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**RESERVATION IN INDIA: A CRITICAL STUDY WITH REFERENCE TO
CREAMY LAYER PRINCIPLE.**

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I, **GOPINADHAN K.J.**, do hereby declare that this dissertation work titled ***“Reservation in India: A critical study with reference to Creamy Layer Principle.”*** researched and submitted by me to the National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of degree of master of laws in Constitutional and Administrative Law under the guidance and supervision of **Dr. ABHAYACHANDRAN K.**, Associate Professor, The National University of Advanced Legal studies is an Original, Bonafide and Legitimate work. It has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this university or any other university.

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PREFACE

As an LLM Student specialising in Constitutional Law and Administrative Law at the National University of Advanced Legal Studies, my academic journey consistently aligned with National perspective on law and constitutional governance. Among the many areas that captivated my interest, the intersection of Constitutional Law and Administrative law stood out as uniquely complex and evolving subjects.

Over time, I became especially drawn to the enforcement dimension of Constitutional and Administrative Laws, but how courts are ensured the mechanism played in this enforcement.

Every country's ability to safeguard the interests of weaker sections is enumerated in its constitution and its implementation by Administrative Authorities. The Reservation, especially OBC reservation with creamy layer principle plays a pivotal role in a country's affirmative action policy ensured by the Constitutional provisions of the country.

I tried my level best to research regarding the various aspect of the reservation system in India, along with the creamy layer application to resolve the question of present system in identifying creamy layer adequate and its impact in the backward classes.

The journey of this dissertation has been enriched by the guidance and support of many individuals. I express my sincere gratitude to my guide Dr. Abhayachandran. K, Associate Professor, NUALS whose insightful guidance for stimulating academic environment and access to resources.

Finally, I dedicate this dissertation to all those who continue to strive for a more just and equitable society.

LIST OF ABBREVIATIONS

Art.	Article (of the Constitution of India)
CA	Constitutional Amendment
CJ	Chief Justice
Const.	Constitution
EWS	Economically Weaker Sections
GO	Government Order
GOI	Government of India
Govt.	Government
IAS	Indian Administrative Service
IIT	Indian Institutes of Technology
IITs	Indian Institutes of Technology
IIM	Indian Institutes of Management
I.L.I.	Indian Law Institute
IPS	Indian Police Service
J&K	Jammu and Kashmir
JJ	Justices (Judges)
MLA	Member of Legislative Assembly
MP	Member of Parliament
NCBC	National Commission for Backward Classes
OBC	Other Backward Classes
OBCs	Other Backward Classes
Para.	Paragraph
PM	Prime Minister
Rs.	Indian Rupees
SCs	Scheduled Castes
Sec.	Section (of an Act or Law)
SEBC	Socially and Educationally Backward Classes
STs	Scheduled Tribes
UP	Uttar Pradesh
UPSC	Union Public Service Commission

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CHAPTER – 1

INTRODUCTION

Reservation in India has been a cornerstone of the nation's social justice framework, designed to redress historical injustice and ensure equitable opportunities for weaker sections of the society. The reservation system in India before British rule was not same as now, formally it never existed. However, there were traditional systems of social organization and affirmative action-like measures in some regions. Some rulers provided grants, land, and other benefits to certain communities, particularly Brahmins and other upper-caste groups, for religious and administrative purposes. At the same time, some lower-caste communities have specific occupations and roles, often regulated by the varna and jati systems.¹

The reservation in India has evolved over decades, influenced by socio-political movements, constitutional mandates, and judicial interventions. This policy primarily aims to provide representation and opportunities to historically disadvantaged communities, such as Scheduled Castes, Scheduled Tribes, and Other backward classes. The concept of caste-based reservations was initially conceived by William Hunter and Jyotirao Phule in 1882². The Peshwas of Maratha Kingdom had given certain privileges to backward classes in military and administration.³ Mysore initiated reservation for backward castes after a decade long social justice movement against the repression of non-Brahmin castes⁴. The princely states of Travancore and Cochin (now part of Kerala) had some measures to uplift backward classes.⁵

Under certain Muslim rulers, there were policies to include Persian and Turkish elites in administration, while some efforts were made to uplift lower sections of society through land grants and administrative rulers.⁶ The Mughal empire followed a more meritocratic system, though caste and religion still played a role in appointments.⁷

¹ <https://testbook.com> (Last visited on 23.5.2025)

² <https://iledu.in> (Last visited on 25.5.2025), Institute of Legal Education.

