

DBRANLU LAW REVIEW 2025

CONTENTS

Articles

1. **Unraveling Backwardness: Analyzing The Dynamics of Development from Individual to Community Perspectives**
Abhinav K Shukla and Dr. Anukriti Mishra 1
2. **Towards Privacy-Centric Governance: Analyzing India's Data Protection Trajectory**
Divya Singh and Dr. Harish Tiwari 30
3. **Recognising 'Euthanasia' As A Human Right: National and International Concern**
Dr. Jaswinder Kaur and Mr. Birendra Singh 46
4. **Social Reintegration of Released Prisoners in India: An Analysis of The States of Kerala and Tamil Nadu**
Harsh Mahaseth and Pratham Shah 63
5. **Social Stock Exchange: Navigating Roles, Regulations, and Urgent Reforms**
Satakshi Gupta and Priya Nahar. 77
6. **Social Security for the Digital Age: Evaluating Provisions Contained in The Social Security Code of 2020 for the Protection of Gig Workers in India**
Shailesh Kumar Pandey and Dr Balwinder Kaur 90

7. **Dark Patterns that Plague Indian E-commerce**
Swathi S and Sadhana S 110
8. **Media Trial: A Double-Edged Weapon to Be Used Within Legal Parameters**
Swechha Malik 128
9. **Indian Education System and Inclusivity: Gaging through the Policies towards the Divyang Community**
Vijoy Kumar Sinha and Saheli Chakraborty 140
- Case Comment*
10. **Anil Kumar v. State of Kerala**
Priya Sharma 156

UNRAVELING BACKWARDNESS: ANALYZING THE DYNAMICS OF DEVELOPMENT FROM INDIVIDUAL TO COMMUNITY PERSPECTIVES

- Abhinav K Shukla* and Dr. Anukriti Mishra **

ABSTRACT

The Indian Constitution provides special provisions for socially and educationally backward classes (SEBCs), including Scheduled Castes (SCs) and Scheduled Tribes (STs). The said paper aims to provide an understanding of the Indian legal framework in place for the SEBCs and analyses the criteria for determining backwardness from both legal and sociological perspectives. The authors examine the political and social implications of reservation policies and highlights the need for reforms. The research also explores the concept of equal opportunity ensuring equitable access to benefits and further proposes measures to revamp the reservation system for socio-economic justice.

I. INTRODUCTION

The Constitution of India provides special privileges and safeguards not only to the schedule caste and tribes, but also to other backward communities. The constitution doesn't specifically mention the term 'Other backward classes. However, they have been given the special protection through compensatory discrimination under the head of 'socially and educationally backward classes.' Article 15(4) permits the State to make special provision for the advancement of any socially and educationally backward classes of citizens.¹ Quota system was one of the modes since pre independence to reserve and provide preferential treatment to backward communities. In the meantime, backward class communities of citizens which includes SCs and STs, was inserted by the constituent assembly in Article 16 (4) of Indian Constitution.² However, Article 15(4) was inserted after the landmark judgment of *Champkam Dorairajan* where it allows the state to make special provision for the advancement of socially and educationally backward clasfses of citizens and for the SCs and STs. To interpret such

* Assistant Professor, Hidayatullah National Law University

** Head of the Institution and Assistant Professor, Amity Law School, Amity University Chhattisgarh

¹ The Constitution of India 1950, a. 15(4)

² The Constitution of India 1950, a. 16(4)

articles with regard to socially and educationally backward classes, various central as well as state committees has come up with the indicators and weigh to determine backward communities.

The main inquiry in this research, the main analyses is to revisit the concept of socially and educationally backward class communities from the framework of Indian Constitution. Also, to examine the indicators to determine community as Socially and Educationally backward classe. Further, to discover whether individual or community should be designated as backward class community based on current demand. With regard to the second issue, there is an inequality of opportunities for socially and educationally backward classes. Today any community gets the privileges if it has been designated as backward class community . Meanwhile, amongst these communities many individuals have developed socially, educationally and economically but are still benefited in the name of community. Even caste should not be a sole criterion to identify backwardness. Amongst the upper caste communities, there are some individuals who fall below poverty line, i.e. economically backward individuals. But they don't get the benefit of reservation due to their community being socially and educationally forward. Therefore, state should adopt policies and methods to fulfil individual needs. In the name of caste and community, social stratification is created. The political parties mostly take advantage in the name of community to increase their vote banks, which is unjust for the society. Community has become a political tool as more and more groups have started demanding reservation to fulfil their own agenda. The larger objective of reservation seems to fail if the community and individuals from reserved categories, who have become economically affluent are benefited repeatedly. The recommendation of an "Equal Opportunity Commission" is an affirmative step in the context of including the individual based approach along with the community as a parameter for identification of backward classes.³

The dissertation shall seek for two research questions. The following will be researched upon in the subsequent chapters.

- What is Socially and Educationally backward class under Indian legal framework?
What are the indicators to determine community as Socially and Educationally backward class?
- Whether we designate community as backward or individual.

³*Report by the Expert Group to examine and determine the structure and functions of an Equal Opportunity Commission Set up by the Ministry of Minority Affairs, Government of India February, 2008*
<http://www.minorityaffairs.gov.in/sites/default/files/eoc_wwh.pdf> accessed on 27th May, 2023.

The dissertation aims to provide several suggestions for fulfilling the purpose of reservation policy i.e. to ensure socio-economic justice. This is intended to be achieved through further division of chapters for finding the measures to revamp the reservation system by systematic study.

The first chapter will describe the evolution of backward class communities through pre independence and post-independence perspective. It highlights the objective behind representation of community by the British and the Indian government.

The second chapter looks into various indicators to identify backward classes by referring the court interpretations and commission reports. The chapter is further divided into sociological discussion of class and understanding the concept of class v. caste under Indian legal framework.

The third chapter examines the concept of equal opportunity and the arguments as well as ideas generated in equal opportunity commission. It further analyses the demand of modern society on individualistic approach based on the principle of equal opportunity.

This research will be mainly focused on the idea developed by the above research questions and will try to reach at a conclusion which would develop the knowledge and the awareness in accordance with the Indian legal framework, commissions and judgments.

II. RESEARCH QUESTIONS:

1. What is Socially and Educationally backward class community under Indian legal framework?
2. What are the indicators to determine community as Socially and Educationally backward class community?
3. Whether we designate community as backward or individual.

III. EVOLUTION OF SOCIALLY AND EDUCATIONALLY BACKWARD CLASS COMMUNITIES

3.1. Introduction

The reservation system was introduced before independence during the British colonial era. But intention of the British government was different then Indian government. It can be analysed in this chapter by looking through two different perspectives:

1.2 Pre-independence era

1.3 Post-independence era

3.2. Pre-Independence

The origin of the caste system in India can be traced back to 3000 years ago when the Hindus were classified on the basis of four occupations namely Brahmins, Kshatriyas, Vaishyas and Shudras. In this hierarchy of castes, the fourth group i.e. the Shudras comprised of the 'lower caste' and were considered to be apart from the three higher castes. The Shudras faced discrimination for ages which invoked vast inequalities in the Indian society. In the pre-Independence era, the British never interfered in the matters of prevailing caste system as they didn't want to take the trouble of facing mass public outrage and criticism. So they allowed this to go forward in the manner in which they were being practiced⁴.

