair, re-established the 40 per cent quota for backward classes and also announced that the Damodaran Commission Report could no longer be acted upon as its survey was totally out of date.²¹⁴ More importantly, the report and the events that followed, provided a reflection into the politics surrounding the reservation conflict in Kerala between the Nairs and the Ezahvas, with many instances of the community changing their sides to qualify themselves as part of backward classes.²¹⁵

²¹²Overall commission had identified Backward Classes under Article 16 (4) using following criteria: education, economic position (because prosperity produced a "home atmosphere congenial to education"), participation in governmental service (and consequent participation in governmental power and the benefits that it affords)"and "social backwardness due to historical reasons." The latter includes factors such as stigmatized occupations, vestiges of caste discrimination, a heritage of *purdah*, and aversion to education in English. See, Kerala Backward Classes Reservation Commission 1971, Vol. 1, p.73.

²¹³ Ibid. p.108.

²¹⁴ Nossiter. J.T (1982) p.291.

²¹⁵ Nossiter. T.J. (1982) Communism in Kerala: A Study in Political Adaptation, University of California Press, Berkeley. p.290.

Sattanathan Commission

The states discussed so far -- Andhra, Mysore and Kerala -- had constituted their respective backward class commissions only after the reservation policies were challenged and held unconstitutional by the courts; there was no immediate pressure on the government of Tamil Nadu on these lines. Being the earliest state to initiate reservation for backward class, the First Backward Class Commission in Tamil Nadu was set up to make a general enquiry into the existing reservation scheme.²¹⁶ The commission was headed by A. N. Sattanathan and the terms of reference did not include identification of OBCs but only to enquire into the measures so far taken by the state for the betterment of backward castes.²¹⁷ In this background, the commission was clear, right at the outset, that while determining social and educational backwardness caste cannot be undermined.²¹⁸

However, this was the first state backward class commission that was critical of the existing reservation scheme and one of the important highlights of the commission was that it advocated the review of reservation scheme on a periodical basis.²¹⁹ The opinion of the commission was that some castes have made decent advancement and for that reason there should be a review of the reservation policy.²²⁰ In saying so, the report

²¹⁶ As Tamil Nadu was one of the oldest states to start reservation in services and educational institution it was felt for long that policy should be reviewed so that those who have attained the benefits can make the way for who deserves more than them. The backward list in Tamil Nadu owes its origin to Grant- in- aid programme of 1885, which was over the years modified to accommodate more voices. This scheme expanded after Justice Party came to the power and introduced first communal G.O. 1921, from there state has continuously guarded the rights of backward classes. See Report of the Backward Classes Commission (1970), Government of Tamil Nadu, Vol. 1.

²¹⁷ Ibid. pp.1-2.

²¹⁸ Ibid. p. 5.

²¹⁹ Ibid. pp. 6, 151.

²²⁰ The Sattanathan commission report observed that upper strata of educated and comparatively well-off members are to be found in every caste, in smaller or larger number. In some castes, the strata are so

also acknowledged the fact that reservation has played the constructive role in democratizing the access to services and educational institutions.²²¹

To further check the uneven progress of various caste groups within the OBCs the report suggested the following:

- a) Imposing an income limit on scholarship and fee concession,
- b) 16 per cent reservation for MBCs and 17 per cent reservation for the BCs, while excluding those families whose annual income exceeded Rs. 9000.²²²

The recommendation to create a category of Most Backward Classes within the Backward Classes came under heavy criticism from the members on the grounds that in Balaji, the Supreme Court had already held such categorization as unconstitutional. In fact, one of the members, M.A Jamal, pointed out the same and argued that the constitution did not recognize any separate sub-class within the backward classes and the creation of the new sub-class, namely the Most Backward Classes was contrary to the provisions of the constitution.²²³ This seemed to impact the government's decision too. Based on the report, the state government increased the quota for OBCs to 31 per cent but the state did not offer any separate reservation to MBCs. However the income based ceiling that was proposed by the commission was rejected, only to be implemented again

substantial by all yardsticks that they may as well be regarded as having crossed the border line. Although there is no direct mention of the caste name but it clear from the data that following castes Agamudayan / Thuluva Vellalars; Devanga/ Sedan; Gavara; Illuvan / Ezhuvan/ Illathar; Kaikolan/ Sengunthar; Sadhu Chetty; Saurashtra; Vadugan; and Virakodi Vellala were considered as forward among backward castes. These trends have been clearly outlined in the two different tables on Population Statistics and employment statistics. The statistics as tabulated by the commission show that the population of these caste/communities (mentioned above) was around 11.3% of the total backward caste population but there share was as high as 37.3% in non- gazetted and 48.2% in gazetted posts. See Report of the Backward Classes Commission (1970), Government of Tamil Nadu, Vol. 1, p.67.

²²¹ The report produced enough evidence to show the progress made by the lower castes in terms of their enrollment in higher education and increased strength in services. Ibid Vol. 1, pp. 69-71.

²²² Ibid. Vol.1, p.73.

²²³ Ibid. Notes of Dissent Chapter XII, M.A. Jamal p.233.

by the M.G.Ramachandran government in 1979, which was disposed of once again in 1985. These issues will be dealt with in the next section.

Reservation With and Without Exclusion²²⁴

Despite the general hostility towards caste based reservation, the case of both Kerala and Tamil Nadu showed the desirability of the government to use communal units (caste and religion) for determining backwardness. No doubt, these decisions were political in nature and the fact that in both the states the backward classes were familiar with the political articulation of caste which helped towards the consolidation of reservation as an important policy, irrespective of the judicial constraints.

Besides this, both these states (and to a certain extent Mysore), laid the foundation for the larger debate over the issue as to whether reservation in case of OBCs has to be implemented with some sort of exclusion of groups (caste/community) from those identified as backward. While both the states, through their respective backward class commission reports, acknowledged the fact that there are groups within the OBCs that have progressed more in comparison to the others, the state governments did not commit themselves to income based exclusion and instead created divisions within the OBCs. While in Kerala this was done by providing compartmental reservation to various groups, Tamil Nadu introduced separate quota for the Most Backward Classes (in the late 80s).

On the other hand, the concept of creamy layer (income based exclusion) that was pushed by the judiciary cannot be uniformly applied to every caste or community in the

²²⁴ Narendra Pani has categorized the reservation as implemented by the various states in India, under two different models a) reservation with exclusion and b) reservation without exclusion. He has further argued that the reservation with exclusion creates greater conflict as was seen in the case of Northern India in 1990 during the anti-mandal agitation. See Pani, Narendra (2010) Reservation Exclusion and Conflicts: Some Insight from Mandal and Mysore, *India Review*, 9:4, pp.397-424.

OBC category. It will be fair only when it can be established that the caste/ community in question has achieved a fair and minimum amount of representation. Also, while it might sound a legitimate concern to make reservation accessible to the needful among the OBCs, such a proposition also opens up an opportunity to take out the more assertive castes from the fold of OBC category. These are those groups that can pose a potent threat to the upper castes.²²⁵ Another important thing is that along with Kerala, Tamil Nadu was the only state headed by a non- Congress government, the DMK, that sprouted from the non-Brahmin movement and had made a difference in the manner in which policies were implemented. In this regard, the statistics produced by the Tamil Nadu Backward Classes Commission reflected the progress made by the non-Brahmins in services with about 51.6 per cent and 67.2 per cent representation in gazetted and non-gazetted posts respectively.²²⁶

P Rajendran: Caste, Class, and Backwardness

Just a year before the Sattanathan Commission report came out, the issue as to whether a caste as the whole can be considered as backward was debated in the P. Rajendran vs. the State of Madras case, where most of what was said in Chiterlekha came to be reversed. More importantly, the court, in this case, recognized caste as a constitutional class. It was one of the first cases where the judiciary looked into the intent behind the scheme of reservation and the historical necessity for reservation. Going into the details of how reservation evolved in the state of Madras, the Supreme Court argued that caste is indeed

²²⁵ For instance Yadavas in North India, Ezavas in Kerala.

²²⁶ However some of these data were produced from few districts. For detail See A.N Sattanathan, pp.90-91.

an intelligible criterion for determining backwardness.²²⁷ Such an inquiry also made it clear that if the social and historical conditions of a state imposes the need to identify backwardness based on caste, then it cannot be considered unconstitutional. The court held:

Now, if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of castes in question, it would be violative of Article 15(1). But it must not be forgotten that caste is also a class of citizens and if the caste as a whole is socially and educationally backward, the reservation can be made in favour of such a caste on the ground that it is socially and educationally backward class of citizens within the meaning of Article 15(4)..... It is true that in the present case, the list of socially and educationally backward classes has been specified by caste. But that does not necessarily mean that caste was the sole consideration and that persons belonging to these castes are also not a class of socially and educationally backward citizens.²²⁸

It was an important judgment for two reasons. Firstly, it provided the much-needed clarity on the Balaji dictum over the use of caste for determining backwardness. The judiciary, in this case, made it clear that only when a caste satisfies both educational and social backwardness it can be claimed to be a class. Secondly, it seemed to acknowledge the fact that caste-based reservations is approved in the constitution, something that was debatable and partially denied since the Communal G.O was scrapped in 1951 in Champakam Dorairajan case.

Perikarupan and Balram: Restoring Sanity

As discussed earlier in this section, two set of problems emerged with the Balaji case:

- a) The hesitancy of the court in the Balaji case to allow caste as the dominant criterion to determine backwardness and the manufactured need to identify backwardness by using economic criteria and

²²⁷ P. Rajendran v. the State of Madras, A.I.R 1968 SC 1012.

²²⁸ Ibid.

b) The approach towards equality and positive discrimination.

In two different cases, the court modified these arguments and reflected on the need to recognize caste to address the disability and disadvantage suffered by OBCs.

In one of the cases, *Periakaruppan vs. State of Madras*, the new scheme of reservation implemented after the Sattanathan Commission was challenged and the main objection raised by the petitioner was that the southern state had relied on caste for determining backwardness. To their defense, the state responded by arguing that such list was based on the data and over the years it has been regularly modified. To which court was in agreement and said:

....we should not forget that it is against the immediate interest of the Nation to exclude from the portals of our medical colleges qualified and competent students but then the immediate advantages of the Nation have to be harmonised with its long-range interests. It cannot be denied that unaided many sections of the people in this country cannot compete with the advanced sections of the Nation. Advantages secured due to historical reasons should not be considered as fundamental rights. Nation's interest will be best served to take a long range view if the backward classes are helped to march forward and take their place in line with the advanced sections of the people.²²⁹

The significant point, however, was that the court, in this case, reflected on the previous judgment and acknowledged the importance of both the *Balaji* and *Rajendran* while deciding over the relevance of caste in determining backwardness. However, the court also issued a statement of caution asking for a timely review of the reservation scheme, a matter that was also raised by the backward class commission in Tamil Nadu.²³⁰

²²⁹ *Minor. A. Periakaruppan & others. Vs. The State of Tamil Nadu, AIR 1971 SC 2303.*

²³⁰ It argued that "Government should not proceed on the basis that once a class is considered a backward class it should continue to be backward class for all time. . . . The Government should always keep under review the question of reservation . . . only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. See *A. Periakaruppan & others, 1971.*

Similarly, in *A.P. vs. S.V. Balram*, the Court had to decide upon the validity of the backward class list prepared by the Andhra Pradesh Backward Classes Commission. In this case, the court held that the total reservation of 43 per cent as constitutional and well below the limit of 50 per cent set by the *Balaji* judgment. The court in the *Balram* case also justified the rationale of choosing caste as the criterion for defining social and educational backwardness.²³¹ The court said:

In our opinion, the Commission has taken considerable pains to collect as much relevant material as possible to judge the social and educational backwardness of the person concerned. There was sufficient material to enable the 'Commission to be satisfied that the persons included in the list are really socially and educationally backward.'²³²

There stands to be a reason that the caste criteria were justified in this case and not on the previous occasion in *P. Sagar vs. State of Andhra Pradesh*. The difference being that this time the state was able to produce statistics and data in support of castes that were listed in the backward class list. The decision in this case, yet again, highlighted the difficulty of collecting accurate data in the absence of caste census and in these circumstances even partially correct data was held as permissible for arriving at conclusions.

The judiciary, in this case, further reasserted what was said in the *P Rajendran* case regarding caste, where the court had held that caste as the whole constituted a class. This approach also opposed the idea that was proposed in *Balaji* and later on stressed in *Chiterlekha* that is to eliminate the rich from the reserved group. The court held:

²³¹Even on the assumption that the list is based exclusively on caste, it is clear from the materials before the commission and the reasons given by it in its report that the entire caste is socially and educationally backward and therefore their inclusion in the list of Backward Classes is warranted by Art. 15(4). See, *State of Andhra Pradesh & others vs. U.S.V. Balram*, A.I.R. 1972 S.C. 1375.

²³² *Ibid.*

One thing is clear, that if an entire caste, is a fact found to be socially and educationally backward, their inclusion in the list of socially and educationally, backward classes by their caste name is not violative of article 15(4).²³³

As far as the dispute within the judiciary was concerned, two lines of arguments developed -- Balaji and Rajendran --, with no attempt to either settle or to reject the earlier opinion. From here on, two lines were followed by the judiciary one of Balaji-Chiterlekha and other of Rajendran- Balram, picking up selectively, one over the other. The objections were not as to whether caste can be used as a unit or not while determining backwardness but rather the usage of caste on the basis of its status and standing in the hierarchy. The caste can be backward or forward depending upon its position in the social hierarchy; however, caste itself is not an indicator of backwardness, which in turn can be identified by the lower level of education, lesser opportunity in services and social discrimination. Discrimination resulted in low occupation, denial of education and to other important resources resulting in deprivation which ultimately was the intent of most of the commission's report. Court did not put any constitutional objection on caste.²³⁴

SECTION III

Policies of Preferential Treatment: Claiming Reservation as their Right

By the mid-1970s, the scenario had begun to change both at the judicial and the political level and the discourse on reservation began to go beyond the confines of merit and the limits imposed by such narrow concerns. Firstly, the judicial understanding in the Balaji

²³³ Ibid.

²³⁴ To this Galanter has argued 'the failure to make clear the distinction between castes as units and caste rank as a measure of backwardness put both uses of caste in some disrepute and encouraged the notion that "caste" was in all respects eliminated from the selection of Backward Classes'. See Galanter (1984), p.191.

case²³⁵ was challenged in couple of important cases, paving the way for more liberal interpretation of the Fundamental Right to Equality and its relation with the policies of affirmative action. More importantly, it allowed alternative opinions to co-exist even while Balaji was still followed in majority of the cases. Secondly, until now, the relationship between the Directive Principles of State Policies and the Fundamental Rights was reduced to mere subordination of one to the other. Such understanding was substantially altered in the Supreme Court's decision in the Keshavananda Bharti vs. State of Kerala wherein the Directive Principles of State Policy was elevated to a status on par with the Fundamental Rights²³⁶ and this principle, applied with clarity in the Minerva Mills case, where Justice P.N. Bhagwati laid stress on the Constitutional goals by arguing that the Directive Principles of State Policy were an obligation on the state.²³⁷

Beside the above alteration in the judicial understanding over the key issues related to reservation, changes at the political level around this time created a space for the lower castes to foreground reservation as an important political demand. The biggest political change, in fact, was brought by the defeat of the Congress in the 1967 elections, where Congress had lost the power for the first time in as many as nine states across

²³⁵M.R. Balaji & Others vs. the State of Mysore, AIR 1963 SC 649. Clarifying that the impetus for reservation comes from the preamble of the constitution the court in this case permitted the use of communal units such as communities, which included caste also. The court argued: It is for the attainment of social and economic justice that Article 15 (4) authorizes the making of special provisions for the advancement of the communities there contemplated, even if such provisions may be inconsistent with the fundamental rights guaranteed under Article 15 or 29(2).

²³⁶The Fundamental rights themselves have no fixed content; most of them are mere empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgement, curtailment, and even abrogation of these rights in circumstances not visualised by the Constitution-makers might become necessary: Their claim to supremacy or priority is liable to overborne at particular stages in the history of the nation by the moral claims embodied in Part IV. Even the article in question was 31 but it justified state action to create equality even if the direction is coming from the directive principles

²³⁷Thus, Directive Principle's, therefore, impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality not only for a few privileged persons but for the entire people of the country.

India.²³⁸ More than the defeat in the elections what raised the anxiety among the Congress men was the fact that the Congress party that up until now had managed to check the discontent among the lower caste failed to do so this time.²³⁹

Not only did this prove to be a colossal change in the Indian politics, it provided an opportunity to the backward caste leaders to raise demands for the increased representation in the grand old Party.²⁴⁰ The Congress responded to this by restructuring their party by bringing more backward caste leaders to their fold.²⁴¹ However, the process of withering away of Congress continued throughout 1970s. This, in fact, was necessary not only for the assertion of OBCs at the political level but also to trigger a substantive change in the manner reservation was treated in the political and judicial arena.

The growing assertiveness of the lower caste leaders and the changes they brought along with them were visible in terms of the large number of Backward Classes Commissions that were appointed across the states and the directions their reports took in the late 1970s and the early 1980s. These reports, indeed, were the product of the socio-political changes that had materialized in the respective regions. Most important among them was the political encashment of caste by the backward classes, a process that continued throughout the 1980s and ultimately captured the centre stage of the Indian

²³⁸The Congress party lost majority in elections of state assembly in Kerala, Tamil Nadu, Madhya Pradesh, West Bengal, Uttar Pradesh, Haryana, Orissa and Punjab. See, Ananth Krishna (2011) *India Since Independence: Making Sense of Indian Politics*. Pearson: Delhi, pp.73-75.

²³⁹See Rajni Kothari, *The Congress System in India*, Asian Survey, December 1964.

²⁴⁰ The demands within congress to include more representatives from OBCs started to appear after the 1967 election where Congress lost considerable ground. See Jafferlote Christopher *India's Silent Revolution* p265.

²⁴¹ These processes were visible in both Uttar Pradesh and Bihar, two states where Congress lost election to coalition of socialist and Kisan Union. See S.N. Chuadary (1999), *Power Relations: Struggle for Hegemony in Rural Bihar*, Zoya Hasan (1998) *Quest for Power*, and Paul Brass (1980) *The politicization of Peasantry in Northern India*.

politics with the partial implementation of the Mandal Commission report in August 1990. These processes and the events related to them will be discussed in Chapter 4 of this thesis.

Approaches to affirmative Action

Irrespective of the geographical location and the diverse caste composition of the different states, political parties across the spectrum shared one common concern by now: On how to politically legitimize reservation and reap electoral gains.²⁴² While the caste based parties identified their demography which predominately belonged to the lower caste groups, the possibility to engage with larger audience was quiet limited. This is where the Southern Indian states were able to manufacture reservation as a system of guaranteed representation to various groups excluding only Brahmins and the few other caste groups.²⁴³ The nature of reservation in the Southern Indian states, especially Kerala, Karnataka and Tamil Nadu allowed the inclusion of the dominant castes too in the list of backward classes and therefore these states were able to gather political acceptance for reservation.²⁴⁴ Beside this, the socio- economic and the political factors also played an

²⁴² Galanter divides the Indian states into three parts over the nature and extend of reservation that was implemented in the post- colonial India. His categorization goes till the late 70s:

a) Peninsular Bloc: Comprising Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and Maharashtra. In these states reservation benefits for backward classes were in function from colonial period.

b) Easter Middle Band: These are states where there was no significant use of backward classes and no major policy was introduced in the post-colonial India.

c) Northern Tier of states: The states under this category display an intermediate pattern. See Galanter (1984) pp 182-183.

²⁴³ It has been widely argued that in Southern part of India the caste group assimilated to form the larger identity groups like Non- Brahmin faction, described as the 'ethnification process'. Although the term ethnification has been widely popularized by Jafferlote, there are others before him like Hadgrave who have used to the same concept to describe the Nadar association in Tamil Nadu. See Hadgrave, L. (1969) *The Nadars of Tamilnad: The Political Culture of a Community in Change*, Berkeley: University of California Press.

²⁴⁴ Pani, Narendar (2010) 'Reservations, Exclusion, and Conflict: Some Insights From Mandal and Mysore', *India Review*, 9: 4, 397- 424.

important role in stabilizing the reservation policy in the Southern Indian states.²⁴⁵ This is not to say that the issue of reservation was settled in the Southern Indian states; it only means that at least at some level reservation as a policy of social justice had established itself in political circles, although the judicial battle had to be continued for long to establish the constitutionality of reservation scheme that was implemented in these states.