³ <https://pwonlyias.co> (Last visited on 23.5.2025)

⁴ <https://www.goimonitor.com> (Last visited on 24.5.2025)

⁵ <https://frontline.thehindu.com> (Last visited on 24.5.2025)

⁶ <https://www.jagaranjosh.com> (Last visited on 24.5.2025)

⁷ <https://www.nextias.com> (Last visited on 24.5.2025)

Chhatrapati Shahu Maharaj of Kolhapur in 1902, introduced reservation for backward castes and Dalits.⁸

In 1918 the Princely state of Mysore implemented reservation in education and employment for backward communities⁹. In 1921 The Madras Presidency introduced caste-based reservation in public services and education, under the influence of the Justice party¹⁰.

In 1932 Communal Award introduced by the British government, which provided separate electorates for minorities and disadvantaged groups, including Scheduled Castes and Scheduled Tribes. This system had opposed by Mahatma Gandhi, but Dr. B. R. Ambedkar supported the same, leading to the Poona Pact, 1932. This Pact agreed on reserved seats for SCs within the general electorate¹¹. The Government of India Act, 1935, provided reserved seats for Scheduled Castes and Scheduled Tribes in legislatures, making the beginning of formal political representation¹².

Dr. BR Ambedkar the Chairman of the drafting committee of the constitution concluded by making several remarks for the scheduled castes. He said that other minorities have got privileges in the past for a long time, for example, the Muslims were receiving privileges since 1892, Christians from the constitution of 1920 but the scheduled caste received it from the 1935 constitution and practically from 1937 which were also ceased by 1939. Therefore, the Scheduled Castes has received benefits only for two years by then and hence he believed that they should get a reservation for a long term. But since the resolution of expiration on ten years has been passed would not go against it, but yes, the opinion of extension of this period required, would always be there.¹³ They are suffering from the centuries and it is the responsibility of the independent India to bring them into the mainstream and make them at par with other dominant communities of the society. He advocated reservation for 10 years and he thought within the duration

⁸ <https://www.goimonitor.com> (Last visited on 24.5.2025)

⁹ The report of the Miller Committee (1918), p.1

¹⁰ S. Muthiah's, The Justice Party: A Historical perspective. A.S SUBHARAJ's studies on the Non-Brahmin Movement Government Archives on Madras Presidency's reservation policies.

¹¹ Dr. B.R. Ambedkar, Annihilation of Caste. Mahatma Gandhi's writing on Poona pact. Historical studies on the communal Award and Dalit representation. Appendix-I and II

¹² B. SHIVA RAO, The Framing of India's Constitution MV PYLEE, Constitutional History of India. Official text, 1935 (available in archives and libraries). Schedule I, V, VI of the Government India Act, 1935.

¹³ <http://candindia.clpr.org.in/constitutionassemblydebate>. Constituent Assembly debates, 30th (Last visited on 24.5.2025)

of this ten years it is possible to bring them to the mainstream. But the reality is different. If Dr. BR Ambedkar was alive today, it would have pained him to see that the Scheduled castes and Scheduled Tribes are living under sufferings and they still need reservation. He was advocated for a casteless and classless society.

The reservation for SC and ST was agreed by the Constituent Assembly on the condition that it will not be extended to any other group of people. During constituent assembly debates, Dr. Ambedkar said that, “Mr. Speaker, the reservation in education is not to be regarded as an act of charity or a temporary expedient. It is a measure of justice – a rightful claim of the Depressed Classes to the opportunity of developing their latent capacity which, for centuries, has been suppressed by the curse of caste. In public employment too, such reservation is not a favor but a necessity, only by ensuring a fair share can we hope to eradicate the deep-rooted social inequalities which have hounded these communities.”¹⁴

Further in the Constituent Assembly debate on reservation in public employment Dr. BR Ambedkar said that “I should like to emphasize that the reservation in public employment is not a concession to any class; rather it is a corrective measure intended to compensate for the historic injustice meted out to the Scheduled Castes. The objective is to enable them to compete on a level playing field with others – a precondition for any genuine social reconstruction. Without such reservations in education and employment, the constitutional promise of equality would remain a hollow assurance”¹⁵. These debates in the Constituent Assembly were instrumental for providing reservation for SCs and STs by way of incorporating Articles in the Constitution of India.