In colonial era rulers of the princely state were genuinely interested in the upliftment of the disadvantaged section of the society. It was justified by both colonial and post-colonial states on the basis of representing particular community with regard to government job between different communities. It is important to know the objective behind representing community by British government and Indian government. Colonial government started identifying political significance of community by classifying differences between various social group⁵. They inducted into the political process by granting separate representation to the minorities on religious as well as schedule castes and tribes such as Muslim community in various legislative bodies.⁶ Colonial government had introduced affirmative action policies in India which kept on growing ever since. That affirmative action is known as 'reservation system'. Although, the policy was not designed to directly support or uplift communities in India.

⁴ Zia Mody, *10 Judgements That Changed India* (First Published 2013, Penguin 2013) 117

⁵ Singh, 'Reservation Policy for backward class communities' (1996)

⁶ Singh and Bal, 'Strategies of Social Change in India' (1996)

Rather, it was encouraged as community within Indian society to seek political representation. The British realised that the Indian culture is divided on religious, linguistic and regional basis. Therefore, representation of different communities would benefit them. The British were in fear of the Indian National congress as in 1930s the party had began to negotiate with the leaders of the untouchable communities. These negotiations were regarding the terms for separate political representations where they were granted separate reserved seats.⁷ This led to the beginning of reservation policy in India.

Reservation policy was further developed in the round table conferences of the 1930s. These conferences were held to discuss the role of Indians in government and to insure political representation for each group.⁸ The purpose of the conference was to develop an Indian constitution and there were also representatives from major and minor community. In that conferences many of the issues with regard to disadvantaged group was introduced which gave separate representation to the minority community.

3.3. Post-Independence

In the post-independence era, after the enactment of the constitution, the Indian courts were struggling with responses from the state with regards to the constitutional provisions on fundamental rights which emphasizes on promoting the interests of disadvantaged groups. Such groups are comprised of Scheduled Castes, Scheduled Tribes, and OBCs.⁹

The motive of the Indian government was to uplift the disadvantaged communities through compensatory discrimination which comprises of various preferential treatments. This policy which was introduced to remove caste inequalities from the Indian society is known as 'reservation'.¹⁰ The intention behind implementing reservation system was to advance the interests of deprived classes i.e. socially and educationally backward class community es, scheduled castes and scheduled tribes. The two groups primarily identified as disadvantaged were were the SCs and STs.¹¹ However, with regard to OBCs, different states had their own criteria for classification. The groups were identified as majority or minority communities, but not as individuals. If we see the Indian society through the lens of caste or religion, community

⁷ Bineet Kedia, 'Affirmative Action in India and U.S- A Challenge to Reservation Policy in India' *International Journal of Law and Legal Jurisprudence* ISSN – 2348- 8212 Vol2 Issue1

⁸ Tracey L. Connette, 'Sherman Alexies Reservation' *Relocating the Centre of Indian Identity* (2010)

⁹ Sushma Yadav, 'Reservation & Inclusive Growth' (2010) 7

¹⁰ Quleen Kaur Bijral, 'Affirmative Action: The System of Reservations and Quotas in India' (*The Logical Indian*, 2015) <https://thelogicalindian.com/story-feed/awareness/affirmative-action-the-system-of-reservations-and-quotas-in-india/> accessed on 25 March 2013

¹¹ Shariful Hasan, *Fundamental Rights and Directive Principles*(Deep and Deep Publication) 14

as a whole were subject to discrimination, not individual. Hence, the constitution makers intended to uplift the deprived groups and ensure an equal position for them in the main stream society.

The framers believed that due to discrimination, the two main disadvantaged communities which are SCs and STs should be taken to the mainstream. For STs, were unable to derive equal opportunity in every sphere. Whereas SCs were discriminated by upper caste communities amongst the Hindus. These two communities are integral part of the Indian society. So, the purpose was to ensure equal representation through compensatory discrimination.¹² Equal representation of communities was breaking out as a huge debate in the parliament and legislative assemblies. It was intended to uplift these communities from every aspect such as the socio-economic aspect, educational aspect, etc. to achieve development. Community has been taken into consideration for claiming any rights rather than individual. If one community has been identified as deprived, then every individual of that community is benefited. Therefore, community upliftment of SCs and STs was the main preference for the Indian framers.

In case of socially and educationally backward class community, the British Government of India made a list of 'Backward Tribes' which was prepared under Government of India Act, 1935.¹³ Colonial thinkers realised that within the tribes, there are backward communities. The first two amendments in the Indian Constitution were related to the policy of protective discrimination. The debate that was raised on the issue was whether reservation that has been provided to SC and ST should also be provided to socially and educationally backward class community. The term backward class has not been defined anywhere in the constitution. Therefore, to overcome the difficulties, parliament laid down article 15(4). As caste and community bonds are stronger than anything else, this reservation would led to provide some weightage to the disadvantaged community.

In this research, the main analysis is in relation to the identification based on present scenario, i.e. community should be designated as backward classes or individual. In caste and tribes, there are communities which are backward. Whereas in upper caste communities, many individuals are still backward owing to social and economic factors. Therefore, further

¹² Shefali Jha, 'Defending Minority Interests in the Constituent Assembly: Rights vs Representation' [2003] Vol 38, Issue No.16, *Economic and Political Weekly*

¹³ Christophe Jaffrelot, 'India's Silent Revolution' *The Indian Constitution Appendix III*, London: Hurst & Co. Publication 208

examination is essential to discover the changes which happened after independence till the present scenario. Now, the current scenario demands some restructuring where the state and courts can take some measures in the interest of achieving the larger goal of the reservation policy.

III. UNDERSTANDING INDIVIDUAL VS COMMUNITY AS A UNIT OF BACKWARDNESS

4.1. Introduction

Indian political thinkers usually believed to integrate the ethnic groups, minorities and other social group by framing constitutional safeguards in the form of protective discrimination or reservation. Dr. Ambedkar wanted the Indian Constitution to give some means such as equal citizenship, fundamental rights of equality, possession of equal civil rights, political representation of the deprived class, abolition of untouchability and discrimination.¹⁴ The implementation of reservation was a means to combat group or community inequalities. OBCs unlike SCs and STs were not distinct social group. Prior to the insertion of constitutional provision for reservation to backward class communities, hefty debates arose among legislators on some issues with regard to identification of backward class communities. First, the meaning of backward community was vague. Secondly, different states identified backward community in different manner. Thirdly, the data which were collected on backward community were improper. These issues were taken into consideration before inserting clause for backward community reservation. In Indian society, the backward class community is considered to be an important section. This chapter reflects into deep analysis of various indicators and weigh to identify backward community by referring court interpretations and commission reports. Whereas, the chapter is further divided into two parts which are as follows:

4.3 Sociological discussion of Class

4.4 Class v. Caste under Indian legal frame work

¹⁴ *Constituent Assembly Debates, Vol. II, p. 227.*

4.2. Meaning of Backward Community

The constituent assembly did not fix any criteria or index to determine backward or non-backward class community. However, they passed this task to the upcoming elected government and legislatures for embedding some criteria and alter them from time to time based on future circumstances. In constituent assembly there was a demand for a precise definition of the term “Backward”. H. N. Kunzru stated that “the word ‘Backward’ is not defined anywhere in the Constitution”. He pleaded that “whether any class is Backward or not should not be left on the courts of law to decide”.¹⁵ The term ‘other backward class community’, i.e. backward class community other than the schedule castes and the schedule tribes, has not been defined in the Constitution. Article 15(4) and (5) instead use the expression “socially and educationally backward classes”, a more concrete expression than the expression “other backward classes”.¹⁶

Though constituent assembly provided reservation for backward class communities only in Article 16(4), but through the first amendment¹⁷, Article 15(4) was inserted after the landmark judgment of Champkam Dorairajan.¹⁸ The issue of this case classified students merely on the basis of ‘caste’ and ‘religion’ irrespective of their merit. On the other hand, Article 15(1) states that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”. So basically in the above mentioned case there was a discrimination on the ground of ‘caste’ and ‘religion’. Therefore, the Supreme Court held this reservation to be invalid. As an aftermath of the judgment, the parliament added Article 15(4) to the constitution in 1951. Prior to 1951, Article 15 did not contain a clause such as Article 16(4). But there exists a fundamental difference between Article 15(4) and 16(4) in regards to the term backward class communities. Article 15(4) allows the state to make special provision for the advancement of socially and educationally backward class communities of citizens and for SCs and STs. However, Article 16(4) provides for the reservation in public employment to any backward class community of citizens. As K.M. Munshi¹⁹ contended that “it is perfectly clear that the word ‘Backward’ signifies that class of people who are deprived and backward. It does not matter whether you further classify them as touchable or untouchable. The

¹⁵ *Constituent Assembly Debates, Vol. VII, p. 680.*

¹⁶ *Udai Raj Rai, ‘Fundamental Rights and Their Enforcement’ (2011) p.572*

¹⁷ *Constitution of India (First) Amendment Act 1951*

¹⁸ *State of Madras v. Champakam Dorairajan, AIR 1951 SC 226*

¹⁹ *Constituent Assembly Debates, Vol. VII, p. 683*

interpretation which can be inferred out of Munshi's statement is that, the backward class community of citizens as mentioned in Article 16(4) includes the SCs and STs.

4.3. Sociological Discussion of Class

According to Paul W. Taylor, "When an injustice has been done to a group, compensation must be made to that group. Group's right to compensation are not rights against wrongdoers but against society as a whole. The obligation to offer such benefit to the group as a whole is an obligation that falls on society in general and not on any particular person for it is the society that through its established social practice brought upon itself the obligation."²⁰

In the Constitution of India, the very purpose of providing reservation to the SCs and STs is different from the purpose of providing it to the backward class communities. While the SCs and STs were given the privilege of reservation in the parliament (House of People)²¹ and the legislative assemblies²² through reserved constituencies, the reservation to the backward class community was confined only to the public employment under Article 16(4). However, the reservation for the backward class communities, the SCs and STs was extended to the educational institutions and other sectors through the insertion of Article 15(4) in 1951²³, but this was not done by the constituent assembly. Although Article 16(4) while providing for the reservation in public employment only mentions the term 'any backward class community of citizens', but its implication is different. It includes the SCs and STs as well.²⁴

Thus, it can be inferred from the above that the constituent assembly while drafting and enacting Article 16(4) had considered all the deprived classes as homogenous. Hence, the SCs, STs and OBCs were classified under one common head "backward class of citizens". Any emphasis was not laid on the identification and classification of different castes and classes and gave all of them a common nomenclature. This approach of homogeneity of all backward and deprived classes as one is not applicable in the practical implication of the constitution. The reason for this is the presence of different degrees of backwardness in the society due to which all cannot be treated as one. The different classifications amongst the backward class community of citizens includes the SCs, the STs, the backward class communities and the more backward class communities. It also includes those who were backward but are now considered

²⁰Paul W. Taylor, "The Ethics of Respect for Nature"[1981] p. 214

²¹ Constitution of India, 1950, a 330

²² Constitution of India, 1950, a 332

²³ Constitution of India (First Amendment) Act 1951

²⁴ Indra Sawhney v. Union of India, 1992 Supp 3 SCC., pp. 786-89

to be forward due to their economic development and exclusion from the creamy layer. The Supreme Court in Indra Sawhney verdict had considered that the very intention of providing reservation to the backward class community is their social and educational upliftment and upheld the criterion of creamy layer exclusion. It also upheld the identification of backward class communities into backward and more backward. The court also held that due to the social structure being an integral part of India, caste can be one of the indicators (but not the dominating factor) to decide backwardness.²⁵ Thus the classification of the backward class community into several other sub divisions is an inevitable part of the society.

4.4. Class vs Caste Under Indian Legal Frame Work

The debate which emerged between legislature and judiciary was on ‘caste’ and ‘class’ in order to identify backward community. Whether the definition of backward class community was based on the criteria of “caste as a sole basis or class”. Article 15(1) and Article 16(1) both provides for a restriction on the state to entertain reservation solely on the basis of caste. There has been a conflict while identifying classes which can be categorised as backward for the purpose of availing benefits of compensatory discrimination. Amidst this process of identification, several states used the terms caste and class interchangeably. Although caste has been a significant factor for deciding backward class communities, these two terms differ fundamentally.

4.4.1. Backward Class Communities Commission

Article 340 of the Indian Constitution authorises the President of India to appoint a commission to investigate and give report on the conditions of the backward class communities in different parts of the country.²⁶ So the first backward classes commission i.e., the Kalekar Commission was appointed in 1953 by the President of India.²⁷ The commission was tasked to determine the criteria to be adopted in considering whether any section of people should be treated as socially and educationally backward. It was also to prepare a list of such classes. It was directed to investigate the conditions of all such socially and educational backward class communities and the difficulties faced by them. It was asked to make recommendations on the following matters, (a) steps to be taken by union and states to remove such difficulties and to improve

²⁵ *Ibid.*, pp. 801-03

²⁶ *Constitution of India 1950*, a 340.

²⁷ *National Commission for backward classes Annual Report 2012-13*, p. 1 <http://www.ncbc.nic.in/Writereaddata/AR%202012-13%20Pandey635705824205955927.pdf> accessed on 25th April 2023.

their conditions, (b) as to grants that should be made available. Mainly three criteria were identified for determining backwardness.

- 1) Low social position in caste hierarchy
- 2) Lack of educational progress
- 3) Inadequate representation in government services, in the field of trade, commerce and industries.

The commission took caste as the key factor in making a list of backward class communities which again invoked the debate of caste v. class. The central government rejected the tests of criteria prescribed by the commission for the reason stated that the views of the commission was vague and impractical.