The experience in U.P, Bihar, Gujarat and few other states of Northern and Central India reflects the other side of the story, where the state proved to be the biggest hurdle to the cause of the OBCs apart from a hostile judiciary. As discussed earlier in this chapter, an upper caste dominated setup of the state assemblies in these states hardly allowed the structuring of any fair scheme of reservation for OBCs. More importantly, the parts of Northern and Central India were yet to see the kind of political language that backward castes had developed in the Southern Indian states. Compared to the Southern Indian states that saw a strong cultural upheaval and challenge to the upper caste hegemony, states like U.P, Bihar and Gujarat showed very little signs of resistance to the upper caste hegemony in the sphere of knowledge and cultural production and all these contributed to the political subordination of the lower castes.²⁴⁶ Such other parts like Madhya Pradesh and Rajasthan (which were primarily carved out merging a host of Princely states from the colonial era and hence dominated by strong feudal remnants until their merger with independent India), remained un-affected by any movement for reforms

²⁴⁵ The Mandal Commission report, submitted in 1980, had listed out nine hypotheses to explain what the report describes as the widespread violence in North Indian states and certain calmness in the South Indian states as the policy of reservation was implemented in the post- colonial India. See Second Backward Class Commission Report Vol. 1, pp. 31-36.

²⁴⁶ The hegemony here means the concept as laid by the Gramsci where emphasis on the intertwining of civil and political society, and encompassing of both by the advanced capitalist state, suggest that a counter hegemony may well not be feasible, at least initially; that some significant strength within the existing parliamentary system may be necessary as a precondition for any construction of an alternative institutions.

and the earliest reaction in the realm of OBC empowerment had to wait until the partial implementation of the Mandal Commission Report.²⁴⁷

Lastly, it is important to mention here that the democratic assertion of the lower castes, both in the Southern and the Northern Indian states were linked organically to the course that the various state governments in these states took in the domain of land reforms legislations. It is true that the policies of land reforms produced very little change in the property relations and their success is very much doubted but still they created an assertive section within the OBCs, a social coalition that played a significant role in the electoral politics of India.²⁴⁸ However to what extent did these arrangements secularise the institution of caste has also to be debated. As, it is, equally important to differentiate between the one strategy that worked towards the complete annihilation of caste and the other, where caste only provided temporary political and social gains.

Socialists Come to the Rescue

The two important Northern Indian states -- Uttar Pradesh and Bihar -- saw the emergence of Kisan politics and the socialists' quota politics, posing a serious challenge to the upper caste domination in the electoral arena. While the former laid their allegiance towards the peasants as a class and largely mobilized the farmers from the intermediate castes²⁴⁹, the latter was rooted in the ideas of Ram Manohar Lohia and constantly foregrounded caste as a category to bring about transformation of the society at

²⁴⁷ Jaffrelot (2003) p.252.

²⁴⁸ See, Kohl, Atul (1990) *Democracy and Discontent: India's Growing Crisis of Governability*, Cambridge: Cambridge University Press.

²⁴⁹ The kisan politics is largely identified with the Jat leader Charan Singh, who left Congress in 1967 over the issue of Zamindari abolition and was instrumental in mobilizing the intermediate caste in parts of Uttar Pradesh and Haryana. See Brass Paul (2012) *An Indian Political Life: Charan Singh and Congress Politics, 1957 to 1967*, Sage Publication Inc.

large.²⁵⁰ The socialists were the first to raise the demand for reservation for the OBCs and this became one of their central agenda. The first sets of experiments were initiated in the state of Bihar, where socialists always had their presence.²⁵¹

Historically the only preferential scheme Bihar had was the post-matric scholarship, which was in force since 1951.²⁵² However, following the judgment in the Balaji case, a group of upper caste persons successfully challenged this list in the Patna high court.²⁵³ Following this, any attempt to bring in reservation at the larger level started only after the decline of Congress in 1967. The defeat of the grand old party in the assembly elections to Bihar in 1967 provided better political possibilities to the OBCs and to their representatives in the state assembly. Even the Congress was forced to increase the representation of the lower caste leaders in the party. As a result, in 1971, the Congress was headed by Daroga Parsad Rai, who belonged to the backward caste and went on to constitute the first backward class committee under the chairmanship of Mungeri Lal. The purpose of this committee was to study the desirability of providing reservation in government services, a demand that was raised way back in 1953 by the Congress MLA, Bajnath Singh.²⁵⁴ In this regard, the committee prepared two separate lists for the backward classes- other backward classes containing 128 castes and most

²⁵⁰ Lohia was one of the first political leaders in Independent India, who argued for reservation in case of OBCs. In fact affirmative action became the central most political agenda for Lohia and his party, which were picked up later by the leaders like Karpuri Thakur in the 1970s. See, Lohia (1964), *The Caste System*, p.141. Also see, Jaffrelot (2003), p.301.

²⁵¹ In the first general election socialist succeeded in bringing their vote share close to 21.3 percent.

²⁵² The backward caste list comprised two categories: 79 castes were considered as more backward than the other 30 castes mentioned in the Annexure 2. . See, AIR 1965 Pat 372.

²⁵³ The Patna High Court argued that Supreme Court in Balaji case did not approve of specification backward classes by 'caste' and community. See, AIR 1965 Pat 372.

²⁵⁴ In 1953 Congress MLA has proposed 25% reservation in post for the OBCs, however after the pressure from the party the congress leader retracted his demands. Mentioned in Hebsur, R.K (1980) 'Reaction to the Reservation to the Other Backward Classes', A comparative Study of Four States, report submitted to the Backward Classes Commission, Government of India, in Report of the Second Backward Classes Commission, Vol. III to VII, p. 157.

backward classes containing 93 castes.²⁵⁵ Besides this, the Mungeri Lal committee also recommended a quota of 26% in posts and 24% in the educational institution for the backward classes. These recommendations, however, were put in the shelf by the Congress government which by this time came to be headed by the Brahmin leader Jaganath Mishra.²⁵⁶

However, with the thumping victory of the socialists (who dominated the Janata Party in Bihar) in the 1977 elections, the agenda of reservation for backward classes was again up for consideration. The Bihar government which was now headed by the Karpoori Thakur, implemented the recommendations made by the Mugeri Lal Committee with some minor modification.²⁵⁷ In addition to that the government introduced sub-quota for the Extremely/ Most Backward Classes, who were certainly under- represented (in services and educational institutions) as compared to the backward classes.²⁵⁸ However, even the socialists could not keep out the idea of reservation to the economically backward classes²⁵⁹. On the other hand such ‘generosity’ towards the OBCs did not go well among the upper castes and in no time Bihar was drowned in anti- reservation violence. The Janata government paid the price for trying hard to engineer a quota in jobs

²⁵⁵ The list was prepared from the 1951 data and few castes were directly lifted from the Kaka kalekar report. Mentioned in Karnataka Backward Class Commission Report Vol. 1, p.55.

²⁵⁶ Nand Singh Shyama (1991) Reservation: Problems and Prospects, Uppal Publishing House. pp 191-2.

²⁵⁷ Singh Jagpal (2015) Karpoori Thakur: A Socialist Leader in the Hindi Belt, *Economic and Political Weekly*, Vol. 50, Issue No. 3.

²⁵⁸ As this policy was introduced by Karpoori Thakur government, it generally came to be alluded as “Karpoori Thakur Formula” signifying the division of the reservation into different and unequal sections of the Backward Classes.

²⁵⁹ In addition to the 24 per cent reservation quota in the government jobs which already existed for the SCs and STs, it added 26 per cent quota for the “Backward Classes”. The Backward Classes were divided into “Annexure I” which would have 12 per cent reservation of the posts, and “Annexure II” which would have 8 per cent reservation - 3 per cent for women of any group, and 3 per cent for the “economically backward” classes. See Blair 1980 p.64

and educational institutions for the OBCs in Bihar and soon ended up losing political power in the state.²⁶⁰

Cheddi Lal Sathi Commission

Much like the case with Bihar, the reservation policy in Uttar Pradesh was stalled by a hostile Congress governments and any progress in this direction was made only in the late 1970s. Before that the preferential policy in the Uttar Pradesh for OBCs was limited only to educational concessions, a scheme that was in place from as early as 1945.²⁶¹ Post-independence, the same scheme was reproduced by the state government in 1955, where two backward class lists were prepared by a cabinet sub- committee- one for the purpose of educational benefits and the other list for consideration of quota in administration, which was never put into practice.²⁶² In 1958, the state government decided to combine the two lists and a single list was prepared and the castes were listed as socially and educationally backward.²⁶³

These were indeed insignificant changes and the question of reservation in case of OBCs remained dormant until 1975, when the then Congress Chief Minister of Uttar Pradesh, H.N. Bahuguna, invited Cheddi Lal Sathi with a brief to compile a report for the Most Backward Classes (MBCs).²⁶⁴ In fact, Cheddi Lal Sathi had shifted his loyalties from the Republican Party of India (RPI) to the Congress in 1970 (over the assurance that soon a commission will be appointed to study the condition of backward

²⁶⁰ Limaye Madhu (1994) Janta Party Experiment: An insider's account of Oppositional Politics, 1977-80, Delhi: B.R. Publishing Corporation.

²⁶¹ Chotey Lal Pandey & Others. Vs. State of Uttar Pradesh and Anr. AIR 1979.

²⁶² Ibid.

²⁶³ See, S.N. Singh (1996) Reservation Policy for Backward Classes, Rawat Publication, p.143.

²⁶⁴ Sathi was a mallah (boat rower) by caste, founding President of the Republican Party of India in U.P and a member of U.P Legislative council before chairing the commission.

classes).²⁶⁵The Congress, however, only commissioned an enquiry into the condition of MBCs. On this, Christophe Jafferlote has argued that the decision of the Congress government to confine the enquiry of the backward class commission only to the MBCs ‘reflected their desire to restrict the scope of reservation to the less assertive of the low caste’.²⁶⁶

The commission reported that the ‘most backward classes’ in Uttar Pradesh were nearly 21.36%, the other backward classes among Hindus were 20.22% while among the Muslims they were 5.82% out of the total population of the State in the year 1976, making the estimated population of OBCs around 51.8 per cent.²⁶⁷ Later on, in August 1977, a Government Order was passed that provided 15% reservation in Class I, II and III services and 10% for class IV services for the backward classes as defined in the concerned order.²⁶⁸ Meanwhile, H.N. Bahuguna was removed from the post of Chief Minister and N.D. Tewari was installed as his successor who showed swiftness in shelving the report. Sathi himself in later stages openly accused different political parties for not implementing the recommendation of the commission.²⁶⁹

Much like Bihar, implementation of the Backward Class Commission report evoked strong resistance from the upper castes and resulted in widespread agitations and demands were raised that instead of caste, reservation should be given on economic

²⁶⁵ Mentioned in Zoya Hasan, 1998, *Quest of Power: Oppositional Movements & Post- Congress Politics in Uttar Pradesh*, New Delhi: Oxford University Press, p.143.

²⁶⁶ Jafferlot (2003), p.251.

²⁶⁷ For further details on Sethi Lal Commission Report, See *Chotey Lal Pandey and others vs. State of Uttar Pradesh*, A.I.R, 1979.

²⁶⁸ The backward classes included in the government order were picked from the G.O of 1958 dated 17 Sept. list which had declared 37 castes of Hindus and 17 castes of Muslim as backward classes.

²⁶⁹ See *Times of India*, July 13, 2001, *Govt’s MBCs escapades only an election stunt: Sathi*. In his interviews Sathi has been critical of all the political parties in ignoring the recommendation of the commission.

basis.²⁷⁰ An upper caste dominated Jan Sangh, which was part of the Janata government, was the main opponent to caste based reservation.²⁷¹ These frictions were just the starting point that will later culminate in widespread violence against the policy of reservation leading up to the implementation of Mandal report.

Rising Violence: A case of Gujarat

While in the northern Indian states (U.P. and Bihar), the socialist party (under various garbs) played an important role in pushing the agenda of reservation for OBCs (especially Bihar), introduction of reservation for OBCs in Gujarat was the direct result of the infighting in the Congress and the political instability that followed after the split of Congress in 1969.²⁷² It is important to stress here that this was not a case of ideological commitment to the empowerment of the OBCs and the consequent social transformation and instead a settlement made by the Congress (I) to the various groups for their loyalty towards the party. The difference indeed is important to understand the success of caste based social justice parties' in states like U.P and Bihar and their failure to replicate the same in a state like Gujarat.

When the Congress split occurred in 1969, the majority of party members, predominantly from the upper caste (Brahmin, Baniya and Patidar) supported Congress (O) that was led by Morarji Desai, who enjoyed considerable appeal in Gujarat. These sudden changes in the political circumstances compelled Indira Gandhi to venture outside

²⁷⁰ See, Hebsur, R.K., Uttar Pradesh: Belated and Imperfect Mobilisation of the Backwards' in Report of the Second Backward Class Commission, Vol. III to VII, p.161.

²⁷¹ The Janata coalition broke down as the struggle continued over the axis of caste and the mobilisation of lower caste was seen dangerous to the upper caste interest. It was only after the partial implementation of Mandal Commission Report that reservation became functional in Uttar Pradesh in way it should have been.

²⁷² R. Kothari and R. Maru (1986), *Federating for Political Interests: The Kshastriyas of Gujarat* in R. Kothari (1970) (ed.) *Caste in Indian Politics*, New Delhi: Orient Longman, p.68.

the traditional support base of the Congress, which also provided an opportunity to other caste groups who has been alienated previously by the Patidars in the Congress.²⁷³ In this new arrangement, a reservation policy became the perfect ploy to engage with the lower castes and the Congress (I) was the first to cash in on this opportunity. In fact in 1971 election the party manifesto of Congress (I) included its commitment to constitute a backward class commission in the state.²⁷⁴ Not only that, some of the caste groups (particularly Kshatriyas) was even given the assurance that they will be listed as backward under the new scheme of reservation.²⁷⁵

Politically, this strategy also led to the formation of the KHAM (Kshatriya Harijan Adivasi Muslims combine) alliance before the 1971 state assembly election and Congress (I) successfully defeated the grand alliance of Congress (O), the Jan Sangh, and the Swatantra Party that was predominately supported by the Patidar- Bania- Brahmin coalition.²⁷⁶ The party was led by Indira loyalist, Ghanshyam Oja, who as promised appointed the first Backward Class Commission of the state in 1972, headed by a retired High Court Judge A.R. Baxi.²⁷⁷

²⁷³ Shah Ghanshyam (1974) 'The Upsurge in Gujarat', *Economic and Political Weekly*, Special Number August, p.1445.

²⁷⁴ Shah Ghansyam (1990), *Strategies of Social Engineering Reservation and Mobility of Backward Communities of Gujarat*, in Ramashray Roy and Richard Sisson (eds), *Diversity Dominance in Indian Politics*, Vol. II, Delhi: Sage Publications, pp. 111-145.

²⁷⁵ Mentioned in Ghanshyam Shah (1990), *Agitation in Gujarat*, Seminar vol. 375. Also see, Shani Ornit (2007) *Communalism, Caste and Hindu Nationalism: The Violence in Gujarat*. Cambridge University Press, p 69

²⁷⁶ Sanghavi Nagindas (2011) *From Navnirman to the anti- Mandal riots: The political trajectory of Gujarat (1974-1985)* in M. Nalin and M.G. Mona (ed) *Gujarat Beyond Gandhi: Identity, Society and Conflict*, Routledge. P.17.

²⁷⁷ A N Baxi was also the chairman of Law Commission. See, *Second Backward Class Commission, Report of the 'Socially and Educationally Backward Classes'*, Government of Gujarat, p. xvi. Vol. 1, p- xv.

The commission submitted its report in February 1976 wherein 82 castes were identified under the backward caste list and recommended 10% of reservation for the same in medical, engineering, and other professional institutions.²⁷⁸ Besides this, a similar quota was recommended for reservation in Class III and IV posts, 5% for the Class I posts in the Gujarat state services. Even this minuscule quota of 10% was enough to provoke the upper castes into an agitation, especially the Patel community, who were already upset with the treatment they had received from the ruling party.²⁷⁹ The recommendation of the Baxi commission was accepted in-toto by the government of Gujarat in 1978, which was now headed by the Janata Party.²⁸⁰

Rane Commission

In the 1980 elections to the Gujarat state assembly, the Congress (I) made a successful return to power; and Madhav Sinh Solanki was appointed as the Chief Minister. Solanki had cultivated the social combination of KHAM as part of the Congress (I)'s election strategy during the campaign and promised the backward classes that the party will continue with the reservation which was opposed by the Patels and the other forward communities.²⁸¹ The Congress leader stood firm over the issue of reservation and in 1981 appointed the second backward class commission of the state to enquire whether any new caste groups need to be added to the old list or not.²⁸²

²⁷⁸ Ibid. Vol.1, p.xvi.

²⁷⁹ Shani Ornit (2007) *Communalism, Caste and Hindu Nationalism: The Violence in Gujarat*. Cambridge: Cambridge University Press, pp.67-70

²⁸⁰ See, Second Backward Class Commission, Report of the Socially and Educationally Backward Classes, Government of Gujarat, p. xvi. Vol.1, p. xvi.

²⁸¹ Madhav Singh Solanki was the first Chief Minister of Gujarat who was not from Patidar, Baniya or Brahmin castes.

²⁸² The Commission was named after the Chairman Rane, who was a retired judge of the High Court.

The new commission totally sidelined the relevance of caste and instead went on to classify backward classes by using economic criteria.²⁸³ Caste was ignored even after the commission had taken an extensive tour of the various districts in the state and admitted to the fact that the lower castes did suffer from general disability and are engaged in low paying professions.²⁸⁴ Their reasoning for excluding caste as a criterion for backwardness was based on a reading of the decision in the Balaji case and the Rane Commission's report argued that usage of caste will perpetuate casteism and with this to totally scrap the possibility of using caste to determine backwardness in case of OBCs.²⁸⁵ By far, the Rane commission was one of the worst attempts by any state backward class commission to identify the criteria of backwardness. However, as the commission submitted its report in 1983, it did recommend raising the bar of reservation from 10 percent to 28 percent.²⁸⁶

For around two years, both the findings and the recommendations made by the report were kept a secret by Solanki, who waited until January 1985.²⁸⁷ Finally, as the report was made public, the Government led by Solanki rejected the list prepared by the commission and commented that commission was never asked to decide the criteria for backwardness and only to supplement the list that was prepared by the Baxi Commission.²⁸⁸ After waiting for two years, Solanki announced to raise the bar of

²⁸³Second Backward Class Commission, Report of the 'Socially and Educationally Backward Classes', Government of Gujarat, p.59.

²⁸⁴ Ibid. p.34.

²⁸⁵ Ibid. p.36.

²⁸⁶ Ibid. p.62.

²⁸⁷ Sunita.P (1997) The Politics of Preference: Democratic Institutions and Affirmative Action in the United States and India, Michigan: University of Michigan Press, p.181.

²⁸⁸ The Rane commission was given two tasks a) to evaluate whether there is a need to supplement the list prepared by the Baxi commission, b) whether seats in services and educational institutions should be reserved in proportion to the OBCs population. See Second Commission Report of the Socially and

reservation from 10 percent to 28 percent and prepared the backward caste list by using caste criterion.²⁸⁹ The government decision evoked strong response from the forward communities, who have been protesting against the state policy of reservation from 1981.²⁹⁰ The protests were led by the Patidars and the student wing of the RSS – the ABVP -- and in the name of equality; loot and arson were an integral part of the protest and also destruction of public property. The violence was justified by the local newspapers, which did ‘not shy taking a position against the reservation’.²⁹¹ In a few months this upper caste agitation took a communal turn and the protesters were mobilized on the lines of Hindu identity.²⁹² Ultimately, the month of turbulence resulted in the departure of Solanki, who was forced to resign by Indira Gandhi’s son, Rajiv Gandhi, in 1985.

The policy on reservation for OBCs was ambushed not only in states like Gujarat but the agony of upper caste against reservation was visible even in some of the Southern Indian states. Take, for instance, the case of Andhra Pradesh, which witnessed one of the most violent anti- reservation protests in 1985. These protests were triggered after the Murlidhar Rao Commission Report, submitted in 1983, recommended raising the quota of reservation for “backward classes” from 25 percent to 44 percent and also added some new castes to the list.²⁹³ The agitators who belonged mostly to the upper castes (particularly Kamma) formed an organization called AP Nava Sangharshana Samiti

Educationally Backward Classes, Government of Gujarat. Vol.1, pp. xvi-xvii. Also see Shani Ornit (2007) Communalism, Caste and Hindu Nationalism: The Violence in Gujarat. Cambridge University, p-58.

²⁸⁹ Baxi, Upendra (1990), Reflections on the reservation crisis in Gujarat in V. Das (ed.) Mirrors of Violence Communities, Riots and Survivors in South Asia, Delhi: Oxford University Press, pp. 215-39.

²⁹⁰ Engineer Asgharali ed. (2003) The Gujarat Carnage, New Delhi: Orient Longman Private Ltd., p.12.

²⁹¹ Nandy, Ashis (1995) Creating a Nationality: The Ramjanambhumi Movement and Fear of the Self, Delhi: Oxford Indian Paperbacks, pp.105-6.