During 1950 the constitution of India came into being. It included many provisions for eradicating discrimination and untouchability and also included provisions which promote the Scheduled Castes and Scheduled Tribes and weaker sections in education and public employment. The main aim of this inclusion was to bring the historically marginalized and sidelined sections of the society into the mainstream so that they can be developed at par with other advanced communities in the society in free India.

¹⁴ Constituent Assembly Debates, Volume VIII, Session No. 107(29 Nov. 1948)

¹⁵ Constituent Assembly Debates, Volume VIII, Session No. 109(2 December 1948)

Article 16¹⁶ in the constitution of India, provides for equality of opportunity in matters of public employment. The clause (4) of the Article 16 says that, 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. Thus, the constitution of India, provides that the state to make special provisions for socially and educationally backward section for their representation in the public employment. During the time of independence their living condition was highly pathetic and their representation in the governance was equal to nil. Similarly, Article 15¹⁷ incorporated in the constitution which provides for prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Clause (4) of Article 15 had been incorporated in the constitution of India through First (Amendment) Act, of 1951¹⁸, which says that, 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 for the Scheduled Castes and the Scheduled Tribes.

However, the politics of India after independence created a situation that without giving reservation to the OBCs it is difficult to move forward by the political parties. This was an artificially created compulsion. Then there was widespread demand for OBC reservation. This was promoted by the political parties taking into account of the OBCs substandard living conditions. They were reeling under acute poverty and their representation in jobs and educational institutions were meagre. Considering all the above the Central Government constituted a committee to identify the problems faced by the OBCs and to report their suggestion for improvement. A Backward class commission was set up by a Presidential order under Article 340 on Jan 29th 1953, Kaka Kalelkar as Chairman, which is popularly known as Kaka Kalelkar Commission for the above purpose¹⁹. Kalelkar commission submitted its report to the Central government

¹⁶ The constitution of India, MP JAIN, V.N. SHUKLA's Constitution of India, Mahendra Pal Singh, twelfth edition, p.108

¹⁷ MP JAIN, Indian Constitutional Law, 8th Edition, Lexis Nexis.

¹⁸ National Portal of India, www.india.gov.in (Last visited on 24.5.2025)

¹⁹ Members of Kaka Kalelkar Commission,
Mr. Kaka Saheb Kalelkar, Chairman
Mr. Narayan Sadoba Kajrolkar (MP), Member
Mr. Bheeka Bhai, (MP), Member
Mr. Dayal Singh Chaurasia, Member
Mr. Rajeshwar Patel (MP), Member
Mr. Abdul Qayum Ansari, (MLA, Bihar), Member

and no action has been taken by the central government to find solution to the recommendations.

In between in 1969 the Tamil Nadu government formed a commission to study the position of Backward classes in Tamil Nadu headed by AN Sattanathan. This commission was known as Sattanathan commission²⁰. The key recommendations of the commission were that the concept of a creamy layer system to be introduced when the reservation of the backward classes are provided, so that by excluding advanced members within the backward classes the reservation benefits could be provided to more disadvantaged in the OBC community.

Thereafter in 1979, the then Prime Minister Sri. Morarji Desai constituted a commission headed by BP Mandal as its chairman, which was popularly known as Mandal Commission to study the scope of reservation in education and employment to Other Backward classes. Sri. BP Mandal was an eminent personality and the former Chief Minister of Bihar, was also a renowned OBC leader. The committee elaborately studied the conditions of OBCs and submitted its report in 1980 to the government. But the report had to wait until 1990 to be taken up for implementation which was during the rule of Prime Minister VP Singh. Mr. Singh was an egalitarian leader who was determined to implement the Mandal Commission Report even when there were nationwide agitations and protests.²¹ This decision has been challenged in the Supreme Court of India vide *Indra Sawhney v. Union of India*²², saying unconstitutional. In the instant case Supreme Court of India affirmed reservation for OBCs for a tune of 27% but introduced exclusion of creamy layer. The creamy layer principle is a good idea which exclude advanced sections of the OBCs from the reservation fold.