4.4.2. Identification of Backward Class Communities: Ambiguity

In 1962, the states were asked to specify the backward class communities themselves based on the indicators as suitable to them. Following this, the state of Mysore identified the socially and educationally backward class communities by considering castes as a primary index of social backwardness. The supreme court in the case of *MR Balaji vs state of Mysore*²⁸, held these criteria to be unsatisfactory and laid down the following principles:

1. The respective government shall identify the backward class communities which shall be subject to judicial review.
2. The backwardness needs to be both social and educational and not social or educational
3. The classes should not fall just below the advance sections of the society but must be sufficiently below the average standard of advancement.
4. Caste can be a relevant consideration amongst Hindus but not the dominant consideration. Poverty and occupation can be other relevant factors.

Further in *R. Chitrlekha vs state of Mysore*,²⁹ another constitution bench upheld the identification of backward class communities on the basis of occupation and income. Later in the case of *P Rajendran vs State of Madras*,³⁰ it was held that if a caste was found on the whole to be backward, it could be designated by the caste name and the court observed that 'caste was also a class'. In state of *Andhra Pradesh vs P Sagar*,³¹ the caste-based determination was held

²⁸ *MR Balaji vs state of Mysore* [1963] Supp. 1 SCR 439

²⁹ *R. Chitrlekha vs state of Mysore* [1964] 6 SCR 368

³⁰ *P Rajendran vs State of Madras* [1968] 2 SCR 786

³¹ *Andhra Pradesh vs P Sagar* [1968] 3 SCR 595

to be invalid as a state was not able to justify any basis on which it had classified certain castes as backward. However, in *Andhra Pradesh vs U.S.V Balram*³² the designation of certain castes as backward was held valid as the state could justify.

In 1974, the government of UP gave reservation under Article 15(4) for candidates belonging to Uttarakhand hilly and village areas. Thus, the Supreme Court in *State of UP vs Pradip Tandon*,³³ upheld the identification of Uttarakhand and hill areas as backward but disallowed the classification of entire village population as backward. It was held that nearly 80 percent of the state population could not be said as backward and all villagers could not form one homogeneous class.

4.4.3. Class vs Caste

Hence from the above instances and cases, it can be inferred that although caste can form the basis of one of the indicators for identifying class but both of them are not interchangeable. Following are the differences between caste and class:

- Caste is placed by virtue of birth whereas class by virtue of wealth and education
- There is no social mobility in caste but this exists in class
- In caste there is no occupational mobility whereas it is there in class
- Caste has its own customs and usages but this lacks in class
- Inter-caste marriages are forbidden but interclass marriages are allowed
- Caste follows single religion and is supported on religious grounds but every class follows its own religion and is not supported on religious ground
- In caste system social gap is wide but in class it is narrow

While interpreting various cases, Supreme Court endorsed the meaning of backward community. The judicial interpretation on MR Balaji case held that caste cannot be the sole or dominate criteria but it can be a relevant factor to determine backwardness. As social backwardness is the result of poverty, it invalidated reservation policies. In *Indra Sawhney*³⁴ and in *Ashok Kumar Thakur*,³⁵ it was held that caste cannot be sole consideration to determine backwardness, it can be used as a dominant criterion. A caste can be and often is a social class in India.

³² *Andhra Pradesh vs U.S.V Balram* [1972] 1 SCC 660

³³ *State of UP v. Pradip Tandon & Ors*, [1975] 2 SCR 761

³⁴ 1992 Supp 3 SCC 217

³⁵ *Ashok Kumar Thakur v. Union of India* [2006] WP (Civil) 265

There was a lack of a reasonable index for identification of backward class communities due to which different states adopted different means resulting in situation of chaos. This also prevented the backward communities from availing the benefit of reservation. Thus, the government of India appointed the second backward classes commission under the chairmanship of B. P. Mandal. The commission was given the task to (a) determine the criteria for defining socially and educationally backward classes, (b) recommends steps to be taken for their advancement, (c) examine the desirability of making provision for reservation of backward classes, (d) to present a report setting out the facts found and make such recommendations as they deemed fit.³⁶

4.4.4. The Mandal Commission and Indra Sawhney

The commission observed that backwardness was both social and educational. If a caste as a whole is backward then reservation shall be given for the entire caste considering the specific caste as backward class community. backward class communities including non-Hindus, SCs and STs constitute 52 percent of India's population. Total 3743 communities across India were identified as backward. The commission recommended 27 percent reservation for backward class communities in government jobs and educational institutions. The commission used the method of survey and sample. Under this there were level points based on various social (caste as a class), economic (average assets of the family) and educational (number of members completed matriculation) factors. For this 11 criteria were given which consisted of three economical, three educational and four social. Total out of 25 points, if any community clears 11, it shall be declared as backward.³⁷

This report was implemented in 1990. After the implementation the matter came to Supreme Court of India in the case of *Indra Sawhney v Union of India*³⁸. The verdict was pronounced by the nine judges bench in 6:3 and majority opinion been delivered by Reddy, J.³⁹ Though there were several issues that were brought to the court but the emphasis of the bench was in and around the methodology of identification of backward class communities. The commission in its index had given 12 points to social backwardness and only ten points to economic and educational backwardness, taken together. It is a well-established fact that to decide the social

³⁶ *National Commission for backward classes Annual Report 2012-13*, p. 2 <http://www.ncbc.nic.in/Writereaddata/AR%202012-13%20Pandey635705824205955927.pdf> accessed on 25th Jan 2024.

³⁷ *Zia Mody, 10 Judgements That Changed India (First Published 2013, Penguin 2013)* 125

³⁸ *Indra Sawhney v Union of India* [1992] Supp 3 SCC 217

³⁹ *Ibid.*, para 859, pp. 766-69

backwardness, the position in traditional caste hierarchy is the most significant factor unless any person has become economically so well and is being covered in the creamy layer. This index was upheld by the majority. The contention claiming that no reservation to be given to any caste if there has been no discrimination in the past, was refused. Although it was held that unlike the SC and ST community, reservation to the citizens of backward class communities shall not be given if they have become prosperous, affluent and belongs to the creamy layer.⁴⁰

Indra Sawhney: A Critical Analysis

In *Indra Sawhney*, the court has not been able to completely eliminate the caste factor in identifying the backward class community. However, the court has sought to keep the caste factor within limits. Caste can be one of the factors, but not the sole factor, to access backwardness.⁴¹

Reservation has become the bane of the contemporary Indian life. More and more sections of the society are demanding reservation for themselves in government services. The politicians are also vying among themselves for demanding reservations to all and sundry groups whether deserved or not. Needless to say, reservation is inequitable insofar as a meritorious candidate may have to be passed over in favour of a much less meritorious candidate in the reserved category.

Reservation is a compensatory discrimination for the special category. The appointments to the reserved posts may be made in the order of merit exclusively amongst themselves in their own specific category. However, those who are given reservation are not required to compete on equal terms with the open category. Their selection and appointment to the reserved posts is made independently on their inter se merit and not as compared with the merit of candidates in the open category. The very objective of providing reservation is to give protection to the weaker section as against the competition from the general category competitors. The Supreme Court had stated in this case that the very intention of giving reservation is to ensure selection of a less meritorious person.” The only justification for reservation is social justice. It is a constitutionally recognised method of overcoming backwardness. This may have adverse effects in the efficiency of administration.⁴² But in the present scenario, the system of reservation has to be accepted as necessary. However, while accepting reservation up to a point

⁴⁰ *Ibid.*, pp. 790-93

⁴¹ *Ibid.*, pp. 776-79

⁴² *Ibid.*, pp. 780-85

as a present day political and social necessity, it does not mean that it must not be kept within strict limits. The defects of the system of reservation ought to be minimised as far as possible.