²⁹² Lokhande. S.B (2015) Communal Violence, Forced Migration and the State: Gujarat Since 2002, London: Cambridge University press, p.42.

²⁹³ V. Narayana Rao & Anr. Vs. State of Andhra Pradesh & Anr. AIR 1987 AP53.

(APNSS).²⁹⁴ However, unlike in Gujarat or Bihar and Uttar Pradesh, the political clout of the backward classes did not allow the state in Andhra Pradesh to reduce the quantum of quota and the state government went ahead with the decision that was later held unconstitutional in the Narayana Rao case.²⁹⁵ Following the high court judgment, then Andhra Pradesh Chief Minister, N.T.Rama Rao struck a deal with the APNSS and reduced the reservation back to 25%.

These agitations became a site where the principle idea of reservation was openly criticized by the upper caste students and the reservation for backward classes was held responsible for the violence that was conducted by the upper caste students in Gujarat or any in other states.²⁹⁶ A propaganda that was used effectively even during the anti-Mandal agitation. On the other hand, the vehement opposition to reservation was not for the reason that there were scant opportunities available to the non-reserved sections but it was due to the assertion of backward classes and their mobility which began to hurt the upper castes; this was more particularly with the increasing assertion by the dalits.²⁹⁷ This was one of the prime reasons that attempts were made to replace caste based reservation with other suitable criteria based on what has been called as non-communal lines.

Then, there were other states like Madhya Pradesh which failed to reflect on the backward class movement for too long and it was only in 1983 that the state government made an attempt to create a list of backward classes and constituted a commission to

²⁹⁴The details of the anti-reservation protest in Andhra Pradesh have been outlined by Balagopal. See, Balagopal, K (1986), *Anti-Reservation, Yet Once More*, Economic and Political Weekly, Vol. 21, No 36, pp.1572-1574.

²⁹⁵V. Narayana Rao & Anr. Vs. State of Andhra Pradesh & Anr. AIR 1987 AP53.

²⁹⁶ Spodek, Howard (1989), 'From Gandhi to Violence: Ahmedabad's 1985 Riots in Historical Perspectives', in *Modern Asian Studies*, (23), 4, pp. 765-795.

²⁹⁷ Bhat, Anil and Achyut Yagnik (1984). *The Anti Dalit Agitation in Gujarat*, South Asian Bulletin (4)1. Also see, Report of Dave Commission of Inquiry into the violence in Gujarat from February to 18 July 1985.

conduct an enquiry into the condition of backward classes.²⁹⁸ This, notwithstanding the fact that Madhya Pradesh is a state which had a large section of backward classes and was comparatively much more backward than any of the states in Northern or Central India. The commission identified 80 OBCs that together represented 48.08% of the state's population. The report recommended 35% reservation in admission to educational institutions aided or run by the government. Similar quotas were made available in government semi-government and public sector jobs for the OBCs.²⁹⁹

In the above mentioned states, particularly in Gujarat, Bihar and Uttar Pradesh, it was important that the first and foremost political embargo on caste based reservation was lifted, in which they succeeded to some extent, only with the influx of politicians from the lower caste. And the subsequent changes in the social profile of the ruling party in these states had repercussion on the pattern of reservation. On the other hand, it is no mere coincidence, that these were the states where the political project of Hindutwa emerged in coming years few of them became the laboratory for raising the communal campaign; this is true of Gujarat and Uttar Pradesh in particular. It is, hence, possible to draw a pattern on the nexus between the agenda of 'Hindu nationalism' and the opposition to caste-based reservations and the larger principle of social justice.³⁰⁰ This, however, is beyond the scope of this thesis and could be the subject matter of another study.

²⁹⁸ Rajya Picchara Varg Ayog- Antim Prativedan, Government of Madhya Pradesh, Bhopal 1983 Also See, Second Backward Class Commission Report, Government of India, Vol. 1.

²⁹⁹ Ibid.

³⁰⁰ See, Nandy Ashis & Others (1997). Creating a Nationality

In the end, as from the scope of this study, we may argue that nothing conclusive was achieved that could have changed the fate of OBCs in the Northern Indian states. This, notwithstanding, the processes that were initiated in the 1970s set in motion and put in place the stage for a movement demanding caste as a basis for reservation from the OBCs that eventually crystallized in unsettling the dominant narratives and eventually leading to:

- a) the emergence of caste as a secular category and its use for the democratic assertion of lower castes in politics,
- b) help the backward classes to claim political leadership as well as reservation benefits in educational institutions and services,
- c) the exit of OBCs from the general category and more importantly such clear distinction between the reserved and un-reserved group started to unsettle the old coalition.

No doubt there were some border line communities that were brought into the classification of OBCs and avail the benefit. The outcome, by and large, was that the idea of reservations for the lower castes was at long last accepted as legitimate policy to address their grievances and offer them immediate relief in the sense that it provided for their entry into educational institutions and services which without reservation would have remained inaccessible to them. The story of such reservations was, however, a shade different and distinct in the Southern Indian states and this calls for some discussion.

Karnataka: Policy of Political Preferences

As argued earlier in this section, the reason for the rigmorale of reservations Southern Indian states unfolding in a different manner from that in the Northern Indian states had to do with the inclusion of such border line groups as the Lingayats in Karnataka or Gavara and Vellala in Tamil Nadu as OBCs. In the long run, this strategy did create problems and demands were raised from those groups among the OBCs, particularly those who believed that they have not benefited out of reservation as compared to the others. However, as the competition among the backward caste groups intensified, it also provided an opportunity to political parties to shift from one arrangement to the other. The experience in this regard in Karnataka is relevant.

Havanur Commission

Much like the rest of India, the struggle to wrest political power continued after the collapse of unified Congress in which the Indira led Congress (I) came out victorious and Devraj Urs was elected as the Chief Minister of Karnataka in 1971 election. The Congress (I) followed the same strategy as they had in other states and undermined the old social base of the party that predominantly comprised of Lingayats and Vokaligas.³⁰¹ The new coalition was structured by mobilizing lower and intermediate castes, what has been called as Devraj Urs, a 'broad based coalition'.³⁰²

³⁰¹ Manor and Raghavan (2009) *Broadening and Deeping Democracy: Political Innovation in Karnataka*, Routledge: London, New Delhi. pp.26-27.

³⁰² See Atul Kohli (1990) *Democracy and Discontent: India's Growing Crisis of Governability*, Cambridge University Press, p.110.

In 1975, the state government in Karnataka, headed by Devraj Urs, constituted the first backward class commission that was headed by L.G. Havanur.³⁰³ According to Thimmaih, the backward class commission provided Urs the intellectual support which was needed for this new political strategy that sought to isolate the Lingayats.³⁰⁴ On the other hand, the Havanur Commission's report was very crucial, as it came after years of judicial intervention that had forced the state government to restructure the list of backward classes many times in the past. The first backward class commission report in Karnataka was perhaps one of the finest and most comprehensive report of its time in case of OBCs in any state.³⁰⁵

While framing the criteria for backwardness, the Havanur Commission ignored the principle of caste-the principle of status-the principle of high and low and instead used multiple tests such as level of education, economic, residential and occupational, in deciding social backwardness of castes and communities.³⁰⁶ In fact, the commission produced a long list of factors that contributed towards backwardness.³⁰⁷ Based on these, the commission came up with three different lists

³⁰³ It was a conscious decision to choose L.G Havanur as the chairman of the commission, who has previously widely criticized the state policy of reservation. In fact throughout the 1960s Havanur produced various booklets and memorandum over the issue of reservation in case of OBCs.

³⁰⁴ Thimmaih.G. (1993) *Power Politics and Social Justice: Backward Caste in Karnataka*, New Delhi: Sage Publication, p.56.

³⁰⁵ See Marc Galanter (1984) p115.

³⁰⁶ Havanur.L.G (1975) *Karnataka First Backward Class Commission Report*, Government of Karnataka, Vol. 1, p.307.

³⁰⁷ (i) Residence in rural, isolated and segregated areas, (ii) Their economic condition is poor that the majority of them are incapable of owing land, house or other property, (iii) they are engaged in very unremunerative occupations that are considered unclean or inferior, and therefore low , (iv) People of the advanced castes and communities entertain prejudices against them, (v) Low status or inferiority associated with their castes makes it difficult to have access to places of cultural training, or to have religious and secular education, (vi) Many of them have been segregated from the advanced communities due social taboos against inter-dining, intermarriage, and against similar opportunities of association, (vii) They are prevented from enjoying status in society due to the age old social customs, (viii) consequent apathy for

- a) Backward communities consisting of 15 castes,
- b) Backward castes consisting of 128 castes and
- c) Backward tribes consisting of 62 Tribes

and recommended 32% reservation for backward classes.³⁰⁸ The Lingayats was the only major community that was excluded from the backward caste list, a decision which was not well received among the members of the community. However Lingayat community lacked the kind of political muscle which they once had way back in the 1960s when the community was able to reverse the decision taken by Nagan Gowda committee to exclude the Lingayats from among the OBCs.

As the report was implemented, the state government issued a modified order, wherein in addition to the three backward castes list that the Havanur commission had recommended, a five percent reservation was set aside for a new category called 'Backward Special groups'. The admission to this category was open to all irrespective of their caste status and it was clear that this category was created to accommodate the poor among the Lingayats and other upper caste communities, which were critical of the report.³⁰⁹ Besides this, government also increased the total quota to 40 percent. However, the problem with creating such groups was that not only it militated against the constitutional directive but it also legitimized the idea of reservation on economic basis. This new scheme of reservation was challenged and in the *Somashekherapa & Ors. Vs. State of Karnataka*, the court only ordered to exclude certain castes from the backward

education. See, Havanur.L.G (1975) Karnataka First Backward Class Commission Report, Government of Karnataka Vol. 1, pp. 313- 314.

³⁰⁸ Ibid. Vol. I, p.317.

³⁰⁹ *Somashekherapp & Ors. Vs. state of Karnataka*, AIR 1980 Kar 77.

caste list, which according to court were included without any basis.³¹⁰ The government responded in the worst possible way by increasing the reservation for special groups from 5 to 15 percent, taking the total reservation to 68 percent. Once again, the government was dragged to court in the *Vasanth Kumar vs. State of Karnataka* where the state admitted to the anomalies and suggested to constitute a new commission to study the issue of reservation afresh, which was accepted by the Supreme Court.³¹¹

Venkataswamy Commission

In 1983, the state government of Karnataka constituted the second backward class commission to review the existing list of backward classes, which submitted its report in 1986³¹². The commission devised seventeen socio- economic and educational indicators to determine social backwardness.³¹³ In this, those communities which scored nine or more on backward indicators were considered for the list of socially and educationally backward.³¹⁴ The number of castes under the backward caste list was reduced drastically from 200 to 35, excluding major caste groups like the Lingyats, Vokaligyas, Balaji, Devanga and Neigi from the earlier list. The quantum of reservation was also reduced from the earlier 32 percent, as recommended by Havanur commission, to 27 percent.³¹⁵ The report faced heavy backlash and it was rejected by the government. Soon, the state

³¹⁰ This was the first time that court used the ' *principle of severability*'. While allowing the categorization of backward classes, it struck down only that part which court deemed to be inconsistent with the article 15(4) and 16(4). From category I Arsu (Urs) community for the purpose of Art. 15(4) and 16(4) and six other communities (Baalija, Devadiga, Ganinga, Nayinda, Rajput and Stani) were deleted for the purpose of Art. 16(4). Similarly from Category II thirteen other communities were directed to be deleted from the backward caste list for the purpose of Art. 16(4). See *Somashekherapp & Ors. Vs. state of Karnataka*, AIR 1980 Kar 77.

³¹¹ *K.C. Vasanth Kumar & Anr. vs. State of Karnataka*. AIR 1985.

³¹² *Venkataswamy.T (1986) Report of Karnataka Second Backward Classes Commission, Government of Karnataka Vol. 1, p.1.*

³¹³ *Ibid.* p.196.

³¹⁴ *Ibid.* p.177.

³¹⁵ *Ibid.* pp.292-93.

made its own arrangement for reservation returning to the 1970s formula, covering almost 90% of the population as backward.³¹⁶ The backward classes were divided into five groups -- A, B, C, D and E --, with the highest number of castes placed under group A (consisting of 138 castes) for the purpose of provisions under Articles 15(4) while 119 castes were placed in Group B, as relevant for the purpose of Article 16(4). Group C consisted of 7 for each group.³¹⁷ This was only an interim arrangement as the government appointed the third backward class commission to conduct yet another inquiry into the issues related to the OBCs.

Chinappa Reddy Commission

The third backward classes commission was headed by Justice O.Chinnappa Reddy and submitted its report in 1990. The commission was assisted by the Supreme Court judgment in the Vasanth Kumar vs. State of Karnataka, which had suggested adopting means-cum occupation test for determining backwardness in case of OBCs, where Justice Chinappa Reddy himself had held caste as an important criterion to determine backwardness.³¹⁸ Much like its predecessors, the report produced extensive data to support the fact that both the Lingayats and the Vokkaligyas were, infact, prosperous communities and hence not to be held backward under any circumstances.³¹⁹ Based on the socio- economic and educational survey, the commission classified the backward castes and communities into three categories -- I (52 castes), II (14 castes) and Category III

³¹⁶ See Nair Janaki (1986) Karnataka- Fighting for Backwardness- Venkataswamy Commission Report and After, Economic and Political Weekly. Vol. 21, Issue No. 42, pp. 1837-8.

³¹⁷ Radhakrishnan. P (2002) India, the Perfidies of Power: A Social Critique, New Delhi: Vedam Books, p.96.

³¹⁸ Chinnapa Reddy in Vasanth Kumar & Anr. vs. State of Karnataka. AIR 1985.

³¹⁹ According to report Lingayat and Vokkaligyas exceed in term of their representation in politics See Reddy Chinappa, Report of the Karnataka Third Backward Class Commission, Government of Karnataka Vol. 1, pp. 40, 57-59.

included agricultural laborers not owing any land, daily wage workers, rickshaw pullers, etc.³²⁰ In total, 38 percent reservation was recommended for the three categories together under the backward classes.³²¹ The report also recommended excluding those among the backward classes whose parents earned their income from some elite profession or was either employed in Class I and Class II services.³²²

With some major modifications, the government accepted the report and created new categories I, IIA, IIB, IIIA, IIIB, and IV. Category IIIA included the Vokkaligas and IIIB the Lingayats. Overall, the quota was also raised from 38 percent to 50 percent, taking the total reservation to 68 percent.³²³ Finally the quotas were trimmed and settled only after the Mandal case judgment, where the Supreme Court imposed a 27 percent ceiling on OBC reservation and 50 per cent including the SCs and STs.

In the end, it can be argued that the post-colonial policies of preferential treatment for the OBCs in Karnataka is the best example where for the larger period, the reservation policy was reduced to grant preferences to castes/ communities that held their clout in the political process. Even the period of change, during Devraj Urs government, was due to the emergence of a different kind of coalition in power; however, as soon this trend was reversed in the political process, it also affected the reservation policy. The three backward class commission reports successfully excluded the dominant castes on the ground that they had made enough progress in last few decades and could not be treated

³²⁰ Ibid. pp.170-173.

³²¹ The reservation was as follows: Category- I (5%), Category- II (28%), Category III (5%). Reddy, Chinappa (1990), Ibid.p.170.

³²² Ibid. p.174.

³²³ Shastri Sandeep (2009) Legislators in Karnataka: Well- entrenched Dominant Castes in Jaffrelot & Kumar (ed) Rise of the Plebians? The Changing Face of Indian Legislative Assemblies, Routledge: Delhi, New York,

as backward anymore. However these were followed by political maneuvers, resisting any attempt that excluded the Lingayats and others from the benefit of reservation.

Something that has been described by Valerian Rodrigues as:

... political responses of government...can be described as *modus Vivendi*, accommodation to dominance wherein the primary effort was to placate the Lingayats and Vokkaligas and relatively developed castes and communities such as Devangas, Ganigas, Padmashalis and Catholic Christians.³²⁴

The changing contours of Quota Politics in Tamil Nadu: The Crucial Case of Heterogeneity

It is a fact that the caste with a strong history of the backward class movement is better placed than those who have struggled to create a political space for them.³²⁵ For instance, the Nadar community, once treated as untouchables, as a community has made considerable progress both in the educational and social sense.³²⁶ Compared to the Nadars, who had established their political ascendancy, the other castes like the Ambalakaran, Valiyan, Boya have struggled to replicate the same success story. This uneven development, across the Non- Brahmin social groups, has been widely documented.³²⁷ This brings us to the crucial question of heterogeneity among the OBCs is an important factor to be accounted while designing the reservation programme. More importantly, affirmative action policies that rely upon broad categories conceal significant disparities within the groups. These tensions presented themselves in the late 1980s shaking the foundation of Dravidian politics in Tamil Nadu.

³²⁴ Rodrigues.V (2014) 'Devraj Urs and Lower Caste Mobilisation: Political Power and Democratic Enablement', *Economic and Political Weekly*, Vol.49, Issue no. 25, June 21, pp. 62-70

³²⁵ These process has been mapped by Hardgrave (1969), Rudolph and Rudolph (1967), where both the scholars have looked into the progress made by Nadars.

³²⁶ Hardgrave.L. Robert (1969) *The Nadars of Tamil Nadu: The Political Culture of a Community in Change*, California: University of California Press, pp. 262-269.

³²⁷ Pandian, M.S.S (1994) "Crisis in DMK", *Economic & Political Weekly*, Vol. 29, Issue No. 5, pp.221-3.

Ambasankar: Review of Reservation

Back in 1969, when the Sattanathan commission criticized the state policy on reservation, it opened up two sets of debates in Tamil Nadu.

1. The demand to exclude the so called forwards among the backwards by imposing an income limit and
2. To provide separate reservation for MBCs within the quota for OBCs.

While the demand to impose an income limit was more of a judicial direction and lacked public support in Tamil Nadu, as much as it might have had in some other states of India, the latter revealed the tension between the former members of the non-Brahmin factions and provided considerable opportunity to mobilize caste groups. In 1979, the M.G. Ramachandran led AIADMK government, announced its intend to exclude those OBCs whose income in a year was more than Rs. 9000; this intend provoked protests from the OBCs and became one of the reasons for the debacle of AIADMK in the Lok Sabha elections held in January,1980.³²⁸ By voting against the AIADMK, the majority had spoken against such income based exclusion of OBCs and fearing further retaliation, the state government stumped the opposition parties by raising the reservation quota from 35 per cent to 50 per cent for the OBCs.³²⁹ This move meant a shift from the social integration model to one where reservation was projected as means to distribute group based benefits to castes which were relatively backward to Brahmins in the social hierarchy.

³²⁸Racine Luc Jean (2009) Caste and Beyond in Tamil Politics in Jafferlot and Kumar (eds.) Rise of the Plebeians? The Changing Face of the Indian Legislative Assemblies, Routledge: London, New Delhi, p.457.

³²⁹ Ibid. p.90.

These issues were taken up by the Second Backward Class Commission constituted in 1982. The commission enquired in detail the social, educational and economic conditions of the various caste/communities and provided statistics on the progress made by different caste groups in Tamil Nadu. Much like the Sattanathan commission report, Ambasankar was highly critical of the fact that most of the jobs offered through the scheme of reservation were cornered by the few among the backwards.³³⁰ Similar trends were highlighted in the educational institutions and services.³³¹ To curtail this effect, the commission recommended the following:

- Compartmental reservation by placing backward classes according to the degree of backwardness;
- Deletion of 32 communities which the commission deemed as forward; and addition of 29 communities to the list of BCs.³³²

Among other things, the dissenters questioned the rationale for inclusion of 17 Forward Communities as BCs and the deletion of 34 communities from the existing BCs list in the chairman's recommendations.³³³

The M.G.Ramachandran government, fearing the retaliation from the members of backward classes (who had strongly disputed the Chairman's recommendation), restrained from bringing the report in the public domain and instead proceeded with the old arrangement.³³⁴ Even this expansion did not silence the voices of dissent within the

³³⁰ See. Ambasankar. J.A (1985) Report of the Tamil Nadu Second Backward Classes Commission, Madras: Government of Tamil Nadu. Vol. 1, p.97.

³³¹ See. Ibid. pp.100-123, 154-68, 179-97

³³² Ambasankar. J.A (1985) Report of the Tamil Nadu Second Backward Classes Commission, Madras: Government of Tamil Nadu. Vol. 1, pp.76-86.

³³³ Ibid.