Mr. T. Mariappa, (MLA, Mysore), Member

Mr. Lala Jagannath, Member

Mr. NRM Swamy, (MP), Member

Mr. Arunomghrahu Dey, Member

²⁰ Thiru AN Sattanathan (Retired collector of Customs), Chairman Thiru. S. Chinnapan (Dist. & Sessions Judge, Retd.), member Thiru MA Jamal Hussain (Dist. & Sessions Judge, ret'd.), Member

²¹ Mandal Commission members. Shri BP Mandal (Ex-MP), Chairman

Shri Dewan Mohan Lal, Member

Justice RP Bhole, Member

Shri K. Subramaniam, Member

Shri Din Bandhu Saha, Member

Shri LR Saha (Ex-MP), Member

Shri SS Gill Secretary.

²² AIR 1993 SC 477

The concept of exclusion of Creamy Layer was a historical step by the Supreme Court of India. It paved way for inclusion of more and more eligible and deserving candidates from other backward classes and they absorbed in the reservation process. The matter of OBC reservation and creamy layer principle has been settled down in Indra sawney²³ case by Supreme Court of India. Final pronouncement regarding the creamy layer exclusion was a gift from Indian Judiciary. If this principle would not have introduced the mighty sections of the OBCs would have usurped the reservation benefits. But today the poorer and marginalized sections of that community is empowered to enjoy the benefits of reservation due to the exclusion of creamy layer. However, there is doubt about the correctness of the fixing the bench mark for identifying the creamy layer presently. Today the contentious issue is that more and more castes are demanding reservation.

In 1993, a statutory body was established by the government and it was granted constitutional status through the 102nd constitutional amendment, Act, 1993²⁴, operating under Article 338B of the constitution of India. This body is called as National Commission for Backward Classes (NCBC) and working under the Ministry of Social Justice and Empowerment. They are tasked with investigating and monitoring safeguards for socially and educationally backward classes, advising on socio-economic development, and evaluating progress.²⁵ Then in 2017 the government appointed a commission known as Justice G Rohini commission to address the issues of sub-categorization within the OBCs²⁶. The four-member commission was formed to ensure a more equitable distribution of reservation benefits among the Other Backward Classes (OBCs) in India.²⁷

Due to demand from the political parties for providing reservation to the Economically Weaker Sections of the unreserved categories, the Government of India appointed a commission which was known as Sinho Commission²⁸. The Chairman of this commission was Major General (Retd.) S. R. Sinho. The commission after an elaborate study submitted the report to the Central Government. In pursuance of the

²³ Indra Sawhney v. Union of India, AIR 1993 SC 477

²⁴ Constitution 102rd Amendment Act, 2018. Granted constitutional status to the NCBC.

²⁵ The commission consists of a Chairman, Vice-Chairman, and three other members, All in the rank and pay of Secretary to the Government of India.

²⁶ <https://www.business-standard.com> (Last visited on 25.4.2025)

²⁷ Justice G Rohini former Chief Justice of the Delhi High Court as Chairman and four members.

²⁸ <https://www.scobserver.in> (Last visited on 24.5.2025)

recommendations of the Sinho commission the parliament passed the (103rd Amendment) Act, 2019²⁹; to provide 10% reservation to the economically weaker sections of the unreserved communities. This has been considered as segregation of the unreserved communities of the society. This reservation is known as EWS reservation and justified that, though their forefathers were well to do and was in commanding position in the society in the early periods, many of them are presently living in poor conditions. Therefore, it is the responsibility of the governments to support them to bring to the main stream by providing reservation and equitable justice.

In addition to the above, recent judgements of the Supreme Court shows a new trend of segregation of STs and SCs as sub classes so that the well to do and advanced sections of that community can be excluded from the reservation and more and more marginalized could be given the benefits of reservation in educational institutions and employment. The Supreme Court of India in *Jarnail Singh v. Lachhmi Narain Gupta*³⁰, bowed the seed for sub classification of SCs and STs. This process continued in *The State of Punjab v. Davinder Singh v. State*³¹, Supreme Court held that the sub classification of the SCs and STs shall be done by the States, so that advanced sections in SCs and STs must be weeded out from the reservation process; this will facilitate more backward in that community to get reservation benefits.