The Supreme Court's opinion in *Indra Sawhney* makes a signal contribution to this end. For example, some minimum qualifications for the candidates of the reserved categories should be prescribed. Also, the list of services where merit will prevail may be enlarged.⁴³ Above all, it seems to be essential that reservation for more than 50% ought to be declared unconstitutional as adversely affecting the 'basic' feature of the constitution and equality, so that reservation may not be increased beyond 50% even by a constitutional amendment. This is necessary to hold the growing demand of politicians for more and more reservation in favour of groups they seek to represent.

The basis of providing reservation should be quantitative data which depicts the backwardness of the class and inadequate representation of that class in public services and employment. The Court appears to have introduced the principle of proportionality by saying that "even if the state has compelling reasons, the state will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely".⁴⁴

4.5. Individual vs Community

The constituent assembly intended to provide reservation for the backward class communities, SCs and STs. The reservation for the STs and SCs is based on the community as a whole. The reason being that, according to Article 341 and Article 342 The President of India notifies any caste or tribe as a whole community to be eligible for availing the benefit of reservation. In the cases of backward class communities, in various cases it has been held by the Hon'ble Supreme Court that caste cannot be the sole criterion but a significant basis for the identification of backward class communities. This extended the reservation on community basis to the backward class communities as well.

The *Indra Sawhney* verdict given by the 9 judges constitution bench is considered to be the turning point in the regards to the individual v. community approach. The concept of 'Exclusion of Creamy Layer' was introduced as part of the implementation and effect of the Mandal Commission report and the *Indra Sawhney* judgement. According to the creamy layer system the individuals whose annual family income exceeds a certain limit then they wouldn't

⁴³ *Ibid.*, pp. 832-41

⁴⁴ *Ibid.*, pp. 804-813

be eligible for availing the benefit of reservation even if they belong to the backward class community. The limit was initially fixed at Rs. two lakhs per annum in 1992 which was gradually increased in the upcoming years and in 2017 it was made as Rs. 8 lakhs per annum. The court was of the opinion that if a certain individual has become so affluent and economically sound that he is being covered by the creamy layer, then cannot be considered as socially and educationally backward.

The invoking of creamy layer for the OBC reservation is a landmark in significantly considering the individual based approach along with the community-based approach. Unlike the SCs and STs in which no economic restriction is applicable, the backward class communities can avail the benefit of reservation only if they fulfil the required eligibility criterion of creamy layer exclusion.

This is certainly clear that the reservation policy needs to be revamped for the purpose of achieving the larger objective of socio-economic justice. The appraisal of backwardness on the basis of individualistic approach along with the community-based approach through the insertion of creamy layer is a significant development in this direction. But this measure is not adequate. A significant question that remains is that how to ensure equal opportunities for the other excluded groups and sections of the society. In this regard, certain other steps such as extension of the individualistic approach to other sections of the society and establishment of an Equal Opportunity Commission shall be instrumental.

V. THE CONCEPT OF EQUAL OPPORTUNITY

5.1. Introduction

In the constituent assembly, Dr. B. R. Ambedkar defended the backward class communities which has been embodied in the constitution and argued on equal opportunity concept where three views were expressed in constituent assembly, “The first is there shall be equality of opportunity for all citizens. Many members of this House wanted that every individual who is qualified for the particular post should be free to apply, sit for examinations and to through the qualifications test in order to operate principle of equality of opportunity. Furthermore, another view was expressed by the section of this house if this principle is to be operative, there ought to be no reservations for any class or community. All citizens if they are qualified, should be placed on the same level of equality with regard to public services are concerned. There should

be entry of certain communities which have so far been outside the administration”.⁴⁵ From this debate I believe that most of the members of legislature were in favour of equal opportunity principle. This chapter examines the concept of equal opportunity and the arguments as well as ideas generated in equal opportunity commission. It further analyses the demand of modern society on individualistic approach based on the principle of equal opportunity.

5.2. Principle of Equal Opportunity

The Preamble of the Constitution of India provides for “Equality of status and of opportunity.”⁴⁶ Article 14 of the Constitution finds its inception from this. Article 14 reads as “The State shall not deny any person equality before law and equal protection of law within the territory of India”.⁴⁷ The concept of equality as mentioned above means ‘Equality amongst the equals’.⁴⁸ According to H.L.A. Hart, there are two principles/rules of justice, (a) Like must be treated alike, (b) different must be treated differently.⁴⁹ Based on these principles the compensatory discrimination has been made an integral part of the Constitution.

The main argument which can be drawn on principle of equal opportunity is that, equality does not mean to treat each and every one in the same manner. While providing justice on the basis of equality, it must be considered that justice must not only be done but must also be seen and appear to be done. In the pre constitutional era, several castes and classes of people suffered huge discriminations. Due to this historical aspect, it was necessary to invoke some special safeguards for the suppressed and backward class community es. The constitutional provisions for guaranteeing equality to all individuals were not sufficient for substantive equality of opportunity to the disadvantaged groups. Therefore, reservation was implemented to rectify the discrimination practice against these groups. It basically emphasized on equal treatment of all individual. The main social goals of constituent assembly were to reduce social and economic inequalities. The reservation in public services for the backward class community was inserted to eradicate disparities between groups. The very idea of compensatory discrimination is to

⁴⁵ *Constituent Assembly Debate, Vol. VIII, p. 11.*

⁴⁶ *Constitution of India, 1950, Preamble*

⁴⁷ *Constitution of India, 1950, a. 14*

⁴⁸ *M.P. Jain, ‘Indian Constitutional Law’ (6th edn, Lexis Nexis 2012) 929*

⁴⁹ *Robert S. Summer, “H.L.A. Hart on Justice” [1962] Paper 1263, 499*

achieve objective such as ‘to re-distribute resources and opportunities to those who enjoy the fewest advantages.’⁵⁰

It can be analysed that there is a lack of understanding between Article 15 and 16 of the Indian Constitution, which stressed mainly on ‘right to equality for every citizen irrespective of religion, race, caste etc.’⁵¹ The very idea of right to equality makes the state responsible to provide equal opportunity for each and every citizen irrespective of their religious identity or based on the community to which they belong. But this has been evident through various cases and recommendations of commissions including the Mandal Commission report, that caste is a significant and inevitable factor for the identification of backward class communities. From this it can be inferred that for providing the benefit of reservation to the SCs and the castes identified as backward, the state has to deviate from the principle of non-discrimination on the basis of religion. This is so because the caste system prevails only in the Hindu religion and therefore the classification on the basis of Hindus and non-Hindus becomes a necessity.⁵²

However, in order to uplift socially and educationally backward class communities of citizen or for the SCs and STs, special provision was inserted through ‘Compensatory Discrimination’. It consists of two sets of principles- formal equality for all and compensatory discrimination for some, competing with each other. In order to apply the principle of equal opportunity, it is necessary to understand that certain classes of the society are weaker than others in terms of social upliftment. Therefore, the introduction of compensatory discrimination is not against equality. In *NM Thomas vs State of Kerala*,⁵³ Supreme Court has held that ‘Article 16(4), which is prime source of compensatory discrimination, is not an exception to Article 16 (1) but only an instance for classification’. It highlights that equality of opportunity, not opportunity to achieve equality. Though there are some flaws in compensatory discrimination. It is obvious that until and unless educational and economic factors of the weaker sections are promoted, the principles of equal opportunity will not be achieved. Eventually state is authorized to promote the objective by taking necessary steps without affecting fundamental rights.