³³⁴ Radhakrishnan.P (2002) India, the Perfidies of Power: A Social Critique, PRK Publications, p.88.

backward classes and in 1987 demands were raised from the Vanniyar community for separate quota in reservation.³³⁵ Initially, the protest was directed against the government; however, soon the dalits were targeted in large numbers and parts of the state witnessed arson and violence for months on end.³³⁶ The vandalism continued for months and finally, in 1989, the DMK-led government introduced compartmental reservation, setting aside 20 percent quota for the MBCs that included the Vanniyars.³³⁷

Even though these were legitimate demands, the large scale violence against dalits proved that Caste persisted as a tool to conduct violence, whether the perpetrator belonged to the upper castes or to the intermediate caste. The two contrasting protests -- one in Gujarat (or in Andhra Pradesh) -- demanding an end to reservation and other in Tamil Nadu where the demand was to restructure the reservation policy by the Vanniyar community that already enjoyed the status of backward class, showed two different stages of progress where secular character of caste was damaged from both the sides. The political picture on reservation was clear, on one hand there were those who totally rejected the idea of merit and indulged in endless expansion of reservation. On the other hand, there were those who clearly saw no use of reservation and they were supported by the proponents of reservation based on economic criteria. Over the years, both sides were clever enough not to raise other issues related to the idea of social justice.

³³⁵ Pillai.V.K (2006) Caste Violence in Tamil Nadu: A Sociological Analysis, Centre for Developing Society, p.67.

³³⁶ Jacob. T.G (2000) Reflections on the Caste Question: An Overview of Tamil Nadu, Karnataka & Kerala, NESAPublication, p.40.

³³⁷ Ambasankar. J.A (1985) Report of the Tamil Nadu Second Backward Classes Commission, pp.76-86.

Contestation, Courts and Reservation

Parallel to the political churning in the mid-1970s and early 1980s over the assertion of the backward classes, the judiciary also continued to juggle over the question of reservation to OBCs. The positive start in this direction was that the objection on caste based reservation was more or less lifted.³³⁸ More importantly, unlike in the 1960s and to some extent in early 1970s, where the Balaji judgment had a decisive impact on the policy of reservation, by the mid-1970s and early 1980s the role of judicial intervention was curtailed to certain extent. In fact, in some of the states like Tamil Nadu and Kerala, courts were sympathetic towards the policy of reservation.³³⁹ This generosity, however, was more in the form of exception and hardly provided any binding influence on the later judgments, and in many cases the courts still continued to construct the policies on affirmative action as outside the scope of general article on equality.³⁴⁰ More importantly the judiciary failed to settle down with one single interpretation.

Falling backwards

The common knowledge is that when a judgment is passed from the Supreme Court, it becomes the basis for interpretation on which all future ruling should be based in the High Courts. Therefore, while dealing with the issue of reservation, if Balaji was at all to be referred, it should have been done in the light of Rajendran and Balram, which were more recent judgments and where the Balaji dictum was explained in a completely different sense and a new interpretation had emerged. On account of that, it is hard to find

³³⁸ Except for the few cases where Balaji was misread the general hostility towards caste based determination of backwardness was more or less ended.

³³⁹ The trend was already set by the Rajendran and Periarupakkam as discussed in the previous section.

³⁴⁰ See, Janaki Parsad vs. State of Jammu & Kashmir, Chotey Lal vs. State of Uttar Pradesh, Pradip Tandon vs. State of Uttar Pradesh.

any logic, except for the fact that judiciary has selectively invoked ideology over the question of reservation and made it difficult to set any standards that could be followed in the future cases. This point is highlighted in the series of court cases where the standard set by earlier judgments were either overlooked or the court was too eager to pick their favorites from some of the earlier judgments that suited their arguments. So in a case *Janki Parsad vs. State of Jammu and Kashmir* that came almost a decade after the *Balaji* judgement, the apex court still held *Balaji* as the ‘locus classicus, putting a blanket on several other decisions that have offered an alternative reading on issues related to reservation.³⁴¹ This allowed the court to make conservative observations and revert back to the old reading of reservation as an exception.³⁴² Not only that, the court also upheld that backwardness in case of OBCs cannot be determined solely on the caste based criteria.³⁴³ Similarly, in the *Pradip Tandon* case, taking up the controversy of caste and class, the court argued homogeneity of the class of citizens is social and educational backwardness and neither caste nor religion nor place of birth will be the uniform element of common attributes to make them a class of citizens.³⁴⁴

Chotey Lal

In *Chotey Lal vs. State of Uttar Pradesh*, the prayer by the petitioner was that many of the so-called backward castes like the Ahirs and the Kurmis were not economically or socially backward. The petitioners were at pains that many among these classes were doing well, some have even occupied high offices, some were doctors and engineers and in no way they can constitute the backward class as there was no economic

³⁴¹ *Janki Parsad Parimoo & Ors. Vs. State of Jammu and Kashmir. AIR 1973 SC (3) 236.*

³⁴² *Ibid.*

³⁴³ *Ibid.*

³⁴⁴ *State of Uttar Pradesh. Vs. Pradip Tandon, A.I.R. 1975 SC 563.*

homogeneity.³⁴⁵ Following the precedent set in the previous cases, the court clearly developed the case of individual excellence in the backward classes as the parameter to judge the progress made by entire caste group.³⁴⁶ Repeating what was said in *Balaji*, the court even held caste as relevant in determining social backwardness but it cannot be the sole criteria. It went further to argue that Article 15(4) refers to ‘backward classes’ and not the backward castes; indeed the test of caste would break down as regards several communities which have no caste.³⁴⁷

The rule of discretionary power was once again elaborated by the court holding that Article 16(4) does not confer any right on a person to require that a reservation should be made. It confers discretionary powers on the State to make such a reservation if in its opinion a backward class of citizens is not adequately represented in the services. Mere inadequacy of representation of a caste or class in the service is, however, not sufficient to attract Article 16(4) unless that class (including caste as a whole) is socially and educationally backward.

Efficiency, Reservation and Constraints

By the mid-1970s, the Indian courts have shifted from the earlier position where reservation in general was considered to be detrimental to efficiency and excellence in higher education and services. Instead, a new argument was presented that some elite institutions or jobs requires cultivation of specific skill and only certain people are suited

³⁴⁵ *Chotey Lal Pandey & Ors. Vs. State of Uttar Pradesh & Anr.* AIR 1979 All 135.

³⁴⁶ The court argued: True, a few members of those castes or social groups may have progressed far enough and forged ahead so as to compare favorably with the leading forward classes economically, socially and educationally. In such cases, perhaps an upper income ceiling would secure the benefit of reservation to such of those of members of the class who really deserve it... class poverty, and individual poverty, is therefore the primary test. See, *Chotey Lal Pandey & Ors. Vs. State of Uttar Pradesh & Anr.* AIR 1979 All 135.

³⁴⁷ *Chotey Lal Pandey & Ors. Vs. State of Uttar Pradesh & Anr.* AIR 1979 All 135.

for the elite professions. Therefore, the candidate accommodated through means of reservation, will reduce efficiency and reservation if needed should be restricted to jobs of lesser importance.

These concerns were reflected in the Janki Prasad Parmioo case. The issue was related to reservation in promotion for backward classes under Article 16 (4).³⁴⁸ The five judge bench of the Supreme Court, even while upholding that caste was an important criteria to determine backwardness, imposed restrictions on the scope of reservation by arguing that *'where appointments and promotions to responsible public offices are made, greater circumspection would be required in making reservations for the benefit of any backward class because efficiency and public interest must always remain paramount'*.³⁴⁹ (emphasis added by author) In saying so, the apex court reverted to the old reasoning by holding reservation as detrimental to efficiency in services.³⁵⁰ It was also an attempt to restrict reservation to posts that were considered to be of lesser importance. These operations were conducted when there was no provision in the constitution which approved of such restrictions for implementation of reservation in the elite institutions.

Similar sentiments were expressed, a decade later, in the Vasanth Kumar case in 1985, where one of the judges, Justice K. Venkataramaih argued with conviction that the principle of equal opportunity did not apply to the elite institutions. In his words:

The doctrine of protective discrimination embodied in Arts. 15(4) and 16(4) and the mandate of Art. 29(2) cannot be stretched beyond a particular limit. The State exists to serve its people. *There are some services where expertise and skill are of the essence* (emphasis added). Medical services directly affect and deal with the health and life of the populace. Professional expertise, born of knowledge and experience, of a high degree of technical knowledge and operational skill is

³⁴⁸ Janki Parsad Parimoo & Ors. Vs. State of Jammu and Kashmir. AIR 1973 SC (3) 236.

³⁴⁹ *ibid.*

³⁵⁰ The court has expressed similar opinion in some other cases, Champakam vs. Doriarajan, Balaji vs. State of Mysore, Chitrelkha vs. State of Mysore.

required of pilots and aviation engineers. The lives of citizens depend on such persons. There are other similar fields of governmental activity where professional, technological, scientific or other special skill is called for. In such services or posts under the Union or States, there can be no room for reservation of posts; *merit alone must be the sole and decisive consideration for appointment*(emphasis added).³⁵¹

By containing the demands of lower castes to certain bare minimum, the courts have ensured that such an arrangement will hardly affect the fortunes of upper caste students. Projecting reservation as some sort of patronage to the lower caste granted by the Indian state and. These set of interpretations evolved with the Champakam Dorirajan case and were upheld in the later cases like Balaji and Chiterlekha, until they were challenged, for the first time in Thomas vs. State of Kerala, where Justice V.R. Krishna Iyer argued in an emphatic manner:

The inputs of efficiency include a sense of belonging and of accountability which springs in the bosom of the bureaucracy if its composition takes in also the weaker segments of 'We, the people of India'..... No other understanding can reconcile the claim of the radical present and the hangover of the unjust past.³⁵²

These propositions were further attacked by Justice O. Chinappa Reddy in the Vasanth Kumar case, who reminded the court that the current understanding of efficiency should not provide any undue advantage to the upper caste to create monopoly in services.³⁵³ Beside this, Justice Iyer produced a scathing criticism of meritarian principle, which by far was shielded jealously by the Indian court. He argued:

What is merit? There is no merit in a system which brings about such consequences. Is not a child of the Scheduled Castes, Scheduled Tribes or other backward classes who has been brought up in an atmosphere of penury, illiteracy and anti- culture, who is looked down upon by tradition and society, who has no books and magazines to read at home, no radio to listen, no T.V. to watch, no

³⁵¹ See Justice Venkataramaih in K.C. Vasanth Kumar & Anr. vs. State of Karnataka. AIR 1985.

³⁵² Justice Iyer in State of Kerala & Anr. Vs. N.M. Thomas & Ors. AIR 1976 SCR (1) 906.

³⁵³ How an SC child, brought up in an atmosphere of penury, illiteracy and deprivation, who scores 40 per cent in a competitive exam, could be considered inferior to a child brought up in the lap of luxury, who studied in most exclusive schools and colleges and got 70 or Efficiency is not be discounted.... It cannot be permitted to be sued as a camouflage to let the upper classes take advantage of the backward classes in its name and to monopolies the services, particularly the higher posts and the professional institutions. State of Kerala & Anr. Vs. N.M. Thomas & Ors. AIR 1976 SCR (1) 906.

one to help him with his homework, who goes to the nearest local board school and college, whose parents are either illiterate or so ignorant and informed that he cannot even hope to seek their advice on any matter of importance, a child who must perforce trudge to the nearest public reading room to read a newspaper to know what is happening in the world, has not this child got merit if he, with all his disadvantages is able to secure the qualifying 40% or 50% of the marks at a competitive examination where the children of the upper classes who have all the advantages, who go to St. Paul's High School and St. Stephen's College, and who have perhaps been specially coached for the examination may secure 70, 80 or even 90% of the marks? Surely, a child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life. If spring flower he cannot be, autumn flower he may be. Why then, should he be stopped at the threshold on an alleged meritarian principle? The requirements of efficiency may always be safeguarded by the prescription of minimum standards. Mediocrity has always triumphed in the past in the case of the upper classes. But why should the so-called meritarian principle be put against mediocrity when we come to Scheduled Castes, Scheduled Tribes and backward classes.³⁵⁴

Harmonious Construction

So far as the judicial understanding of reservation in the case of OBCs is concerned, the Indian courts has consistently shown the continuous tensions between two different yet related set of entitlements-- on one hand, the much cherished goal of equality and non-discrimination, and on the other the constitutional promise of the Indian state to readdress the issue of discrimination and disability suffered by the citizens from the lower castes.³⁵⁵

More importantly, the desire of the Indian courts has been to pick one side in what has been projected as a conflict between the fundamental rights and an exceptional article on positive discrimination. Not only has such interpretation allowed the concepts like justice, discrimination and fairness to be constructed in favor of upper caste, it has also provided enough validation to question the policy of reservation.

Now ideally when there is conflict between two or more statutes, the common understanding is that the two provisions should march together. In fact, the same has been allowed by the Supreme Court in interpreting the relation between Fundamental Rights

³⁵⁴ Justice Chinnapa Reddy in *Vasanth Kumar & Anr. vs. State of Karnataka*. AIR 1985.

³⁵⁵ See Deshpande Satish (2013) *Towards a Biography of the 'General Category' Caste and Castelessness*.

(Part III) and Directive Principles (Part IV) of the constitution.³⁵⁶ Also, as pointed out at the beginning of this chapter, the key is to understand the utility of reservation to the nation at large to achieve the egalitarian principle. Or in other words, in order to give effect to the scope of positive discrimination the provisions on equality and non-discrimination has to be constructed in manner that they synergise to achieve the purpose as argued by Justice Chinappa Reddy in Vasanth Kumar case:

Purposive interpretation thus seeks to fashion a purpose that creates harmony between the meaning given to a text and the legal system surrounding it. The goal is synthesis and integration between text and legal system.³⁵⁷

The first attempt in this regard however was made by Justice Krishna Iyer in Thomas vs. State of Kerala, who brought an effective change in the interpretation of reservation from an exception to the articles on equality and non-discrimination to an approach where positive discrimination is described as a way to achieve the very equality to which it was supposed to be an exception. Such reading of the Indian constitution enabled the court to acknowledge the intent of the Indian state to achieve equality by addressing disability and disadvantage suffered by the OBCs. The court observed:

In a given situation of large social categories being submerged for long, the guarantee of equality with the rest is myth, not reality, unless it is combined with affirmative State action for equalisation geared to promotion of eventual equality. Article 16(4) is not a jarring note but auxiliary to fair fulfillment of Art. 16(1). The prescription of Art. 16(1) needs, in the living conditions of India, the concrete sanction of Art. 16(4) so that those wallowing in the social quagmire are enabled to rise to levels of equality with the rest and march together with their brethren whom history had not so harshly hamstrung. To bury this truth is to sloganise Art. 16(1) and sacrifice the facts of life.³⁵⁸

³⁵⁶ Kesavananda Bharti vs. State of Kerala & Anr. AIR 1973 SCC 225.

³⁵⁷ Chinnappa Reddy in Vasanth Kumar & Anr. vs. State of Karnataka. See also, Justice Iyer in Thomas vs. State of Kerala where he has argued: The important task of construing the articles of a constitution is not an exercise in mere syllogism. It necessitates an effort to find the true purpose and object, which underlines that article. The historical background, the felt necessities of the time, the balancing of the conflicting interests must all enter into the crucible when the court is engaged in the delicate task of construing the provisions of a constitution.

³⁵⁸ State of Kerala & Anr. Vs. N.M. Thomas & Ors. AIR 1976 SCR (1) 906.

Similarly in Akhil Bhartiya case, reading out the principle of harmonious construction between Articles 16(1) and 16(4), Justice Krishna Iyer allowed an unregistered association of workers to institute a writ petition under the Article 32 to address the common grievances.³⁵⁹The issue in this case was a certain Railway Board policy which gave direction for preferential treatment to SCs/STs candidates in promotion, which was argued as a case of discrimination against the other employees by the petitioners. Justice Krishna Iyer not only presented a defense for the policy of reservation but also reminded the court that the reservation was a constitutional commitment and part of the social contract, which laid an obligation not only on the state but also over the judiciary.

It(reservation) is not a concession or privilege extended to them (backward classes); it is in recognition of their undoubted fundamental right to equality of opportunity and in discharge of the constitutional obligation imposed upon the state to secure to all its citizens 'justice- social, economic and political.'³⁶⁰

Vasanth Kumar: Compounding Confusion

The Vasanth Kumar case came up at a crucial stage when the Indian courts had achieved some amount of maturity in their understanding towards the idea of reservation. Also what made the outcome of this case more interesting was the fact that the Mandal Commission had submitted its report issuing clear guidelines for determining backwardness in case of OBCs with a clear emphasis on the caste. In this case, a five judge bench was constituted to draw the guidelines that were to be used in determining

³⁵⁹ Akhil Bhartiya Shosit Karamchari Sangh (Railway) Represented vs. Union of India & Others, AIR 1981 (SC) 298.

³⁶⁰ Akhil Bhartiya Shosit Karamchari Sangh (Railway) Repersented vs. Union of India & Others, AIR 1981 (SC) 298.

the constitutionally sound and nationally acceptable criteria for identifying socially and educationally backward classes under Articles 15 (4) and 16(4).³⁶¹

Justice D.A. Desai started the proceeding by raising concern over the usage of caste for determining backwardness. According to Desai, legitimization of caste as the indicator of backwardness will only perpetuate casteism and therefore defeats the purpose of the Indian constitution to create a casteless society.³⁶² These arguments were supported by Justice Y.V. Chandrachud, who observed:

If the state patronage for preferred treatment accepts caste as the only insignia for determining social and educational backwardness, the danger looms large that this approach alone would legitimise and perpetuate the caste system. It does not go well with our proclaimed secular character as enriched in the preamble of the constitution.³⁶³

It is clear that such an idea of casteless society is based on the premises that society is comprised of two categories of people -- one those who recognize the institution of caste for availing various forms of preferential treatment and others who have shed their identities by taking a position beyond caste. Not only has the court imposed an upper caste idea of 'castelessness' but it also helps obliterate the already marginalized culture, associated with the caste identities. Besides that, it also sidelined the fact that the constitutional intent of reservation was to address the issue of disability and discrimination faced by the caste group of lower status in the Indian society.

Overall class (economic deprivation) was presented as a secular social category and caste as a communal threat to the secular democracy, which meant that reservation

³⁶¹ Beside this court was also asked to decide whether mean test adopted by the state government was an intelligible initiative and can this used by the backward class commission. *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714.

³⁶² Justice Desai in *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714.

³⁶³ Justice Chandrachud in *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714.

has to distributed based on the economic differences.³⁶⁴ This indeed is what Justice Desai intended to suggest, as he argued, to devise a method...without reference to caste, beneficial to all sections of people irrespective of the caste to which they belong. These suggestions were put forth even after acknowledging the fact that caste is still the source of discrimination but clearly poverty seemed to be the more obvious reason for the backwardness.³⁶⁵

It is important to highlight here that poverty may well result to some sort of discrimination but it can hardly create an exact replica of caste based discrimination. The condition of economic backwardness, rather than being in the form of discretion, was sought to be imposed as a necessary condition to qualify for backwardness. Justice A.P. Sen also joined the other two judges, who while acknowledging the policy of reservation as a national commitment to eradicate disparities was quite opposed to the caste based quota reservation and much like Justice Desai suggested for reservation only for those who were poor.³⁶⁶

In fact, the majority in the Vasanth Kumar case retreated to the principle laid down in the Balaji on two important points a) it held backwardness in case of OBCs must

³⁶⁴ If economic criterion for compensatory discrimination or affirmative action is accepted, it would strike at the root cause of social and educational backwardness, and simultaneously take a vital step in the direction of destruction of caste structure which in turn would advance the secular character of the Nation. This approach seeks to translate into reality the twin constitutional goals One, to strike at the perpetuation of the caste structure of the Indian society so_ as to arrest progressive movement and to take a firm step towards establishing a casteless society; and two, to progressively eliminate poverty by giving an opportunity to the disadvantaged sections of the society to raise their position and be part of the main stream of life which means eradication of poverty³⁶⁴ See, Justice Desai in K.C. Vasanth Kumar vs. State of Karnataka, 1985 Supp SCC 714.

³⁶⁵ Desai suggested reservation as a poverty eradication programme. The only criterion which can be realistically devised is the one of economic backwardness. To this may be added some relevant criteria such as the secular character of the group, its opportunity for earning livelihood etc. but by and large economic backwardness must be the load star. On the other hand this reasoning was not limited to the OBCs, the judge was of the opinion that such criteria might be fruitfull even in case of SC and STs. See K.C. Vasanth Kumar vs. State of Karnataka, 1985 Supp SCC 714.