Another argument can be stated here that identifying beneficiaries based on multiple criteria, including religion is important for providing equal opportunity. Indian Constitution preserves equality of status and opportunity of all citizens. Under Article 14 of Indian Constitution,

⁵⁰Marc Galanter, “Competing Equalities: Law and the backward class communities in India” [1984] Vol. 28, 118 Oxford University Press

⁵¹Constitution of India, 1950, a. 15 and 16

⁵² Rochana Bajpai, “Minority Rights in the Indian Constituent Assembly Debates, 1946-1949” 7

⁵³ [1976] 2 SCC 310

equality before the law or equal protection of the laws does not mean the same treatment to everyone. As no two human beings are equal in all respects, the same treatment to them in every respect would result in unequal treatment. For example, the same treatment in all respects to a child as to an adult, or to a sick or physically challenged as to a healthy person, or to a rich person as to poor, will result in unequal treatment or treatment which nobody will justify or support. Therefore, the underlying principle of equality is not the uniformity of treatment to all in all respects, but rather to give them the same treatment in those respects in which they are similar and different treatment in those respects in which they are different. In a nutshell it is stated: 'Equals must be treated equally while unequal's must be treated differently.'⁵⁴

However, for the application of the principle of equality in real life we must, therefore, differentiate between those who are equal and those who are different. This exercise is expressed as reasonable classification. Even though no two human beings are similar in all respects, they are all similar in one respect, namely, they are all human beings. Therefore, as human beings they require the same treatment, i.e. they must all be treated as human beings. In the language of rights, even though we are all different from one another in one respect or the other and may be given different treatment in those respects, we are all entitled to equal treatment as human beings. As human beings in Kantian terms we all have equal worth and in Dworkin's words are entitled to equal respect and concern.⁵⁵ Any classification or absence of it that ignores this aspect, violates equality and cannot be justified under Article 14. Therefore, as it can be said that Articles 14, 15 and 16, equality not only prohibits unequal treatment but it also demands equal treatment. The State must not only treat people equally but it must also take positive steps to remove existing inequalities, especially those inequalities which treat human beings less than human beings. Our common humanity, which is also formulated as human dignity; demands distributive justice both of which —dignity and distributive justice are essential to equality.⁵⁶

5.3. Stratification By the Legislature

The right to equality as incorporated in and discussed above requires legislation for its operation so that equals may be treated equally and unequal's may be treated differently. The

⁵⁴M.P. Jain, 'Indian Constitutional Law' (6th edn, Lexis Nexis 2012) 935

⁵⁵ Ronald Dworkin, 'Taking Rights Seriously' (1977) 223

⁵⁶ Sandra Fredman, 'From Deference to Democracy: The Role of Equality under the Human Rights Act, 1998' (2006) 122 LQR 53.

principle of equality, we have noted, does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstances in the same position. The varying needs of different classes of persons require different treatment.

In fact, public welfare requires that persons, property and occupations be classified and subjected to different and appropriate legislation. Governance is not a simple exercise. It encounters and must deal with the problems which come from persons in an infinite variety of relations. Classification is the recognition of these relations, and, in making it, a legislature must be allowed a wide latitude of discretion and judgment.⁵⁷

The Indian statutory law is full of instances of special legislation applying only to a particular class or groups. Lawyers, doctors, money-lenders, landlords, drivers of motor-cars, insurance companies, minors and, indeed, most other classes are subject to special legislation. Such classification undoubtedly differentiates between persons belonging to one class and the others, but that by itself does not make the legislation obnoxious to Article 14.

The Supreme Court has time and again reiterated⁵⁸ that Article 14 does not rule out classification for purposes of legislation. In *Kedar Nath Bajoria v. State of W.B.*,⁵⁹ it was stated that

“The equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation.”

A legislative classification to be valid must be reasonable. It must always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test for permissible classification, two conditions must be fulfilled, (a) classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (b) the differentia must have a rational relation to the object sought to be achieved by the statute in question.⁶⁰

⁵⁷ *Tigner v. Texas* [1940] 310 US 1417

⁵⁸ *Charanjit Lal Chowdhary v. Union of India* [1951] AIR SC 41

⁵⁹ *Kedar Nath Bajoria v. State of W.B.* [1953] AIR SC 404

⁶⁰ *Das J., State of West Bengal v. Anwar Ali Sarkar* [1952] AIR SC 75

So, from the above it can be inferred that the compensatory discrimination of any kind which primarily includes the reservation in educational institutes and government services to the backward class communities, is not a violation of Article 14. Rather it is the facilitation and enhancement of the idea and principle of equality as enshrined in part three of the Constitution of India.

5.4. Idea and Prospects of Equal Opportunity Commission

In India caste and religion are dominant social identities of backwardness based on occupation, residential and regional identities. Still religion prevails over castes which creates systematic biasness in society. The only way to remove such bias is to entertain equal opportunity and access to the programme that generate benefits. In current situation, accessing to various government programmes that promote literacy, education, health, employment services, etc. are difficult due to systematic failure of on the part of societal structure and government. There is a differentiation in outcome measures but it is essential to ensure equal opportunity of access and proper utilization of such services. As with the pace of development, equity is a concurrent objective. Sachar Committee in its recommendations proposed on Equal Opportunity Commission so that opportunity of 'access and use' is ensured equally and justly that also provides equal level to all social- religious communities.⁶¹ The committee submitted a draft bill along with the report to the government in February 2008. The then Prime Minister constituted a group of ministers to establish the process of equal opportunity commission. The purpose of equal opportunity commission is not only to protect interests of minorities, but to ensure equal opportunity to all citizens of India, irrespective of religious, caste, linguistic or geographical differences.⁶²

The object of introducing this commission is to remove unfair discrimination and pro- active creation of conditions in order to enable such neglected groups to avail the right to equality under Article 14 of the Indian Constitution. The idea of equality of opportunity is to offer equal chance to unequal. It is an idea of 'openness to opportunity' and procedural fairness rather than about equality of opportunity. The advantages of this approach are such as it allows for open

⁶¹Ministry of Minority Affairs, Government of India, Report by the Expert Group (February 2008).

⁶²Yogendra Yadav, 'Rethinking Social Justice'

debate and discussion on criteria by which deprivation can be determined. It can distinguish different level of deprivation.⁶³

Although, the very idea of constituting this commission is to ensure equal opportunity, to enhance and facilitate the noble idea of Right to Equality in its true sense. This is yet to be witnessed that whether this commission is successful in proper recommendation and also that the implementation is done efficiently.

5.4.1. Need for Equal Opportunity Commission

The preamble of Constitution of India includes “Equality of status and of opportunity to all citizens,” which has been secured through the provisions enshrined in Article 14, 15, 16 and 17. Even the concept of Equality was strengthened by Directive Principle of State Policy in part IV of the Constitution of India. The Directive Principle ensures a positive duty upon the State to secure these rights of the citizens. Since there is continuous presence of inequalities in social structure of country.⁶⁴ These inequalities cover from basic necessity of life to the higher needs like privileged section of society. Therefore, new policies and programmes have to be adopted by the commission to enable the deprived groups to access rights through equal opportunities. The commission’s strategy has to emphasize on highlighting the problems of unequal opportunities, disproportionality, deprivation and various forms of discrimination. However, the previous commissions have identified and arrived at a stage where group membership cannot be a sufficient criterion to claim disadvantage. Furthermore, they also proposed evidence-based policy options that can be tailored to meet specific requirements. The Equal Opportunity Commission has been proposed as a device to meet the strategies. It will also direct policies which need to move in future to address the problem of inequality of opportunity. At the same time, it will actively act as a forum which will redress inequalities of opportunity and to work on advice and action.

⁶³ Richard Power, ‘Competing Equalities: Law and the backward classes in India’ (1985) Vol. 63 Iss 3, Washington University Law Review.

⁶⁴Pg. 6, Chapter 1, EOC Part I Report by the Expert Group to examine and determine the structure and functions of an Equal Opportunity Commission Set up by the Ministry of Minority Affairs, Government of India February, 2008 <http://www.minorityaffairs.gov.in/sites/default/files/eoc_wwh.pdf> accessed on 2nd June 2023

5.4.2. Functions of The Equal Opportunity Commission

It is proposed that the functions of the commission should comprise of the policy advisory, research, gathering of data. It shall also fix the indicators for identification of the backward classes.⁶⁵ I believe that a periodical evaluation of the list of SC, ST and OBC and accordingly the removal or addition of the existing caste and class will also constitute as a primary function of the Commission.

The very purpose is to ensure that the benefits of the reservation system reaches the last person in the row. It shouldn't merely get confined to few groups of people or individuals repeatedly getting the benefit.

5.4.3. Structural And Constitutional Framework

After studying the purpose and functions of the commission report. It can be suggested here that the Equal Opportunity Commission shall be a permanent constitutional body such as the Finance Commission of India. The President of India by order shall constitute an Equal Opportunity Commission to be appointed after the expiry of every five years.

Members:

The Commission shall consist of a Chairman and four other members to be appointed by the President for a fixed term of five years.

It shall be duty of the Commission to make recommendations to the President as to –

- (1) The measures needed to be considered for ensuring equal opportunity for all the members of the deprived classes;
- (2) Periodical Evaluation and alteration of the list of the SCs, STs and the OBCs for ensuring that those individuals, groups, castes or class of people who have become socially and educationally forward with due consideration to their financial prosperity and stability, shall be removed from the list so that the benefits could be extended to the maximum;

⁶⁵ Pg. 59, Chapter 5, EOC Report by the Expert Group to examine and determine the structure and functions of an Equal Opportunity Commission Set up by the Ministry of Minority Affairs, Government of India February, 2008 <http://www.minorityaffairs.gov.in/sites/default/files/eoc_wwh.pdf> accessed on 2nd Dec 2023

These recommendations shall be made to the President on the basis of the research and data gathering by the commission in this regard.

The President shall ensure that every recommendation made by the Commission is laid before each House of Parliament by the government.

As the concept of equality is based on the principle of equality amongst the equals and treating different differently, so those who have become economically affluent shall be treated as forward and thus need to be excluded from availing the reservation.

VI. CONCLUSION AND SUGGESTIONS

The fundamental right to reservation under Part III has been inserted as an enabling right. It can be inferred from the constitutional provisions and that it was neither the intention of the constituent assembly nor of the parliament that these provisions shall be claimed as enforceable rights forever. Rather, it was a policy directive from the framers to the government. While achieving the larger goal of social economic justice, this is a policy tool to be used and implemented by the state. In pursuance of the same, the state from the very beginning implemented these policies of compensatory discrimination, extending it to the SCs, STs. Later on it was extended to the OBCs, both in the services and the educational institutions. But, it was quite clear from the very beginning that it was never meant to be perpetual. Unfortunately, the manner in which it has been implemented is of the type where we could see perpetual operation of the same. Be it any such policy measure, it requires alteration with the change in time, period, position and circumstances. The reservation policy is probably one such policy which has hardly undergone any change in the past 70 years which defies the very purpose of a policy itself. Therefore, it requires complete overhauling and reformation for which it needs to be detached from the notion of being a political tool and has to be seen as a policy measure.

I believe that the discussions in India shouldn't be on the existence or abrogation of reservation, rather it should be emphasized on who should get the benefits of compensatory discrimination. There has been a wrong notion that the revamping of reservation policy would reduce the percentage of reservation. The benefits of overhauling the reservation policy by extension of the creamy layer to the SCs and STs is neither going to reduce the percentage of reservation, nor it would benefit the general category aspirants. The purpose is not to give the benefits to the people of some other class. Rather, it is for the benefit of the people of same class. This is

to be understood that the restructuring of the SCs, STs and OBCs themselves. Hence, the refurbishment of the reservation policy shouldn't be objected.

It should be Considered from the academic point of view as a policy. For overhauling the reservation policy and treating it in the manner which could sub-serve the larger goals of socio-economic justice, I suggest some measures to be undertaken:

(i) Extension of the Creamy Layer: The introduction of Creamy Layer concept through the Indra Sawhney verdict is a milestone in the reservation system of India. This included the individualistic approach along with the community-based approach for the purpose of appraisal and identification of backwardness.

I suggest that following the footsteps of Indra Sawhney and Creamy Layer, this individualistic approach for reservation needs to be extended to the SC and ST reservation as well.

A thought towards insertion of creamy layer in the SC and STs can prove to be a turning point in this regard as there are still millions of deprived people who didn't or shall not receive the benefits of reservation and a primary reason being that few groups, families or individuals have been repeatedly getting the benefits since generations. An evaluation is needed to exclude the economically affluent individuals from taking further more benefits and instead giving it to those who are still deprived.

An individual is given the benefit of compensatory discrimination if he belongs to a backward class community. The backwardness is decided on the basis of various criteria and economic backwardness is one of them. I suggest that if an individual has become financially affluent, then it shall be considered that the person is no more backward, rather he has become forward.

The concept of equality is based on the principle of equality amongst the equals, like must be treated alike and different must be treated differently. So according to me, a financially strong person being a part of creamy layer, should not be considered as equal to the other backward people of his own class. Since the individual is unequal to the other members of his class, he shall be treated as forward and thus need to be excluded from availing the reservation.

(ii) Determining the Criteria for Creamy Layer:

The Government of India in 2017 increased the limit of creamy layer to Rs. 8 lakhs per annum from Rs. 6 lakh.⁶⁶ This is calculated on the basis annual family income of any individual. As per the report given by the National Commission for backward classes on “The Review Criterion For Determining the Creamy layer”, while applying the creamy layer on the government servants, the income from salary and agricultural land of the employees below the category II is not included while computing the annual family income.⁶⁷ Not including the salary component of the class III and class IV employees is a major flaw in determination of annual family income for creamy layer in OBC. Thus, the larger purpose of the creamy layer exclusion is defeated.