³⁶⁶ AP Sen in K.C. Vasanth Kumar vs. State of Karnataka, 1985 Supp SCC 714.

be similar to the backwardness from which SCs and STs suffer³⁶⁷ and b) the trio of judges produced compelling arguments about how all the opportunity under Article 16(4) and 15(4) were being snatched by the forwards among the backward classes and their anxiety to keep such individuals away from the fold of reservation.³⁶⁸

Chinappa Reddy in Vasanth Kumar

Justice Chinappa Reddy criticized this assumption that the creamy layer exists only among the backward classes. In fact, if the debate on creamy layer is to be traced, to see how the concept was developed by the Indian judiciary, one can see that the concept is only applied to others, those who fall under the reserved category. Further, the idea to exclude the forwards among the backwards is proposed by the upper castes for the lower caste and not applied to itself.³⁶⁹ In Justice Chinappa Reddy's words:

One must, however, enter a caveat to the criticism that the benefits of reservation are often snatched away by the top creamy layer of backward class or caste. That a few the seats and post reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched away, in the same way, by the top creamy layer of the society itself? Seats reserved for the backward classes are taken away by the top layers amongst them on the same principle of merit on which the unreserved seats are taken away by the top layers of society. How can it be bad if reserved seats are taken away by the top layers of society. How can it be bad if reserved seats and post are snatched away by the creamy layer of backward classes, if such snatching away of unreserved posts by the top creamy layer of society itself is not bad?³⁷⁰

367 Justice Chinappa Reddy highly criticized this practice of comparing OBCs backwardness with those of SC and ST and argued that: There is no point in attempting to determine the social backwardness of other classes by applying the test of nearness to the conditions of existence of the Scheduled Castes. Such a test would practically nullify the provision for reservation for socially and educationally backward classes other than Scheduled Castes and Scheduled Tribes. See, Justice Chinappa Reddy in *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714.

368 Desai argued with conviction that 'If a survey is made with reference to families in various castes considered to be Socially and Educationally Backward Classes, about the benefits of preferred treatment, it would unmistakably show that the benefits of reservation are snatched away by the top creamy layer of the Backward Classes. This has to be avoided at any cost'. See Justice Desai in *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714

³⁶⁹ Kannabiran Kalpana () *Tools of Justice: Non- discrimination and the Indian Constitution*, p.203.

³⁷⁰ *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714.

Finally the statement made by Chinappa Reddy point out the limitation of the Indian judiciary to settle down the various question attached with the issue of reservation.

We are afraid the courts are not necessarily the most competent to identify the backward classes or to lay down guidelines for their identification except in broad and very general way. We are not equipped for that; we have no legal barometers to measure social backwardness. We are truly removed from the people, particularly those of the backward classes, by layer upon layer of gradation and degradation. And, India is such a vast country that conditions vary from State to State, region to region, district to district and from one ethnic religious, linguistic or caste group to another. A test to identify backward classes which may appear appropriate when applied to one group of people may be wholly inappropriate and unreasonable if applied to another group of people. There can be no universal test; there can be no exclusive test; there can be no conclusive test. In fact, it may be futile to apply any rigid tests. One may have to look at the generality and the totality of the situation.³⁷¹

Even though progressive statements were passed by Justice Chinappa Reddy, the Supreme Court in this case failed to create the much needed clarity as all five judges took contradictory positions. More importantly, the narrative underneath the statements made by the jurists represented a deep resentment against the policy of reservation. Some of these questions were finally settled in the *Indra Sawhney vs. Union of India*, where among other things, it was settled that the Indian constitution has an indispensable commitment to readdress the disability and disadvantage suffered by the OBCs and in doing so, caste was the most relevant criteria to determine backwardness.³⁷² This will be discussed in Chapter 4 of this study.

³⁷¹ Chinnapa Reddy in *K.C. Vasanth Kumar vs. State of Karnataka*, 1985 Supp SCC 714

³⁷² *Indra Sawhney vs. Union of India*, AIR 1993 SC 477.

CHAPTER IV

Mandal and Beyond: Caste at the Centre Stage

Caste is the most overwhelming factor in Indian life. Those who deny it in principle also accept it in practice- Ram Manohar Lohia (1961).

Background

While the Janata Dal was bogged down with internal strife and problems right from its inception in October 1988, the process of its disintegration began with the events that unfolded after the by- election in Meham constituency of Haryana early in March 1990.¹ The biggest problem seem to have started with the Jat patriarch, Devi Lal, who had, much against the wishes of the party, successfully planted his eldest son Om Prakash Chautala as the Chief Minister of Haryana. However, Chautala still had to be elected to the Haryana state assembly and for this he was nominated as party candidate from Meham where by- election were announced; and he was accused later, of rigging the elections.² Devi Lal, who stood by his son, came under heavy attack from the party leadership and after a heated argument with Arun Nehru and Ajit Singh, resigned from the cabinet; however V.P Singh refused to accept the resignation and re-installed Devi Lal.³ Following this, Chautala did resign from the post of Chief Minister but only to reinstall himself within a couple of months, in July 1990. This only helped escalating the tension between Devi Lal and V.P. Singh and finally on 1 August 1990, Devi Lal was removed

¹ Ficket, Lewis p. (1993) "The Rise and Fall of the Janata Dal". Asian Survey, Vol.33, no. 12, 1993, pp.1151-1162.

² Devi Lal has denounced the whole episode as a political conspiracy, in which CBI enquiry was ordered. See, Verghese. B.G. (2010) First Draft: Witness to the Making of Modern India, Chennai: Tranquebar Press, p.355.

³ Baweja Harinder, *In the Hot Seat*, India Today, March 31, 1990.

from the cabinet of the National Front government.⁴ Soon after his dismissal, Devi Lal called for a rally at the Boat club in Delhi on 9 August, 1990. Little did Devi Lal, and the political class of India, know then that V.P Singh would announce the partial implementation of the Mandal Commission Report (gathering dust in the shelves of the Union Home Ministry since 1980, when the report was submitted); Prime Minister Singh announced this in Parliament on 7 August 1990, a couple of days before Devi Lal had planned to address Kisan Rally in Delhi.⁵ The Government declared 27% reservation to the OBCs in jobs under the central government and the public sector undertakings.⁶

The very fact that the announcement was so sudden gave little time to the political parties to think and react. In fact, initially when V.P. Singh made the announcement on the floor of the Lok Sabha, it was met with loud cheer from the members of parliament cutting across parties and officially also all the political parties defended reservation and insisted that they supported the implementation of the Mandal commission report.⁷ This, interestingly included the Congress (I), whose governments had slept over the report for almost a decade after its submission. It is pertinent, from the scope of this thesis, to stress that Mandal⁸ achieved two things:

- a) It polarized political and public opinion over the issue of reservation and

⁴ Shekhar Gupta and Harinder Baweja (1989) Can Devi Lal wreck the government? India Today, 15 April.

⁵ See Ananth, Krishna (2011) Indian Since Independence, p.368.

⁶ Brass, R, Paul (1976, 2001), The Politics of India Since Independence, Cambridge University Press. p252

⁷ Ananth (2011), p.368.

⁸ The term 'Mandal' is used loosely to describe the forces that were unleashed after the implementation of second backward class commission report. Also this chapter looks Mandal more in terms of a phenomenon rather than as a historical event.

- b) It created ruptures in the ideological position of parties across the spectrum and as the protests against it intensified, it forced the leaders of the various political parties to search for reasons to shift political and ideological affiliations.⁹

So much so, someone like Mulayam Singh Yadav, who until now supported Chandra Shekhar against V.P. Singh, was critical of the former as he had publicly criticized the reservation policy.

The opposition itself was divided. The Congress remained silent for weeks and when it spoke, the party leader, Rajiv Gandhi (who as Prime Minister between November 1984 and October 1989 had let the Mandal Report gather dust), outrightly rejected the Mandal report; it is a different matter that this view was not endorsed as the party's line subsequently. On the other hand, the idea of caste based reservation wiped out the ideological boundaries between the CPI (M) and the BJP; both stood on the same side, non-committal and refraining from taking a position on Mandal.¹⁰ The CPI, meanwhile, was the first to formulate an opinion in favour of the Mandal report. The CPI (M), on the other hand, was vertically divided over the issue of Mandal, wherein its Kerala unit strongly supported Mandal and the Bengal unit outrightly rejected the idea.¹¹

The major exercise to divert the attention from the Mandal Report came from the Bharatiya Janata Party (BJP), whose support from outside (along with the Left parties) had sustained the V.P. Singh-led National Front Government. There was an evident sense

⁹ Chawla Prabhu. *Unleashing New Equations*, India Today, September 30, 1990

¹⁰ See Nigam, Aditya (1990), *Mandal Commission and the Left*, Economic and Political Weekly Vol. 25, pp. 2652-2653.

¹¹ It is mentioned in an India Today report that even with division over the quotas for OBCs, few members from CPI (M) were the most vociferous supporter of the report. In fact one of the party member Subashini Ali declared that party was favored implementation of Mandal Report and the leader went around campuses to mobilize support for the Mandal Commission. See Chawla, Prabhu. *Unleashing new Equation*, India Today, September 30.

of insecurity in the party as the backward caste Hindus supported V.P Singh and the implementation of the Mandal Report holding the potential to weaken its agenda of Hindu nationalism in a significant way; Mandal, after all, revealed the schism within the Hindu fold and knocked the bottom off the position that the Hindus constituted a monoblock. The BJP responded by resurrecting the Ram Mandir issue to reconstruct a united Hindu identity.¹² The task was handed over to Lal Krishan Advani, who announced a high profile *Rath Yatra* from Somnath in Gujarat to Ayodha in Uttar Pradesh.¹³ The whole campaign was based on an image of erecting a grand Ram Mandir in place of the Babri Masjid and ended in the demolition of the Seventeenth Century Mosque on December 6, 1992.¹⁴

Meanwhile, unfazed by the political opposition, V.P Singh managed to consolidate on the Socialist Party's base behind the Janata Dal and thus could enlist such backward class leaders as Lalu Prasad Yadav, Mulayam Singh Yadav and Ram Vilas Paswan, behind his leadership to endorse the Mandal report. It then meant that the Janata Dal emerged into a platform representing the democratic aspirations of the backward classes. In this regard, Prime Minister V.P Singh's address to the nation from the ramparts of the Red Fort on August 15, 1990 (a week after the August 7 announcement), made it evident that Mandal was indeed a rebellion against the upper caste politics. He said:

¹² This was a local where many Hindus in Ayodha believed that Babri masjid was the birth place of Ram later called as Ram Janam Bhoomi

¹³ The 6000 mile Rath Yatra that started from Somnath Mandir, was symbolic which was raided by Mahmud of Ghazni in the 11 century and resurgence of Hindu sentiments. Chawla, Prabhu and Pauchari, Pankaj *National Politics: BJP on warpath*, India Today, Oct 15, 1990.

¹⁴ Kannabiran.K.G (2003) *The Wages of Impunity: Power, Justice and Human Rights*, New Delhi: Orient Longman, p.154.

We believe that no section can be uplifted merely by money. They can develop only if they have a share in power and we are prepared to provide this share. In this year of justice, in memory of Dr. Bhimrao Ambedkar, the Government has recently taken a decision to give reservation to the backward classes in the jobs in Government and public sector. It is being debated as to how many persons would get benefit out of it. In a sense, taking into account the population of this country, the Government jobs account for only one percent [of the total] and out of this one percent if one fourth is given to anyone, it cannot be a course for his economic betterment though it may have some effect. But our outlook is clear. Bureaucracy is an important organ of the power structure. It has a decisive role in decision-making. We want to give an effective share in the power structure and running of the country to the depressed, down-trodden and backward people.¹⁵

The Political Motivation behind VP Singh's Decision

It is important to discuss as to why V.P Singh alone is singled out and partisan political motives for his August 7, 1990 decision even while the political leadership before him have tried to muster a similar political strategy. Way back in 1969, when Indra Gandhi's Congress reorganized the social base of the party by bringing more backward caste leaders, it also introduced and restructured reservation in some of the states (as we have seen in Chapter 3 of this thesis) and also that these measures met with violent protests by the upper castes.¹⁶ The difference, however, was that those arrangements were then masked with the popular slogan of '*Gharibi Hatao*'. Also, much of these maneuvers were handled by the local leadership of the party while the national leadership of the party persisted with perceiving caste from the Nehruvian line. However, in 1990, it was the Indian Prime Minister who had not only announced reservation for OBCs but also endorsed and campaigned for the inevitability of such actions to achieve a social transformation.

¹⁵ V.P Singh Independence Day Address 1990, See V.P Singh (1993), V.P Singh, Selected Speeches and Writings, 1989-90, Government of India, p.60.

¹⁶ See Chapter III.

As for the narrative that Mandal was motivated by partisan political aims was popularized, it sought to blur out the fact that the idea to extend reservation to the OBCs was a constitutional imperative, aimed to rectify the dominance of the upper castes in services. In this regard, data produced by the Mandal Commission shows that as late as in 1980 (that is three decades after the Constitutional scheme came into force), the overall representation of the OBCs in services was a mere 12.55 per cent; and in Class I services there number was even lower than 5 per cent as evident from the following data.

Table 4.1

Percentage of OBCs in Central Services

Group Population	% of total
<i>(i) Scheduled Castes and Scheduled Tribes</i>	
Scheduled Castes	15.05
Scheduled Tribes	7.51
Total	22.56
<i>(ii) Non- Hindu Communities, Religious Groups</i>	
Muslims	11.19
Christians	2.16
Sikhs	1.67
Buddhists	0.67
Jains	0.47

Total	16.16
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(iii) Forwards Hindu Castes & Communities

Brahmins (including Bhumihars)	5.52
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Rajputs	3.90
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Marathas	2.21
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Jats	1.00
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Vaishyas/Banai	1.88
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Kayashtas	1.07
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Other forward Hindu	2.00
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Total	17.58
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<i>(iv) Backward Hindu Castes and Communities</i>	43.70
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<i>(v) Backward Non Hindu Communities</i>	8.40
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Source: Second Backward Class Commission Report, Vol. 1, p.56.

Therefore, even though the decision to implement Mandal was guided by the pragmatism in politics and the immediate context may have been the strife in the Janata Dal involving Devi Lal's revolt, it is necessary to stress that V.P Singh had performed a feat that no Indian politician at his level dared to do in the past.¹⁷ It is also necessary to note here that in the 1989 elections, the Janata Dal had promised, in its manifesto, to implement Mandal report if the party came to power.¹⁸ The point is that the report was

¹⁷ Nigam, Aditya and Menon, Nivedita (2007), Power and Contestation: India Since 1989, Fern Wood Publishing, p.16.

¹⁸ National Front Manifesto, 1989 Lok Sabha Elections, p.27.

lying with the Union Home Ministry for almost a decade and none bothered to raise their concern for or against its recommendations and when it was taken up for implementation strong opinions were expressed and questions raised over the timing of the report. The fact of the matter is that 10 years were lost in the search for an ideal time and still political parties at large were searching ways to further delay the report over the argument that it was politically motivated. As noted by Tabish, in a report published in Times of India:

If the report had been implemented a few weeks earlier, it would have been considered a move to neutralize Chandra Shekhar- who had been creating trouble then. If it had been implemented some weeks later, it might have been termed a step to counter the Rath Yatra that Mr. Advani was to launch subsequently. And if Mr. Singh has waited for a properly uneventful time before implementing the report, he might have ended up waiting as long as the Congress did. But then that, I suspect, might have suited some people just fine.¹⁹

Polarizing Opinion

While the politics on Mandal was unfolding, the northern Indian states were simmering with anti- Mandal mania. The first series of protests against the OBCs quota erupted in Delhi soon after the announcement on August 7, 1990 and grew in strength, soon. Organizations sprouted across northern Indian states to build a campaign against the policy of reservations. These agitations, even though scattered, was spread across 29 universities of Northern India under the banner of Anti-Mandal Commission Forum (AMCF), with its headquarters in Delhi University. Outside Delhi such outfits like the Arakshan Virodhi Sangharah Samiti (Committee for the Struggle Against Reservation) in Uttar Pradesh and Rashtriya Swaran Mukti Morcha (National Upper Caste Liberation Front) in Bihar were actively involved in the protests with the latter even raising the

¹⁹ Quoted in Yadav and Singh (1994) India's Unequal Citizens: A Study of Other Backward Classes, Manohar Publication, p.85. Also see, Tabish, 'Media Pariah' The Times of India, 1991, May, 19.

demand for a separate 'Swaran Rajya.' The protest than was not totally apolitical and the student wings of both the BJP (ABVP) and the Congress (I) (NSU-I) sprang to defend the rights of the upper castes; these, however, were done in a rather deceptive manner; the ABVP for instance, launched the 'Mandal Virodhi Sangarsh Vahini' and the NSUI participated in anti-reservation protests through their 'Equality Front'.²⁰

The upper caste students shamelessly defended their privilege and the idea of merit and efficiency by burning down public property. They did not stop there and in fact mocked students from lower castes, as some of them took to shoe polishing and cleaning cars as a form of protest, displaying without disgust that such professions were below the dignity of an upper caste youth and to drive hard their resistance to the possibility of the entry of backward classes into what they considered their birthright and conversely that the lower castes were only to be contended with menial jobs.²¹ Further, as the protest gained momentum, Rajeev Goswami, a student of Delhi University, set himself on fire, sparking off a chain of self-immolation attempts.²² Unfortunate as these incidents were, the more disturbing fact, however, was that the public space was captured to uphold the narrative of the upper castes. More importantly, the nation and national interest were identified with the so called majority, which in fact, with the exit of OBCs after implementation of Mandal report, was reduced to minority.

These narratives were countered by the likes of Sharad Yadav, Ram Vilas Paswan and Lalu Yadav, who were equally militant in their response. For instance, responding to the anti-Mandal agitation, Lalu went public with a statement such as "*Dekhte Kya ho,*

²⁰ Pachauri, Pankaj and Others. *Students groups: The Ragtag Warriors*, India Today, October 31, 1990.

²¹ Bhaumik, Saba. *A Spreading Stir*, India Today, September, 30, 1990.

²² Harinder Baweja, *Pyres of Protest*, Special Report, India Today, October 31, 1990

bomb phekon or Bhoon Do saloon ko (Lob the bombs and mob down the rouge).²³ The polarization created a hostile environment towards any kind of discussion over the issue of reservation as they were colored either anti- Mandal or pro- Mandal. Having said that, the cleavage produced in the society was the result of the hostility of the upper caste towards reservation.²⁴ The overall framework of the discourse surrounding Mandal will be discussed later in this chapter. For now, it is appropriate to discuss in some detail as to what was the Mandal Commission report.

Mandal Report

The Second Backward Class Commission was appointed by the Morarji Desai government on 21 March 1979, more than two decades after the appointment of the Kaka Kalekar commission.²⁵ The terms and reference were more or less the same as with that of the first backward class commission and consistent with Article 340 of the Constitution: To determine the criteria for defining the socially and educationally backward classes and recommend steps to be taken for the advancement of such groups.²⁶ Besides this, the commission was also asked to look into the desirability of reservation for the backward classes in posts and services.²⁷

Unlike the first backward class commission report that proved to be a drab constitutional exercise without any commitment and intent to implement reservation, the Mandal Commission was an outcome of both political necessity and long term demand of backward class people, in the making of which the Janata government played an

²³ Farzand Ahmed. *Language Lows*, India Today, December, 15, 1990

²⁴ Jaffrelot (2003), pp.347-48.

²⁵ Report of the Second Backward Class Commission, Government of India, Vol. 1, p. iii.

²⁶ Ibid. Vol. 1, p. vii.

²⁷ Ibid.

instrumental role, producing a strong report that could impact the landscape of Indian politics even after 10 years of its release, when it was finally implemented. The point of difference being that while the content of Kaka Kalekar report was highly moderated by the Chairman to ultimately reject reservation for the OBCs, B.P Mandal an OBC himself (Yadav) on the other hand and a socialist by conviction supported reservation for the OBCs as a necessity to change the structure of Indian politics.²⁸ Apart from this, four of the five members of the commission were also OBCs.²⁹

The Mandal Commission, thus, initiated an exercise that was totally abandoned after the first backward class commission report: The imperative for the Indian state to readdress the historical disability and disadvantage suffered by the lower caste groups was put on hold ever since the Jawaharlal Nehru government dealt with the Kaka Kalekar Commission Report (which has been discussed in detail in Chapter 3 of this thesis). The most important aspect of the Mandal Commission report was the manner in which caste was articulated while formulating the reservation policy for OBCs. The report marks an important shift from the Nehruvian framework and that of Kaka Kalekar's dissenting note to his own report, where caste (or any other traditional social arrangements) was meant to disappear by achieving an ideal state of socialism.³⁰ The important point being, that Nehru and the Congress at large resisted any political intervention to produce any changes in the institution of caste.³¹ Contrary to this Mandal, acknowledged the fact that state intervention is the only possible way to deal with the institution of caste and

²⁸ B.P Mandal a politician from Bihar, entered into the politics as a Congressman and later left the party to join SSP. In 1968 he was made the Chief Minister of Bihar, a position that he held for 48 days.

²⁹ The other members of the commission were: R.R Bole (M.P), Dewan Mohan Lal, L.R. Naik, K. Subramaniam, S.S Gill (Secretary).

³⁰ These arguments have already been placed in the previous chapters. See Chapter III and IV.

³¹ Suendar Jodhka (2012) "The Problem" Seminar, 633.

promoted the entry of caste in the public and the political space at the national sphere. The political reasons that caused a delay in the implementation of the Mandal commission recommendation will be subject matter in the conclusion of this thesis. This section will look into the Mandal Report and the discourse that it brought out into the open and what makes it an important document in the nation's history.

Coming back to the report, as pointed out in the previous chapters, that once Kaka Kalekar Report was rejected by the central government, the judiciary and intellectuals at large have held an apologetic position towards granting reservation to backward classes. However when Mandal was tasked to frame its argument on reservation, it set the tone and the intent with an opening statement on social equity:

To treat unequals as equals is to perpetuate inequality. When we allow weak and strong to compete on an equal footing, we are loading the dice in favour of the strong and holding only a mock competition in which the weaker partner is destined to failure right from the start.³²

Likewise, the Mandal report rejected the dominant idea of merit, one that alienated the concept from its social context and developed a reasoning that was strong enough to legitimize the denial of reservation. Contradicting this strong tradition, the Mandal report reintroduced the other side of the argument over merit, the one that has been overruled by the judiciary and the civil society at large and argued:

In fact, what we call 'merit' in an elitist society is an amalgam of native endowments and environmental privileges... the conscience of a civilized society and the dictates of social justice demand that 'merit' and 'equality' are not turned into a fetish and the element of privileges is duty recognized and discounted for when unequal's are made to run the same race.³³

³²See Second Backward Class Commission Report (1980), Government of India, Vol. I

³³ Ibid. Vol. I, p.23.

The report also countered the claims against reservation and the argument that reservation dilutes merit and in turn affects the efficiency in services. It asked “*is it possible to maintain that all candidates selected on merit turn out to be honest, efficient, hard-working and dedicated?*” The Mandal Commission countered this by way of a counter-question: “*If the performance of our bureaucracy is any indication, it has not exactly covered itself with glory*”. Efficiency then, according to report, can be achieved by bringing more heterogeneity in the services that was monopolised by the upper castes by stressing that:

Chances are that owing to their (OBCs) social and cultural handicaps, they may be generally a shade less competent. But, on the other hand, they will have the great advantage of possessing firsthand knowledge of the sufferings and problems of backward sections of society. This is not a small asset for field workers and policymakers even at the highest level.³⁴

These were indeed substantive positions taken by the Mandal report, which justified reservation in the larger national interest.

Regarding the criteria of backwardness, the Mandal report was categorical in its rejection of reservation on economic basis and argued: “Substitution of caste by economic test will amount to ignoring the genesis of social backwardness.” The report supported this contention that caste is the most deserving criteria for backwardness by stating in a forthright manner that, “(castes are) the only readily and clearly recognizable and persistent collectiveness.”³⁵ However, even after stressing that caste plays an important role in generating social backwardness, the report refrained from framing reservation solely based on caste, i.e., on the ritual standing of caste in the social hierarchy (low or high) and caste was considered only as the unit to measure the backwardness. Therefore, instead of relying solely on caste, the report devised a universal

³⁴ Ibid. Vol. I, p.57.

³⁵ Ibid, Vol. I, p.54.

formula to determine backwardness using social, educational and economic criteria. Based on these three broad criteria, 11 indicators were designed, which were further assigned group wise weightage, to be used to evaluate backwardness. In this, each social indicator was given a weightage of 3 points, educational indicators a weightage of 2 points each and economic indicators were assigned one weightage point each.³⁶ These indicators were applied to the various castes/communities and those obtaining a minimum score of 11 or above were listed as socially and educationally backward.³⁷

The above criteria and the method used to determine backwardness was highly criticized for not following correct scientific approach. A larger part of such criticism came from the three professors M.N. Srinivas, Yogendra Singh and B.K. Roy Burman, who were associated with the Mandal Report, but disowned the report on grounds that its conclusions were not based on scientific evidence and arrived at without consultation

³⁶The 11 indicators formulated by the commission are as follows:

Social Criteria:

- I. Castes/Classes considered as socially backward by others.
- II. Castes/ Classes which mainly depend on manual labour for their livelihood.
- III. Castes/ Classes where at least 25 per cent females and 10 per cent males above the State average get married at an age below 17 years in rural areas and at least 10 per cent females and 5 per cent males do so in urban areas.
- IV. Castes/Classes where participation of females in work is at least 25 per cent above the State average.

Educational Criteria:

- V. Castes/Classes where the number of children in the age group 5-15 years who never attended school is at least 25 per cent above the State average.
- VI. Castes/Classes where the rates of student drop out in the age group 5-15 years are at least 25 per cent above the State average.
- VII. Castes/Classes amongst whom the proportion of matriculates is at least 25 per cent below the State average.

Economic Criteria:

- VIII. Castes/Classes where the average value of family assets is at least 25 per cent below the State average.
- IX. Castes/Classes where the number of families living in Kuccha houses is at least 25 per cent above the State average.
- X. Castes/ Classes where the source of drinking water is beyond half a kilometer for more than 50 per cent of households.
- XI. Castes/ Classes where the number of households having taken consumption loan is at least 25 per cent above the State average. See Second Backward Class Commission Report (1980), Government of India, Vol. I, p.52.

³⁷ Ibid.

with experts on the issue of reservation.³⁸ Even the socio –educational field survey conducted by the commission, these dissenters argued, covered only two villages and one urban block and hence open to criticism.³⁹ While there is no doubt that the Mandal report did suffer from anomalies over how data was generated, it seems that the experts were more annoyed over the fact that the caste was even considered as a criterion for backwardness.⁴⁰ For instance Yogendra Singh, Professor of Sociology from the Jawaharlal Nehru University, argued:

Forty years have seen enormous differentiation in class and caste divisions. Caste should not be the central element in dispensing social justice. In fact, there should be a process of gradual delegitimation of caste finding scientific methods for the exit of SC and ST members from the reserved quota.⁴¹

Besides this, another problem with the Report was that it did not use the most convincing way to calculate the population of OBCs and has reached the figure of 52 percent by simply deducting the Scheduled castes and forward Hindus from the total Hindu population (See Table 5.2 below). In this P Radhakrishnan has shown that the data produced for the population figures was derived by using different sources- 1931 census for forward castes, 1971 census for SCs/STs and religious groups.⁴² It was difficult to expect pin point accuracy, when the government itself had abandoned caste based computation of population except for the SCs and STs since 1951.

³⁸ Pachauri, Pankaj, *Mandal Commission: The Great Debate*, India Today, September, 30, 1990

³⁹ The Mandal claimed that the survey was conducted under the chairmanship of Srinivas, however the later refuted these claims. Also see, P. Radhakrishnan (2000), *Mandal Commission Report: A Sociological Critique* in Srinivas (ed.) *Caste- Its Twentieth Century Avatar*, p.207.

⁴⁰ Expressing his opinion against Mandal Report in a leading daily Professor B.K. Roy Burman argued: “The report ‘is without scientific basis’—a retrograde thing, where caste, ‘much to the annoyance of the experts, plays an important role’”. Quoted in Yadav and Singh (1994), p.76.

⁴¹ Pachauri, Pankaj, *Mandal Commission: The Great Debate*, India Today, September, 30, 1990

⁴² P. Radhakrishnan (2000), *Mandal Commission Report: A Sociological Critique* in Srinivas (ed.) *Caste- Its Twentieth Century Avatar*, p.207.

Table: 4.2**Representation of OBC in various posts and services**

Depts/ Bodies	Class I			Class II			Total	Class III and IV			All classes		
	Total	SC/ST	OBCs	Total	SC/ST	OBCs		SC/ST	OBCs	Total	SC/ST	OBCs	
1.Ministries/ Department	11707	840 (7.18)	203 (2.59)	43803	5985 (13.66)	1742 (3.98)	1789	5518 (30.95)	1500 (8.41)	7339	12343 (16.83)	3545 (4.83)	
2.Autonomo us Bodies/ Attached & Subordinate Bodies	81325	5399 (6.64)	4147 (5.09)	503337	91431 (18.16)	59079 (11.74)	322948	67118 (20.78)	67686 (20.98)	907610	163948 (18.06)	13101 (14.43)	
3.Public Corporation	80994	3652 (4.51)	3719 (4.59)	365785	68566 (18.74)	36242 (9.91)	143910	45646 (31.72)	22689 (15.77)	590689	117864 (19.95)	6265 (10.61)	
Total	174026	9891 (5.68)	8169 (4.69)	912925	165982	97063 (10.63)	484687	118282 (24.40)	91975 (18.93)	1571638	294155 (18.72)	19720 (12.55)	

*All the figures in the bracket are percentage.

Source: Second Backward Class Commission Report (1980), Government of India, Vol. II, p. 92.

Even though the Mandal Commission Report was mauled for the insufficiency of data, nobody could negate the fact that the OBCs suffered from disability. As shown in the table 5.1, representation of the OBCs in government services and other important posts were far worse than that of the SCs and STs, who had benefited from the policy of reservation. This indeed is testimony of state betrayal and denial of the constitutional

right to provide equal opportunity in services and to the monopoly of the upper castes, which was hardly disrupted and representation of OBCs remained dismal in various public and private institutions.

Finally, as the Mandal report recommended 27 per cent reservation in posts and services for the OBCs, it also clarified the purpose of such reservation:

It is not at all our contention that by offering a few thousand jobs to OBC candidates we shall be able to make 52% of the Indian population as forward. But we must recognize that an essential part of the battle against social backwardness is to be fought in the minds of the backward people. In India Government service has always been looked upon as a symbol of prestige and power. By increasing the representation of OBCs in government services, we give them an immediate feeling of participation in the governance of this country. *When a backward class candidate become a Collector or as a Superintendent of Police, the material benefits accruing from his position are limited to the members of his family only. But the psychological spin off of this phenomenon is tremendous; the entire community of that backward class candidate feels socially elevated.* Even when no tangible benefits flow to the community at large, the feeling that now it has its own man in the corridors of power as morale boosters....*reservation will certainly erode the hold of the higher castes on the services*⁴³ (emphasis by author).

It was an important statement that reflected the necessity of reservation, not only as a policy to equalize resources but also to create a sense of pride and honor among the backwards. In saying so, the report recognized the psychological implication of caste and why it was important to open up the corridors of employment in services to the backward classes. More importantly, the entry of the OBCs in services will also help in removing the monopoly of the upper caste in services.

In a sense, it recognized caste not only as a suitable criteria for determining backwardness in case of the OBCs, but also as a tool for the political assertion of the backward classes and as a means to challenge the upper caste hegemony in services as well as society. In principle, such an exercise does 'not annihilate caste but only makes a positive attempt to democratize the nature in which caste can possibility utilized in the

⁴³ P. Radhakrishnan (2000), Vol.1, p.57.

Indian politics. Therefore Mandal differed, in principle, from both Lohia and Ambedkar, who for a fact campaigned to put an end to the caste system. At best, the Mandal Report was a document that promoted the rule of majority at the expense of upper castes in India.⁴⁴

Anti- Mandal Agitation and the Discourse on Caste

The decision to partially implement the Mandal commission report lifted the veil of hypocrisy worn hitherto by the Indian elite with which it managed to conceal caste under the blanket of modern-secular values. As before it, that is until Mandal arrived at the national level, the post-colonial history of India had stayed aloof of caste; in fact very less was reflected on the understanding of caste (or any subaltern identity) in the scholarly debates that featured mostly the debate on nationalism and the nation state.⁴⁵ Mandal shook out this imbalance by providing legitimacy to the traditional institution like caste. More importantly, the two conflicting themes of post-colonial India – the one that insisted on restricting caste as a private or religious subject and the other which placed caste as integral part of the public discourse -- were now on the path of collision. This also meant that the nation at large had finally begun a tentative interrogation on both the history of caste based discrimination and upper caste privilege.⁴⁶

However, the focus of this section is rather on the unfortunate events, where more than 60 students ended their life as a mark of protest against the extension of quota to the

⁴⁴Frankel. R. Francine (1998) "Middle Classes and Castes in India's Politics: Prospects for Political Accommodation" in Kohli, Atul (ed.) India's Democracy: An Analysis of Changing State- Society Relations. Princeton University Press, p.260.

⁴⁵ Pandey Gyanendra (1992), "In Defence of the Fragment: Writing About Hindu Muslim Riots in India Today". Representations, No.37, pp.27-55

⁴⁶ For a brief account on how caste has been articulated in the post independent India and the changes that has taken place since. See, Deshpande, Satish (2010) Caste Articulation, Himal Southasian. April.

OBCs, while the others indulged in different form of vandalism. This was an extraordinary form of action, one that only the forward castes must be allowed to carry out freely in this nation, with no sign of respect for the constitutional values. The hostility towards Mandal was an upper caste discourse on caste and their resentment towards the alternative or rather true definition of equality and justice (merit and efficiency) that Mandal had proposed, in an equally secular tone. In an ‘us’ versus ‘them’ discourse, the upper caste students were presented as the embodiment of merit and efficiency and the students from the reserved category were exemplified as the others, who were handed over these opportunities in a rather undeserving manner.

As D.L. Sheth puts it, *the elite response to the Mandal Report, indeed, illustrates the wordy opposition of the Indian elite which mouths ‘progressive’ rhetoric in order to oppose any social policy aimed at the structural transformation of our society.*⁴⁷ The policy of reservation, then, was opposed by propagating certain myths about merit and efficiency.⁴⁸ The propaganda was given credence by placing certain concerns on how the benefits of reservation are bound to be cornered by a small elite among the backward classes and that the caste based reservation will perpetuate casteism. As observed by Aditya Nigam:

What was interesting about the agitation, and the highly charged public debate that followed, was that it was entirely conducted, on the part of the opponents of the Mandal Commission, in the most immaculately secular and modern language of “merit” and “efficiency”.⁴⁹

⁴⁷Seth. D.L (2000) Changing Terms of Elite Discourse: The Case of Reservation for ‘Other Backward Classes’ in Hasan Zoya, Politics and the State in India, New Delhi: Sage Publication, pp.246-68.

⁴⁸ While the idea of merit has been contested for quite long commenting on the anti- reservation protest in Andhra Pradesh in 1985 Balagopal argues that such agitations are structured on number of myths one of them being the ‘Patriotic concern for merit’. Balagopal declares such arguments to be elitists and non-popular myths. See, Balagopal K (1986) Andhra Pradesh- Anti-Reservation, Yet Once More, Economic and Political Weekly, Vol.21, Issue No.36.

⁴⁹ Nigam, Aditya and Menon, Nivedita (2007), Power and Contestation, p.17.

However contrary to this, the discourse promoted through the Mandal Commission Report presented an opportunity to redesign the democratic and secular role of caste.

In some other ways, these protesters were the ‘pampered’ upper caste students of the post- colonial state who had so far been protected, at any cost, even if that had meant that the nation had to renege on its constitutional obligation to institute equality by readdressing the disability and the disadvantage suffered by the lower caste students. The explanation, then, for the ferocious campaign against the Mandal report can be derived in the light of the discourse on citizenship involving two opposing and yet engaging elements of the concept — ‘unmarked universal citizen’ and ‘marked’ citizen. It was clear that those who were protesting against reservation were making an attempt to restructure the discourse and the themes on justice and equality in such a way that the upper caste students were easily portrayed as the victims, making claims to the citizenship as unmarked universal citizens, one who remains unmarked by any form of identity (caste, gender, religion etc.).⁵⁰

These, rather abstract, identities provided a convenient way for the upper castes to keep their privileges hidden and to further uphold them through the ‘bogey of merit.’ In fact the ‘ideal citizen’ as an unmarked entity, free from the traditional identities, was implicit in the making of the modern nation state. And since Mandal retained caste identities for determining backwardness in case of the OBCs, it was seen as an act of intrusion into the ‘unmarked universal citizenship’; although such an intrusion was

⁵⁰ Similar language was used by the Indian elite during the Shah Bano case (1985) and Muslim Women Bill (1986). It also included persistent demands largely from the right wing party to abolish the Muslim law in favour of uniform civil code. See Roy Anupama (2005) Gendered Citizenship: Historical and Conceptual Explorations, Hyderabad: Orient Blackswan, pp.219-22.

permitted by the constitution, it was objected to by the upper castes.⁵¹The identification of the lower castes, on the other hand, was an imperative obligation to achieve the citizenship which the nation had envisaged in the constitution. A point that Niraja Jayal makes, saying that to, “*those who belong to variously disadvantaged groups, the road to citizenship lies only and paradoxically through being marked.*”⁵²

While a large body of work has argued that the protest against Mandal was a spontaneous reaction against the reservation (which it perhaps was to a certain extent),⁵³ there are others who have argued that the political parties, a section among the intellectuals and the media were equally responsible for the manner in which the protest was conducted. But, there is no way one can desist from pointing out that the hysteric acts of the upper caste students professed ignorance about the institution of caste.⁵⁴ Ignorance, then is not passive; it is cultivated intentionally through years of denial by propagating that caste-does-not-exist in reality (since it has been already condemned in the constitution) or through the constant rhetoric of castlessness, which in its own self-righteousness, imposes a ban on any engagement with the caste question. In post independent India, this unique feat was achieved by every generation -- an act of collective amnesia of the caste based oppression on the one hand and on the other the power and privilege accumulated by the upper castes.

⁵¹ Ibid.

⁵² Writing on the history of citizenship in India Niraja Goa has argued citizenship as an highly ambiguous and fiercely contested concept. See, Jayal, Niraja (2013) *Citizenship and its Discontents: An Indian History*, Harvard University Press: London, p.275.

⁵³ A report published in India Today during the anti- Mandal agitation has examined the various reasons for the attempts of self immolation. See, Pyres of Protest, India Today, Oct 31, 1990.

⁵⁴ There is similarity in how the discourse on racism and caste has developed in USA and India and much these argument have been drawn from the experience of race in USA. See, Sullivan Shanon and Tauna Nancy (2007) *Race and Epistemologies of Ignorance*, New York: University of New York Press, pp.1-10.

This 'ignorance' of the elite, again, is not unique to the institution of caste and to the Indian nation. For instance, the white society in the United State of America (USA) has systematically silenced the narrative of oppression against the African American and the Native American.⁵⁵ Somewhat similar, it can be said, is the case of India, where though the crucial narrative of social oppression in Indian history existed, it was not narrated to the wider audience. In other words:

For the most part, whites have repressed the historical memory of much of the society's long centuries of oppression or have developed, individually and collectively, an intentional ignorance of that oppression. This repression of history and trained ignorance of oppression have critical living comfortably as a white person in a still- racist society.⁵⁶

Media and Mandal⁵⁷

Such is the institution of caste that it leaves none to be unbiased and without prejudices, whether against or in favor of it and the Indian media was no exception to that. As an institution, the media, not only tried to de-emphasize the fact that caste still remains the source of inequalities but also played a significant role in justifying the 'fury of the forward' against the partial implementation of the Mandal Commission Report; reporting, in the process, one sided, selective and distorted stories. Worst, the understanding of caste was reduced to binaries, one who opposed caste in totality (aggade) and the other who were raising demands for caste based reservation (pichadde). This was, in fact a historical position of the media over the issue of caste and even prior to the Mandal

⁵⁵Feagin.R. Joe (2006) Systematic Racism: A theory of Oppression. London: Routledge, p.275.

⁵⁶ Ibid.

⁵⁷ Well it is difficult to dissect every report that was published in 90s in the Indian newspapers, the only attempt here is to see how the major national media houses indulged in selective and biased reporting which was always there but Mandal brought media into the light and busted their pretence on objective and non-partisan reporting. For a detailed account on the media reportage on the Mandal and the anti-reservation protest, See ,Yadav and Singh (1994) India's Unequal Citizens: A Study of Other Backward Classes, Manohar Publication, pp.77-95. M. Sukumar (2010) in Rita Manchanda (ed.) States in Conflict with Their Minorities: Challenges to Minority Rights in South Asia, Sage Publication, pp.69-93. Balagopal, K (1990) 'This Anti- Mandal Mania', *Economic and Political Weekly*. Vol. 25, Issue No. 40.

commission report, the media's bias against reservation is well documented and Gujarat being a case in point for that.⁵⁸ Not only has the media sided with the upper caste view but also consistently bashed various state government decisions to institute reservation on caste basis.⁵⁹

Not surprisingly, the backward class report that prescribed caste based reservations was unacceptable to a highly upper caste dominated media and since their concerns were not reflected in the national political milieu, they took upon themselves to correct what they deemed was unjust to the nation and to the meritorious students. It also reflected the desperation of the media to garner support for an agitation which they thought had the capability to force the government to reverse its decision and their failure to comprehend the fact that the policy of reservation was constitutionally sanctioned and there was nothing that media could have done was indeed the narrative of the story in the post-Mandal phase in India. For instance, a report carried by India Today, a Weekly Magazine with a pretty high circulation then, after the series of self-immolation attempts by youth belonging to the upper castes, painted quite a picture of the upper caste students as the 'rebels and revolutionaries' and the backward class leaders as the 'culprits'.⁶⁰ In fact, over the period, a series of reports were published in India Today that carried a scathing criticism of the backward caste leaders and leading lights from the academia, chosen on a selective basis for their views against reservation, were invited to write

⁵⁸ The partisan and biased reportage by the print media in Gujarat in the late 80s and the support they provided towards the anti- reservation protest has been mentioned in Chapter III.