I suggest that the salary component of all the employees to be included while calculating the annual family income for creamy layer.

(iii) Classification of the OBCs into Sub categories:

There are around 3000 castes listed in the central list of OBCs. But amongst those, there are a few castes who have been taking the maximum benefit repeatedly. For example, the Yadav community in Northern India and significantly in Uttar Pradesh is considered to be getting the maximum benefit amongst that of the 27% allotted to the OBC community. The largest quota of reservation is repeatedly being taken by a particular class amongst the OBCs due to their social and economic advancement. It is suggested that the OBCs to be classified further as backward and more backward. Then certain restriction as to the maximum percentage of reservation needs to be fixed. For example, amongst the 27% reservation for OBCs, 5% to 8% could be fixed exclusively for the particular caste or class of people. The remaining percentage would be left open for the other castes and class of OBCs (more backward classes), except those who have been given the exclusive reservation. This shall ensure that any specific caste or class that has been largely availing the maximal portion of reservation since a long time doesn't creates a hindrance in the facilitation of reservation to other classes.

⁶⁶The Hindu, OBC creamy layer limit raised to Rs. 8 lakh per annum
<<http://www.thehindu.com/news/national/obc-creamy-layer-income-limit-raised-to-8-lakh-per-annum/article19677545.ece>> accessed on 10th Nov 2023

⁶⁷ Report of the National Commission for backward class communities on The Review Criterion For Determining the Creamy layer, 2015
<<http://www.ncbc.nic.in/Writereaddata/Supplementary%20Creamy%20Layer%20Report%20241115%20final%20at%20430PM%20Corrected%20by%2005052016%20page%20no15635980433155122719.pdf>> accessed on 13th Jan, 2024

This suggestion to classify the OBCs into further sub categories was also upheld by the hon'ble apex court in the Indra Sawhney verdict wherein it was held that the classification of backward classes as backward and more backward is constitutionally permissible. The very purpose of this classification is to ensure that those amongst the backward class communities, who have been deprived of the benefits of reservation, are also given the advantage.

To ensure the implementation of the above mentioned suggestions, there is a necessity for the establishment of an Equal Opportunity Commission which shall be a constitutional body. A question that arises as to what is the need for establishing a permanent constitutional body if Article 340 of the Constitution already empowers the President to appoint a commission for investigating the conditions of backward classes.

The very purpose and idea of suggesting a permanent constitutional body in this regard is to ensure efficiency and effectiveness. The Mandal Commission report was submitted in 1980, but was implemented only after a decade due to vested political interest. While such commission reports are not binding on the government and even after spending heavy public money on preparing these reports, there is no accountability of the government for implementing them. On the other hand, the Equal Opportunity Commission after being established as a permanent constitutional body, shall follow the footsteps and the working of Finance Commission. This shall ensure regular, periodic and efficient recommendations and fix certain accountability for the legislature and executive. Unlike other commissions and their reports, this permanent body shall work as an independent commission. Its recommendations shall not be subject to biased political interests as there would be an accountability on the government and the parliament and both shall be answerable to each other in this regard.

Thus, the suggestions based on the study and analyses aims at revamping the reservation system of India. The emphasis is to attain the larger goal of reservation policy by the inclusion of individualistic approach along with the community based approach in the process of identification of the backward and deprived classes.

BIBLIOGRAPHY

Primary Sources

Indian Legislation:

1. Constituent Assembly Debates, 1946-1949.
2. The Constitution of India 1950
3. The National Commission for backward classes Act 1993

Case Laws:

1. Balaji vs State of Mysore [1963]: AIR SC 649
2. R. Chitrallekha vs State of Mysore [1964] 6SCR 368
3. P. Rajendran v. State of Madras[1968]2S.C.R. 786
4. Indra Sawhney v. Union of India [1992] (Suppl) 3SCC 217
5. Tigner v. Texas [1940] 310 US 1417
6. Charanjit Lal Chowdhary v. Union of India [1951] AIR SC 41
7. Kedar Nath Bajoria v. State of W.B. [1953] AIR SC 404
8. State of West Bengal v. Anwar Ali Sarkar [1952] AIR SC 75
9. State of Madras v. Champakam Dorairajan, AIR 1951 SC 226
10. Ashok Kumar Thakur v. Union of India [2006] WP (Civil) 265
11. Andhra Pradesh vs P Sagar [1968] 3 SCR 595
12. Andhra Pradesh vs U.S.V Balram [1972] 1 SCC 660

Commission Reports:

1. Mandal Commission Report(1980)Vol1 and 2,
2. Report of the Expert Committee on Creamy Layer (1993)
3. EOC Report by the Expert Group to examine and determine the structure and functions of an Equal Opportunity Commission Set up by the Ministry of Minority Affairs, Government of India February, 2008
4. Report of the National Commission for backward classes on The Review Criterion For Determining the Creamy layer, 2015

Secondary Sources

Journals:

1. Rai S, 'Social and Conceptual Background to the Policy of Reservation'(2002)42 Vol. 37Economic and Political Weekly 4309-4311
2. Galanter M, 'Who Are the Other backward classes? An Introduction to a Constitutional Puzzle'(1978) Vol 13 No.Economic and Political Weekly' 1812- 1828
3. Galanter M, 'Law and Caste in Modern India' (1963) Vol3No.11 UCP544- 559
4. Power R, 'Competing Equalities: Law and the backward classes in India' (1985) Vol. 63 Iss 3, Washington University Law Review.
5. Kedia B, 'Affirmative Action in India and U.S- A Challenge to Reservation Policy in India' International Journal of Law and Legal Jurisprudence ISSN – 2348- 8212 Vol2 Issue1
6. Taylor P, 'The Ethics of Respect for Nature'[1981] p. 214
7. Jha S., 'Defending Minority Interests in the Constituent Assembly: Rights vs Representation' [2003] Vol 38, Issue No.16, Economic and Political Weekly

Books

1. Basu D.D., 'Commentary on Constitution of India' (9th edn 2014)
2. Jain M.P., 'Indian Constitutional Law' (6th edn, Lexis Nexis 2012) 935
3. Dworkin R, 'Taking Rights Seriously'(1977) 223
4. Agarwal S and Agarwal J, 'Educational and Social Uplift of backward classes: At what cost and How? Mandal Commission and After, Part1' (1991)228
5. Mody Z, 10 Judgements That Changed India (First Published 2013, Penguin 2013) 117
6. Rai U, 'Fundamental Rights and Their Enforcement' (2011) p.572
7. Jaffrelot C, 'India's Silent Revolution' The Indian Constitution Appendix III, London: Hurst & Co. Publication 208
8. Hasan S, Fundamental Rights and Directive Principles(Deep and Deep Publication) 14

Tertiary Sources

1. Satish Deshpande and Yogendra Yadav, 'Reservation an alternative proposal' (2012) THE HINDU
2. Quleen Kaur Bijral, 'Affirmative Action: The System of Reservations and Quotas in India' (The Logical Indian, 2015)