⁵⁹ See Galanter, (1984).

⁶⁰ The report opens up with an opening statement: "Mandal report seems to have touched a peculiar chord among the youth, one that brooks no easy explanation. More than 159 people have attempted suicide; 63 have died. Not that this has shaken the Government. Smug in its electoral arithmetic, it has refused to concede an inch"

against the policy of reservation.⁶¹ India Today was not alone in this. As for instance, The Hindustan Times, a leading 'national' daily reported Mandal in the most polarizing manner to establish that the 'implementation of the report would create two nations, neatly balanced numerically and never the twain shall meet. Casteism would ignite an unprecedented national conflagration.'⁶²

News with alternative views, if any, was filtered through the prism of the position it took in respect to the Mandal Commission Report. Such reports would be published only if it satisfied the upper caste editor of the prominent newspapers. Clearly, it was unsettling for media that something that they had denied for years was brought out in the open and the fact that they were forced to discuss and debate over it in a manner that was unacceptable to them was unpalatable to them and none of them cared to enquire into the Mandal Report and what it represented. Besides this, the fact that the Mandal report came at an important juncture when the media was thrilled by the liberalization of the market, the policies of reservation seemed to them to have jettisoned the idea of modernity which India was about to embark upon.⁶³ In the process, the media chose not to reflect upon the failure of previous governments to implement the constitutional mandate of reservation.

The announcement to implement the Mandal commission report unsettled their faith in V.P Singh, who so far by the media's standards, was an ideal PM, possibly a nationalist taking a tough line over Kashmir and a modernist who was not afraid of

⁶¹ Civil Right activist Balagopal has highly criticized the role of magazine, See Balagopal K (1990) This Anti- Mandal Mania, Economic and Political Weekly. Vol. 25, Issue No. 40.

⁶² The Hindustan Times, dated 28th August, 1990.

⁶³ M. Sukumar (2010) in Rita Manchanda (ed.) States in Conflict with Their Minorities: Challenges to Minority Rights in South Asia, Sage Publication, p.74.

pushing India towards the path of liberalization.⁶⁴ There is no denial of the fact that to certain extent, the implementation of the Mandal report was motivated by partisan concerns within the ruling combine – the National Front -- then, which resulted in the death of many students all over India and one would have expected V.P Singh to handle the situation in a more planned manner, which he failed to do. However, no one could undermine the role of other political parties that allowed their student wings to indulge in the spate of hooliganism. Quite conveniently, the media laid all the blame on V.P Singh and the Mandal report for the turmoil and violence that erupted in various parts of India. The trolling of V.P Singh continued in the various media outlets that at times, portrayed the Indian Prime Minister as anti- national.⁶⁵ The ‘national’ media developed the narrative where the Mandal report was represented to uphold the feudal and archaic identities like caste rather than holding it as a tool to dismantle the same.

Some of these were editorial opinions. One particular editor, Arun Shourie, used the position to reflect, in its best, his bias and anger against the reservation, totally forgetting the sanctity of the position and the fact that his readers were not only from the forward castes⁶⁶ In the process of doing that, the paper lost all objectivity and sensibility of the fact that such opinions would raise the ante of violence. It is not surprising that Arun Shouire, was rewarded for this with a cabinet berth by the BJP in less than a decade after he spat venom against the idea of reservation in 1990.

The aggressive protests in the end, against the implementation of reservation in jobs and services, was not revolutionary as depicted in the popular media portals. On the

⁶⁴ Inderjit Badhwar and Prabhu Chawla, *A New Assertiveness*, India Today June, 15, 1990.

⁶⁵ As a matter of fact most of the time V.P Singh was criticized in editorial piece. See, Yadav and Singh (1994) p.84.

⁶⁶ See Ajit Bhattacharjee. ‘Arun Shourie: *Is he Journalist or pamphleteer?*’, The Tribune, Oct, 27,1990.

flip side, it proved that how monopoly can be disastrous to the idea of the nation. As important institutions were captured by the upper castes, the nation lost the sense of justice and equality that were now symbolized with the oppressor. On the other hand, it was not surprising that Mandal was presented in such bad taste by a predominately upper caste media. The paradox of the Indian media was that on the one hand it was critical of caste based reservations on the basis that it discriminated against the meritorious students and on the other it has conveniently overlooked the injustice heaped on the lower castes over the years. In the end, it only helped in the very persistence of caste which its professionals at the various levels (and not only the editors) were claiming to be opposing all the time.

Exit of V.P Singh and the 1991 elections

As the Mandal agitation increased in its intensity and spread, political support for the V.P Singh government dwindled both inside the Janata Dal and among the allies in the National Front government. On another front, V.P Singh was challenged firmly by the BJP's agenda of Hindu nationalism, making the issue of Ram Mandir equally important as Mandal, if not less. As a matter of fact, V.P Singh was equally guilty for not attacking the BJP much, over the issue of Ram Mandir, which he feared would lead the Saffron party to withdraw its outside support to the government and therefore chose not to confront L.K.Advani, even after he rode his rath into Delhi. It was the Bihar Chief Minister, Lalu Parsad Yadav, who dared Advani to end the Rath Yathra if it entered Bihar and true to his word, Advani was arrested as he rode into Bihar, on 23 October, 1990, at Samastipur. The script for the fall of the V.P.Singh government was already

written and the BJP withdrew its support from the National front government.⁶⁷ Soon, in November, Chandra Shekar and Devi Lal followed the script and quit the Janata Dal, along with 64 MPs, to form the Samajwadi Janata Party.⁶⁸ As the political loyalty shifted and the ambitions of leaders ascended, another minority government came up, this time supported by the Congress Party and Chandra Shekar was the new PM of India. The experiment did not last long and Rajiv Gandhi withdrew his support in March 1991; Chandra Shekar was PM for 116 days; did nothing to further the agenda of reservation.⁶⁹

In the run-up to the 10th Lok Sabha elections, both politics and the public opinion was highly polarized over two key issues -- Mandal and Mandir. In fact, at a certain level, the BJP had succeeded to scuttle the march of the backwards and they received ample help in this from the Supreme Court that ordered an interim stay of the government order for OBCs quota. The only bright spot, as for now, was the fact that all the political parties at the national level had made a promise, on record, to implement Mandal Commission Report. This, indeed, was a consequence of the fact that such a position was inevitable for them to come to the power.⁷⁰ Mandal and its implementation in August 1990, then, had cannibalized parties, across the spectrum, into accepting the principle of caste based reservation.

During the course of campaign, on May 21 1991, Rajiv Gandhi was assassinated, unfortunate as it was; the loss of Rajiv Gandhi however improved the Congress(I)'s prospects in the elections, and the party came out as the single largest party with 244

⁶⁷ Upadhyaya, Ramesh. *The Drama of the Arrest*, Frontline. November, 23, 1990

⁶⁸ Harinder, Baweja and Prabhu, Chawla. *How long will it last?* India Today, November, 30, 1990

⁶⁹ Yadav and Singh (1994), p.97.

⁷⁰ Ibid.

seats in the Lok Sabha.⁷¹ The other party that improved its numbers was the BJP, whose strength had risen from 85 to 120 seats, with a large majority coming from Uttar Pradesh, where the party also won the Vidhan Sabha elections. Particularly, the victory in Uttar Pradesh was the testimony of the fact that the BJP had succeeded in polarizing voters of a particular community, and even though its expansion in the Hindi-speaking belt was largely curtailed due to the sudden death of Rajiv Gandhi that helped Congress to regain momentum. As for the Janata Dal, it was an election of miss and hit; while someone like Lalu succeeded in devising a winning formula -- Muslim Yadav coalition, one that not only defeated the politics of 'Kamandal' but also helped him to stay on in power for more than a decade. Mulayam Singh Yadav, on the other hand, has failed to counter-act the aggressive BJP.

Finally, the Congress(I) formed a minority government and P.V Narasimha Rao became the new Prime Minister. In September 1991, the Narasimha Rao government accepted the recommendation made by the previous government, providing 27 percent job quotas for the OBCs and also adding 10 percent reservation for the economically backward classes. The extra 10 percent reservation, based on economic criteria, was given as a token to the upper castes, who had consistently opposed reservation for the OBCs. However, this time, the opposition to reservations was muted and limited to some of the university campuses; politically, there was no one who opposed reservation for the OBCs. Having said this, the 1991 elections marked the silent departure of the man who was instrumental in bringing Mandal to the national level; V.P Singh had vanished from the Indian political scene (although he won elections himself and his Janata Dal emerged

⁷¹ Congress (I)- AIDMK- UCPI combined captured all 39 seats in Tamil Nadu, state where election were held after Rajiv Gandhi's assassination. See Ananth (2011), p.386.

with 60 MPs, mostly from Uttar Pradesh and Bihar) without much noise. It remains to be said that V.P.Singh, as Prime Minister had made his contribution towards the Indian politics by transforming the political language of India and ushering the nation towards the path of democratization. This transformation or the crystallization of the Backward Castes as a political class was visible as in the year after August 1991, the socially ambiguous category had successfully crystallized into the most engaging political group in Indian politics. The caste-wise breakup of the MPs elected to the Lok Sabha in the 1991 elections bare testimony of this as we see in the following Table.

Table 4.3

Caste and Community of the MPs Elected in the Hindi Belt, 1980-91

Caste/Communities	Year		
	1984	1989	1991
Upper Castes	46.90	38.20	37.11
Intermediate Castes	5.31	8.00	5.43
OBCs	11.10	20.87	22.60
SCs	17.26	17.78	18.10
STs	7.52	7.57	8.14
Muslims	9.73	5.78	4.52

*All the figures are in percentage.

Source: Jafferlot, Christophe (2002) 'The Subordinate Caste Revolution' in *IndiaBriefing Quickening the Pace of Change*, Alyssa Ayres ad Philip Oldenburg (eds.), New York: M.E Sharpe, p.130.

Indra Sawhney: The Final Battle before the War was Won

In the last attempt to put the clock back, the government decision to extend reservation to OBCs, was taken to the court. A case was filed by the Supreme Court Bar Association, which included prominent counsels like Nani A Palikhwala, who had argued against reservations in a plethora of cases and most important among them being the implementation of reservation in the Shosit case.⁷² The backward classes, on the other hand, were represented by Ram Jethmalani, who was appointed by the Bihar government. In this case, a nine member constitutional bench was formed to settle the legality of the government order. In the same case, the Supreme Court was also assigned the task to clarify on other important issues that were attached to the reservation.⁷³

The court carefully constructed, on the arguments that were made in the previous cases, and in a split verdict (where only three of the nine judges were in favor of exclusion of caste as a criteria and suggested to identify backwardness on purely economic basis) where the majority held that caste can be used as criteria for backwardness if it has qualified the social and educational backwardness. While saying that, the majority also held that reservation, in case of the OBCs, can be valid only if the creamy layer is excluded.⁷⁴

Caste and Class

As we have seen in the discussions hitherto, the controversy over class/caste had dominated the discourse of reservation ever since the dispute was raised and its roots lay

⁷² See Akhil Bhartiya Shosit Karamchari Sangh (Railway) vs. Union of India & Others, AIR 1981 (SC) 298.

⁷³ Indra Swahney vs. Union of India Union of India, AIR 1993 (SC) 477.

⁷⁴ Ibid.

in the fact of the usage of the term ‘backward classes’ (and not backward castes) in the Constitutional provisions for reservations and close to four decades of judicial enquiry shows that it is one issue where the Indian judiciary had not shied away from taking sides and expressing conflicting opinions based on the personal predilections of the judges on different occasions.⁷⁵ Even in the Indra Sawhney case, similar sets of concerns were raised by the petitioners who pleaded to abolish caste in a secular manner, therefore also suggesting that caste should not be used at all for the purpose of reservation. The counsel for the petitioners held, on various moments, that:

A secular, unified and caste- less society is a basic feature of the Constitution. Caste is prohibited ground of distinction under the Constitution. It ought to erase altogether from the Indian society.⁷⁶

Now, that being the argument, the court had to decide on two set of questions

1. Can ‘caste’ constitute ‘class’ as argued before in the Rajendran case and then also in Balram or is that the ‘caste’ and ‘class’ are distinctive categories that cannot be merged into one; and
2. If that was considered to have been settled -- that is caste is a class or vice versa -- how can the court justify caste in a secular sense as argued by the petitioners.

To start with, the more important question was as to what is the constitutional definition of ‘backward class’? From a socio-anthropological perspective, even though caste and class are distinctive, the two categories are not mutually exclusive and in fact

⁷⁵ Historically, the fundamental opposition to caste in judiciary has to do with the fact that over the year’s judiciary has adored the economic criteria so much that there has always been a paranoia attached with the caste. See Chapter III of this thesis for an elaborate account on this.

⁷⁶ Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

reinforce each other.⁷⁷ The point of similarity being that both ‘caste’ and ‘class’ maintain a certain form of hierarchical order and even though the admission to caste is principally based on religio-cultural ties, the concept of caste as a social class is not completely lost. The important point being that the convergence of caste and class is possible. A point that is validated by the court in this case, where the majority decision has keenly argued and held that there is a nexus between caste and class. Speaking for the majority in this case, Justice B.P.Jeevan Reddy, argued:

To repeat, it is a socially and occupationally homogenous class. Endogamy is its main characteristic. Its social status and standing depends upon the nature of the occupation followed by it. Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy. In rural India, occupation caste nexus is true even today. A few members may have gone to cities or even abroad but when they return — they do, barring a few exceptions — they go into the same fold again. It does not matter if he has earned money. He may not follow that particular occupation. Still the label remains. His identity is not changed. For the purposes of marriage, death and all other social functions it is his social class —the caste— that is relevant.⁷⁸

Such an overlap of caste and class also provides answer to second problem that is how caste can be used in a secular sense. Once it is established that ‘caste’ is an ingredient of ‘class’, caste can be used for the determination of backwardness. As argued by Justice S.Ratnavel Pandian, in a concurrent but separate judgment in this case:

Unless ‘caste’ satisfies the primary test of social backwardness as well as the educational and economic backwardness which are the established accepted criteria to identify the ‘Backward Class’, a class per se without satisfying the agreed formulate generally cannot fall within the meaning of backward classes of citizens’ under the Article 16 (4), save in given exceptional circumstances such as the caste itself being identifiable with the traditional occupation of the lower starta--- indicating the social backwardness.⁷⁹

The discussion above only provides an understanding to the manner in which the apex court, in this case, had proceeded to explain the term ‘backward classes’; however

⁷⁷ For a general understanding on caste and class and how they intersect in the Indian context, See Beteille Andre (1971) Caste, Class and Power: Changing Pattern of Stratification in a Tanjore Village, University of California Press, pp.185-226.

⁷⁸ Justice B.P. Jeevan Reddy in Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

⁷⁹ Justice S.R.Pandian in Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

the reason to include caste as a prominent ingredient of backwardness goes way beyond the operational definition of caste and class. In this case and few others before it, the qualification of caste as a constitutional class is justified by looking both into the constitutional intent and the constitutional aspiration to construct a nation free from social inequalities.⁸⁰ In fact, on more than one occasion, the court in this case explicitly stressed upon this aspect. Justice K.T.Thomas, emphasized this as important in his judgment and thus marked a new beginning of a new judicial thinking.⁸¹

In doing so, the court in this case, rejected the earlier practice where equality was interpreted in the constitutional abstraction distant from the social realities and therefore in principle discards both the Devadasan and Chiterlekha decisions were put aside as wrong. The point of reminder is that the Indian constitution is not and was never was a complete import of the western concept on equality. The Articles on equality and non-discrimination were supposed to be conditioned in the reality that the people of this Republic experienced. A point that Justice P.B. Sawant had raised in his concurring but separate judgment in the Indra Sawhney case is worth being cited here. Justice Sawant held:

However painful and distasteful, it may be, we have to face the reality that under the hydraulic pressure of caste system in Hindu Society, a major section of the Hindus under multiple caste labels are made to suffer socially, educationally and economically. There appear no symptoms of early demise of this dangerous disease of caste system or getting away from the caste factor in spite of the fact that many reformative measures have been taken by the Government.⁸²

In fact, the majority in the Indra Sawhney case constructed a similar narrative, where the court had recognized the interventionist role of the Indian state to not only

⁸⁰ See, Scott Grinsell (2010) Caste and the Problem of Social Reform in Indian Equality Law, 35 Yale J. Int'l

⁸¹ See Chapter III.

⁸² Justice Sawant in Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

guarantee equality but also to reform the social order. It is in this context that caste is used Justice Jeevan Reddy when he held:

Merely burying our heads in the sand — ostrich — like would not help. One cannot fight his enemy without recognizing him. The U.S. Supreme Court has said repeatedly, if race be the basis of discrimination —past and present — race must also form basis of redressal programmes though in our constitutional scheme, it is not necessary to go that far.⁸³

It was the simple argument that caste being the source of discrimination, should be allowed to be the basis of providing positive discrimination to those who have suffered from the very system of caste. Therefore, as much as the court insisted on the fact that a ‘caste’ should demonstrate social and educational backwardness and then only it can qualify to be a ‘backward classes’ it did not refrain from using caste primarily based on their social backwardness. As argued by Justice Sawant:

If an affirmative action is to be taken to give them the special advantage envisaged by Article 16(4), it must be given to them because they belong to such discriminated castes. It is not possible to redress the balance in their favour on any other basis. A different basis would perpetuate the status quo and therefore the caste system instead of eliminating it. On the other hand, by giving the discriminated caste groups the benefits in question, discrimination would in course of time be eliminated and along with it the casteism.⁸⁴

Finally, the bench settled that the caste based identification of backward classes is within the constitutional limit and rejected the economic criteria and also the government order, under P.V.Narasimha Rao, which provided 10 per cent reservation primarily on income basis.

Mathematical Limit to Reservation

Over the question of setting a limit to the quota, four different views were outlined by the judges in the Indra Sawhney case with the majority following the precedent set in the

⁸³Justice J.Reddy in Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

⁸⁴ Justice Sawnat in Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

Balaji judgment, upholding the mathematical limit to the backwardness, however with a word of caution that such arrangement cannot be applied uniformly throughout India and in case of exception, the 50 per cent rule can be revoked. Speaking for the majority, Justice Jeevan Reddy said:

While 50 percent shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity in this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in the strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.⁸⁵

To this, Justices T.K.Thommen, Kuldip Singh and R.M.Sahai recorded their dissent to this and held that reservation should stay strictly under the 50 per cent rule.⁸⁶ There was yet another dissenting voice against the two judgments by Justice S.R.Pandian, who for once did not believe in the idea that directives under 16(4) can be limited to a percentage and instead argued for revoking the 50 per cent rule. He held:

As to what extent the proportion of reservation will be so excessive as to render it bad must depend upon adequacy of representation in a given case. Therefore, the decisions fixing the percentage of reservation only upto the maximum of 50% are unsustainable. The percentage of reservation at the maximum of 50 % is neither based on scientific data nor on any established and agreed formula. In fact, Article 16 (4) itself does not limit the power of Government in making the reservation to any maximum percentage; but depends upon the quantum of adequate representation required in the services.⁸⁷

But then, as is the norm in case of split verdicts, the opinion of the five judges constituted the majority in this case and the dissent recording that reservations shall not in any case exceed fifty per cent as well as that there shall not be any mathematical limits were both minority and hence not carried through. The apex court held that there shall be

⁸⁵ Justice Jeevan Reddy for majority in *Indra Swahney vs. Union of India*. AIR 1993 (SC) 477.

⁸⁶ *Indra Swahney vs. Union of India*. AIR 1993 (SC) 477.

⁸⁷ Justice Pandian in *Indra Swahney vs. Union of India*. AIR 1993 (SC) 477.

a ceiling of 50 per cent in reservations and all categories will have to be accommodated in this.

Concept of Creamy Layer

This is one issue on which the court was not called upon to deliver its opinion but since the bench felt that that unequals should not be treated as equals and those who are well endowed, within the OBCs, should be eliminated based on an income criterion, the judiciary defended the applicability of the concept of creamy layer and exclusions thereof. This indeed, again was not a new understanding and the insistence from the judiciary to identify the ‘legal claimants’ among the OBCs was first propounded in Balaji and later on in the Chiterlekha case. The removal of the creamy layer is then based on the idea that the exclusion of forward among the backwards promotes justice within the community; that is between the more backward and the less backward.⁸⁸ The connecting link, Justice Reddy stated was that “in a backward class was the social backwardness and if some of the members were far too advancedthe connecting thread between them and the remaining class snapped. They would be misfits in the class and only after excluding them, the class would be a compact one. Such exclusion really would benefit the truly backward.”⁸⁹

However, the only problem with the assumption that there exists a creamy layer in every OBC is that such a formula can only be applied when there is a guaranteed proof that a certain number of eligible candidates are being generated from a particular caste and only then some sort of mechanism to eliminate the more fortunate can be devised.

⁸⁸ Balagopal K (2009), “Ideology and Adjunction: The Supreme Court and OBC Reservations”, *Economic & Political Weekly*. Vol. 44, Issue No.43.

⁸⁹ Justice J.Reddy in Indra Swahney vs. Union of India. AIR 1993 (SC) 477.

However, in the absence of the desired number, we fall into the risk of eliminating assertive sections from the backward classes that could possibly fill the vacant seats if the concept of creamy layer was not applied. This, in fact was the case with the OBCs who were highly under-represented in the central services (See Table 5.2). These set of concerns were reflected in the separate judgment by Justice Pandian against the majority judgment in this case:

One should not lose sight of the fact that the reservation of appointments or posts in favour of 'any backward class of citizens' in the Central Government services has not yet been put in practice in spite of the impugned OMs. It is after 42 years since the advent of our Constitution, the Government is taking the first step to implement this scheme of reservation for OBCs under Article 16 (4). In fact, some of the States have not even introduced policy of reservation in the matter of public employment in favour of OBCs.⁹⁰

In the end, Justice Pandian takes a position that is closer to that of Justice Chinnappa Reddy in the Vasanth Kumar Case, where the learned judge issued a note of caution over the role of the judiciary in designing the policy framework for issues like reservation.⁹¹ It is the question of whether judiciary is the competent authority and Justice Pandian held:

I have my own doubt whether the judicial supremacy can work in the broad area of social policy or in the great vortex of ideological and philosophical decisions directing the exclusion of any section of the people from the accepted list of OBCs on the mere ground that they are all 'creamy layers' which expression is to be tested with reference to various factors or make suggestions for exclusion of any section of the people who are otherwise entitled for the benefit of reservation in the decision of the Government so long that decision does not suffer from any constitutional infirmity.⁹²

The nine bench judgment did not tamper with the existing understanding over the issue of reservation and for most parts followed both Balaji and Thomas. But the importance of this case lies in the context in which the apex court was asked to deliver its

⁹⁰ Justice Pandian in *Indra Sawhney vs. Union of India*. AIR 1993 (SC) 477.

⁹¹ See Justice Chinnappa Reddy in *Vasanth Kumar & Anr. vs. State of Karnataka*. AIR 1985.

⁹² Justice Pandian in *Indra Sawhney vs. Union of India*. AIR 1993 (SC) 477.

opinion. It was a highly polarized atmosphere, where the Supreme Court held caste based reservations to be a part of the constitutional scheme to achieve equality. Besides this, the decision in this case brought much needed legal clarity on the various issues attached with the reservation and promoted the political parties to settle with the judicial reasoning, also making the upper caste protests if any, irrelevant. However, this has not prevented the upper caste petitioners to drag the government, every now and then, over the issue of reservation, thereby upholding their own wisdom about the practice of reservation as being inconsistent with idea of equality. As far as the judiciary is concerned, post Indra Sawhney, there has been a many attempts to dilute the principle objective of reservation by claiming it on economic basis, which amounts to judicial indiscipline, as a smaller bench shall revise or reverse positions that were settled by a larger Constitution Bench.⁹³ In the end, the judgments that have questioned the basis of reservation have only led to the re- emergence of a crisis in the constitutional interpretation of reservation.

Having said that, the inconsistency shown by the judiciary has not stopped the progress of backward classes and post-Mandal, national politics has transformed significantly. More importantly, as the strength of the backward class members increased in Parliament and the various state assemblies, more legislations for caste based reservation could be passed with much ease.⁹⁴ In the larger context, the extension of quotas to the OBCs has restored faith in the democracy and Mandal, hence turned out to be the agent of change in India by democratizing the political as well as the public space.

⁹³ Ashoka Thakur vs. Union of India and Ors. AIR (2008) 6 SCC 1

⁹⁴ For instance Constitution (93 Amendment) Act, 2005 by which article 15(5) was inserted. The 93 amendment provided reservation to SCs/STs and OBCs to certain central educational institutions.

Rather than a Commission or the chairman of the Second Backward Classes Commission, Mandal, hence is a metaphor. On the other hand quota based reservation has also provided the elite a mechanism to escape from the more radical measures, one that were suggested in the Mandal Report and went unheard even by the Mandal crowd.⁹⁵

⁹⁵ Besides prescribing quotas in jobs and services Mandal report has also recommended land reforms. “through their literal monopoly of means of production the higher castes are able to manipulate and coerce the backward classes into acting against their own interests. In view of this, until the stranglehold of the existing production relations is broken through radical land reforms, the abject dependence of under privileged classes on the dominant higher castes will continue indefinitely.” Second Backward Class Commission Report, Government of India, Vol. 1, p.60.

CONCLUSION

The early phase of the post-colonial political system of India, which also marked the phase of Constitutional democracy (particularly during the 1950s and 1960s), had harbored two sets of modalities -one that claimed to represent some sort of universalism (mirroring the western model) and consistently refrained from recognising mobilizations based on social identities and dubbed such agitations as casteist or communal;and the other was that approved identities like caste to function in order to make claims to the constitutional obligations for the redressal of disability and disadvantage suffered by the lower caste groups. Among the two, it was the former that had sustained for the larger part by claiming hegemony over the other. The ideology of nation building was closely monitored by Gandhi in the early phase of the nationalist movement and in the early stages of the post-independent era by Jawaharlal Nehru, contributing to the creation of national hegemonic discourse in politics.

Therefore, the discourse of caste which was central to the understanding of OBCs was highly monitored by the political apparatus as erected by both Nehru and Gandhi and in a manner that affected the chances of any political activity from the lower caste groups at the national level both within and outside the Congress Party. Meanwhile, the politics of *castelessness* as professed by Nehru, however, did not impose any restriction upon the dominant/upper castes from acquiring and preserving and even consolidating on their caste based privileges. As a matter of fact, their entry into the political sphere, particularly in the context of Constitutional democracy and their hold over the instruments of power thus, was primarily on the basis of their material and cultural superiority; in other words, their status as belonging to the higher castes.

These became restrictions upon the freedom of the lower castes (and even continues to remain so in some degrees) imposed both consciously by an upper caste intelligentsia that had captured both the political and non-political space both within and outside the Congress and unconsciously by those who believed strongly in the compulsion to build a casteless society to be erected by the state-led socialism. For almost two decades after independence, the Congress party largely relied on the local strongmen, mostly the upper caste landed gentry for its organisation and day to day political activities. The association with the ruling party provided them with the authority to control the state institutions and keep them away from the reach of the lower castes.

It may have been that the organisation of the Indian National Congress was dominated by the elite in both the social and economic sense of the term even in the course of the struggle for freedom. When this persisted in the post-independence phase, it had a qualitatively different implication because the dominance meant control over the instruments of power and hence contributed to a certain kind of *un*-freedom in free India.

This was the case with not just the Congress party. The leadership of the major political parties in the first two decades of independence was exclusively from the upper castes. In fact, the socialist leader Dr. Ram Manohar Lohia was critical of all the political parties over the question of the OBCs and was unambiguous about it. He said:

All politics in the country, Congress, Communist or Socialist, has one big area of national agreement whether by design or through custom, and that is to keep down and disenfranchise the Shudra and the women who constitute over three-fourths of our entire population.¹

¹ Lohia, Ram Manohar, (1964), The Caste System, Hyderabad, Navihind Prakashan, p.5.

The headways made through the various forms of backward caste movements in the late 19th and the early 20th centuries was largely contained and in most cases co-opted. For instance, the All Indian Backward Classes Federation (AIBCF), incidentally founded on January 26, 1950 -- the same day as India was declared republic -- as a mark of protest against the Constitution which, in the view of its leaders, had failed to provide any substantial rights to the OBCs. The organization, however, acted more as a buffer zone between the state and the backward classes, who were kept in check by such organizations, clearly lacking any revolutionary content of the nature that Lohia had envisaged.² Their role was limited to bargaining for a few scholarships or releasing small amounts of financial assistance for the backward classes. So, the consensus was a political strategy that was profusely used by the Nehru government to close down the alternative avenues for the expression of subaltern identities.

At this juncture, it is important to establish that whether Nehru, by impeding reservation (on caste based classification of the backward classes) or by refusing to debate caste in the public and political domain was upholding casteism. Nehru and the Congress labored under the ideological restriction derived from a particular understanding of the brand of socialism that Nehru espoused during the freedom struggle and later followed in the formative years of the Republic, was largely responsible for this inactivity over the question of OBCs; the conviction was that socialism in the economic realm will take care of the larger concerns of any group irrespective of their positioning in the social hierarchy.

² Lohia had envisaged a consolidation of the Other Backward Classes as necessary for the transformation and had initiated a serious discussion on this with Ambedkar along with R.L.Chandapuri, then chairman of the AIBCF, during September-October 1956. This attempt, however, did not lead to any substantial progress due to the Ambedkar's death before long. See Ibid. pp 29-37 for full text of the series of the correspondence.

The political regime after Nehru, headed by his daughter Indira Gandhi, built new idioms on nationalism and proceeded with much more conviction to further the principle of universalism. In comparison to her father's, her actions were coercive and authoritative. For instance, demands for regional autonomy, primarily on linguistic premises and falling out of lopsided growth in the economic realm (manifesting in *un-federalism*) or demands for cultural plurality were interpreted as being anti-national and divisive. During her regime, the themes of nationalism were redesigned from the milder to the ultra- nationalism which was reflected during the 1971 war with Pakistan and later during the nuclear programme launched by the party since May 1974. This form of jingoism was combined with populist politics.³The impetus, in this campaign, was laid on the poor. As poverty was pecked over historical discrimination, it also implied that the other forms of inequality and identities so attached with it were sought to be rendered invisible. This Rich vs. Poor discourse contributed much to her popularity as a national leader. The nationalization of 14 private banks in 1969, the abolition of the privileges enjoyed by the former Indian princes in the form of "privy purses", the thrust towards land reforms⁴, all of which preceded and followed the 'liberation' of Bangla Desh in 1971, contributed to ensuring the Nehruvian scheme where socialism essentially was construed in the economic sense rather than social and the premise that the economic will take care of the social. Much like in her father's time, the much celebrated land reforms programme were highly moderated and restricted in their reach. The village notable was the authority who decided on distribution of land and therefore such reforms were highly

³Kohli, Atul (2012) Poverty Amid Plenty in The New India, Cambridge University Press, p87. Cambridge NY

⁴Ibid. p.24.

administered in the feudalistic pattern of the society.⁵ In the end, this was a period when with the help of the various state institutions, Indira established that the primary and the only form of inequality in India was poverty.

The March 1967 elections marked the first big rupture in the much settled political milieu of post independent India. More importantly, the consistent efforts from the parties other than the Congress to mobilize voters on themes other than nationalism yielded some sort of success for these parties and this was evident in the Congress party losing power in nine states; Uttar Pradesh too slipped out from the Congress hold in just a month after the elections (in April 1967) and a coalition of the socialists, the Jan Sangh and a new party led by former Congressman, Charan Singh, assumed power in the state.

The Congress' reverses in 1967 signified the failure of Nehru to dismantle class distinction and to create parity among caste groups that he had attempted to while pushing the agenda of socialism. At so many levels he was defeated by his own party members and the conservative faction within his cabinet and those Congressmen at the helm in the various States who erected all forms of hurdles in the path of land reforms in India. In other words, legislative initiatives and Constitutional amendments in that directions were one thing and efficacious implementation of those were another.

On the other hand, as a result of the losses suffered by the Congress in the 1967 elections and due the subsequent split in the party (in 1969), one faction led by Indira Gandhi initiated the constitutional exercise of extending reservation to the other backward castes. Along with this, accommodation of leaders belonging to the

⁵ Kohli, Atul (1989) *The State and Poverty in India: The Politics of Reform*, Cambridge University Press, Cambridge New York, p.214.

backwardcastes were largely carried out at the regional level, particularly in Gujarat, Uttar Pradesh and Bihar. The inclusion of backward classes was not guided by ideology but rather a well thought out maneuver in politics and an option which the Congress (I) chose to embark upon, willingly or grudgingly, since the old social base of the party stayed back with the syndicate.

The opportunity that the Congress 'provided' to the leaders from the backward classes also initiated the politics of co-option, in a manner that scuttled any real possibility for a qualitative departure from the Congress line for a long time. Some of these castes, for the first time in the history of post-colonial India, were provided a chance to become a part of the power structure. For instance, the KHAM alliance in Gujarat. The politics from then on has remained largely accommodative until the arrival of Janata experiment at the national level, wherein the upper castes had managed to keep their privileges intact and even ensure revolts against mild rearrangements that reservation intended to introduce in government jobs. So, even with the accommodation of few backward caste leaders, the dominant political idiom at the national level was still hegemonic. In a speech made, while addressing the Anglo- Indian gathering in 1976, Indira Gandhi made it clear that the extension of reservation to OBCs in states like Gujarat and Uttar Pradesh was just political in nature and the party still largely believed that reservation was not best for the nation and the national interest. She said:

Because of assistance programmes for so-called backward classes, many groups are clamouring to be labeled "backward". Unfortunately, even within such group, these benefits often go to the strongest and the most vocal individuals or sections. We are trying our best to help those who are in greatest need rather than those who shout the loudest. It is commendable and statesmanly of the

Anglo- Indian community not to demand any such label as “backward”. “Backward is a word which I should like to remove from our vocabulary in connection with social conditions.”⁶

Negotiating Caste: Counter- hegemonic Politics

The lower caste movements, starting from early 1970s and 1980s at the state level and much later with the Mandal episode at the national level, produced a form of knowledge wherein caste was articulated to destabilize and deconstruct the hegemony of national narrative as put forth by the previous governments. The alternative counter-hegemony, critical to the idea of universalism/homogenization, were articulated first in the colonial India through an array of backward caste movements that contested the cultural, material and political dominance of the upper castes, particularly the Brahmins. In fact, some of these experiments were extended to the post-colonial state as a result of which various intermediate as well as dominant castes were able to capture power in various states. So the Maratha’s in Maharashtra, Lingayats in Karnataka, Reddys in Andhra Pradesh, the Nadars and the Vellalas in Tamil Nadu became the new political class.

The birth of an exclusive other backward caste politics at the national level lies in the oppositional politics that was foregrounded by Ram Manohar Lohia, beginning the early 1950s and into the late 1960s. In his programmes there was consistent twin attack on the government headed by Nehru and the upper caste intelligentsia for upholding the Brahmanical tradition. His was a unique experiment in the principal philosophy of socialism that had every bit of Gandhi in it; in terms of the focus it laid on khadi and the small scale industries but rejected the conservative approach of Gandhi towards caste and

⁶ Address to the 100th Anniversary meeting of All India Anglo- Indian Association in Indira Gandhi Selected Speeches and Writings 1972-1977, Government of India, Vol. III, Oct 23, 1976.

centered the political agenda of the party over the issue of reservation for backward classes. However, the first few decades of Indian politics frustrated socialists like Lohia, who failed miserably to achieve any electoral success. The failure to garner political support from a larger electoral support base, however, did not mean that his ideas were rejected in totality; it was just that the politics carried under the banner of socialism and nationalism had not lost its popularity. Even with the political shortcomings that Lohia had to face in his political career his own legacy inspired many backward class politicians in the late 1970s and 1980s and ultimately to revamp the state policies on reservation in the 1990s.

Janata/Janata Dal Experiments: March of the Backwards

The subsequent non-Congress governments – the Janata Party in 1977 and the Janata Dal-led National Front in 1989 -- were largely responsible to usher in the rise of lower castes in Indian politics. Both the Janata as well as the Janata Dal experiments represented the democratic upsurge from below and it was reflected in the increase in the number MPs and MLAs from backward and intermediate castes, who were ideologically positioned towards the issue of reservation and questioned the privilege so acquired by the upper castes. Their politics and discourse was adversarial to the much settled political narratives and celebrated Lohia over Nehru and Ambedkar over Gandhi; it involved questioning the morality behind the idea of ‘merit’ which they held was an idiom erected by the upper caste intelligentsia. Their methods and narratives were rather crude, which even though falls short on the level of sophistication, but clearly finds more audience than someone like Lohia, who struggled in the Nehruvian era to muster the political command over the general masses.

The biggest movement in the backward caste history arrived in August 1990 as V.P Singh made the announcement in parliament to implement the Mandal report. This move was severely criticized by an upper caste media; however the backward caste leadership was offensive in their demand for reservation. The consensus that was traditionally built by Gandhi, who had succeeded in resisting the Scheduled Castes' claims to separate identity during the Poona Pact, had lost its relevance.

The backward caste leaders were demanding parity in treatment, not from the upper castes, but from the nation; not in the form of patronage but as their right. So, rather than being apologetic over the demands of reservation these politicians represented their case with conviction. The changes were not then limited to the political arena; even the judiciary was forced to take a position as finally in the Indra Sawhney case, the apex court held that the caste based reservations are valid under the Constitution and affirmed that caste as a category in determining social backwardness was indeed valid. In all this, electoral politics proved to be the way out of the tussle that went on between the legislature and the judiciary for the other backward classes.

The transformation of lower caste groups from the early 1950s and 1960s from a reductive administrative category into a politically vibrant class can easily help to map the democratic process of the post-colonial Indian state. Similarly, the penetration of Indian democracy can be judged from the visible transformation in the social profile of the Indian politicians from the earlier elite, mostly upper caste, desirably English speaking politicians to the emergence of leaders like Lalu Yadav, Sharad Yadav, Mulayam Singh Yadav, etc., who came from rather modest backgrounds reflects to the outreach of the democratic process in the realm of electoral politics.

Caste was always a significant marker of identity among the Indians; it became ultra visible in the eyes of the nationalist leadership during the colonial rule and after that for almost four decades the post-colonial state sought to be silent and relegated from the national political sphere. It resurfaced in the 1960s and 1970s in the various states and in 1990s at the national level. One principal change, however, from the early decades of the Indian republic to the post-Mandal politics is that the ideologies of social justice has acquired wide presence in the political and the public space. This is not to say that the national hegemonic on caste has vanished and the discourse is now largely moderated by the Indian media, which has principally and quite tactically, coated the privilege acquired by the upper castes and questioned the visibility of backward classes.

In the end, it is important to probe as to how democratic has been the alignment of caste groups under the category of OBCs. The politics derived primarily from the identity politics is bound to fall short of the larger agenda of annihilation of caste. Also, as reservation came on to the centre-stage of political articulation of backward classes, the issue of land reform lost its credibility among the backward caste leaders. For instance, in the 1980s, Bihar witnessed the emergence of the naxalite movement that grew in organization with one of the primary objectives to redistribute the land among the poor who belonged to either MBCs or dalits. However, reservation has proved to be an excellent strategy that has helped to bring these groups back into the mainstream politics. On the flip side, sole focus on reservation has prevented any radical change in the social structure as caste was isolated from class and vice versa.

This, indeed, is not what Lohia had envisaged. In one of his expositions on the caste-class overlap and the imperative for attacking caste and class alongside rather than seeing them as distinct and separate tasks, Lohia argued:

An Indian should be perfectly familiar with the phenomenon of class solidifying into caste... I am as keen about the abolition of classes as anybody can be, but I am fearful that under the cover of abolition of classes, castes have ever been created. All human history, hitherto has been an internal movement between castes and classes, between classes solidifying into castes and castes loosening into classes. Those who wish to abolish all classes and castes in society must get hold of this motive of human history and after grasping it, devise such endeavours as may put an end to both. History by itself will not do so. There is no automatic motion.⁷

Having said that, the political churning that started with the partial implementation of Mandal report has served its purpose in terms of providing a space to different narratives one that is not located in the political idioms of ‘nation building’ and nationalism. However it is also equally true that the democratic process is a continuous exercise where evolution and ruptures from the earlier strategies is imperative if one is to stay relevant in a highly competitive political environment. As seen recently in 2014 Lok Sabha elections and the state elections to Uttar Pradesh in 2017 where after the series of democratic upsurge by the lower castes, BJP has claimed the authority to define the hegemonic national- political narrative it has its similarity with Nehruvian period in the sense it also claims to achieve the true ideal of ‘castelessness’, however not through socialism or consensus but through the agenda of Hindu nationalism and neo- liberal development. This is not to say that caste has lost its relevance it still remains a strategic vote bank but it seems for now it has lost its relevance to the political parties as an agency of social change. Having said that in politics nothing is conclusive and as the BJP marches for it is building the new one equally hegemonic in nature ‘Congress Mukt Bharat’ in

⁷ Lohia, Ram Manohar, (1955) Caste and Class in Wheel of History, Sindhu Publication, Bombay, pp 37-38

2019 election, which for now seems inevitable it has to be seen whether the Indian politics will take another decisive turn?

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