1.1. Background of study

The idea of creamy layer actually referred in *State of Kerala & Anr v. N. M. Thomas & Ors*³² by the Supreme court of India, but the exclusion of Creamy Layer was finally settled in *Indra Sawhney*³³ case. Supreme Court of India finally pronounced that the creamy layer exclusion of the backward classes from the OBC reservation is legally valid, so that the down trodden in the OBCs must get reservation benefits. Some OBC groups are affluent, well to do and advanced at par with other forward sections of the society. If some bench mark is not set the reservation facilities may be usurped by these affluent sections in the community and the real backward and marginalized in the community will be expunged from the reservation fold.

²⁹ <https://www.scobserver.in> (last visited on 24.5.2025)

³⁰ AIR 2018 SC 4729

³¹ 1st August, 2024

³² 1976 AIR 490

³³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

After implementation of the Mandal commission recommendations which recommends for OBC reservation, it has been challenged in *Indra Sawhney v. Union of India*³⁴, saying the OBC reservation is unconstitutional and fraud on the constitution of India. The Supreme court of India upheld the reservation for OBCs but capped all the reservations at 50% and importantly introduced the concept of the Creamy³⁵. The concept of the creamy layer exclusion in the other backward classes reservation in India has been a progressive principle which inclusive growth of the OBCs. This principle avoided affluent sections within the OBCs from reservations in government jobs and educational institutions³⁶. The creamy layer is primarily determined by income limits set by the government. Currently the limit is Rs.8 lakhs per annum, but this has been criticized as too low or too high, depending on the context. Families in metropolitan areas argue that Rs.8 lakhs is insufficient, given the high cost of living. Many government employees (Group A and B) are excluded regardless of their total family income, leading to confusion and legal disputes.

Many argue that income alone does not reflect social backwardness and that factors like education, occupation, and wealth should be considered while excluding creamy layer. The current system excludes individuals based on government job status, which may not always correlate with social upliftment.³⁷ Exclusion of creamy layer from the OBC reservation became a reality in the reservation process. This enhanced the participation of OBCs in public employment and education. A study conducted by the K. Sundaram for Economic and Political Weekly, revealed that the OBCs got sufficient opportunity in public employment after reservation provided to them, and the creamy layer exclusion paved way for inclusive growth of their communities irrespective their financial conditions.³⁸ This manifests that the weaker sections in the OBC benefited from the creamy layer exclusion.

The creamy layer issue remains a challenge to the effectiveness of OBC reservations, with ongoing legal battles and policy debates. The demand for revising the criteria is growing, but political and legal hurdles continue to slow the process. Politicians often

³⁴ AIR 1993 SC 477

³⁵ AIR 1993 SC 477

³⁶ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁷ Rohini commission (set up to sub-classification of OBCs)

³⁸ Source: Economic and Political Weekly, Jan. 27 – Feb 2, 2007, Volume 42, No. 4 (Jan 27 - Feb. 2, 2007), pp 326-327
<https://www.jstor.org/stable/4419190>.

increase or adjust income limits to include more people under the reservation umbrella for electoral gains. Some states, like Tamil Nadu, do not implement the creamy layer concept in state-level reservation, leading to inconsistency. Candidates applying for other backward certificates in Tamil Nadu, the state government has directed revenue officials and collectors to issue the certificate without insisting on income details. The July 5 2021 order states that salary and agriculture income need not be taken into account while calculating annual income ceiling of Rs. 8 lakhs for parents of non-creamy layer category. The order does not cover six categories, including people occupying constitutional posts and service and professional categories identified by the Centre in 1993.³⁹ The above contemplate various variations in many of the states regarding reservation and creamy layer exclusion.

1.2. Statement of the problem

The existing criteria of finding the income limit for creamy layer exclusion seems inadequate.

In order to satisfy the object of the exclusion of the creamy layer it is argued that the total income of the family of the candidate has to be considered, so that more under-privileged communities in the OBCs can be included in the reservation fold.

Because of the appeasement and vote bank politics more and more communities are offered reservation under OBC category by political parties which will undermine the scope of deserved candidates.

If the advanced and financially sound classes are included in the OBC then the income limit for creamy layer exclusion has to be increased.

1.3. Scope of the study

This study is being conducted to find out the present limit of income for exclusion of creamy layer in OBC reservation is adequate, and to suggest any changes in order to enable the deserving candidates to get benefits of reservation.

1.4. Objective of the study

The study is being conducted to investigate the existing criteria for determine creamy layer among OBC is justified. Creamy layer exclusion is addressing the inter caste

³⁹ <https://www.thehindu.com> (Last visited on 25.5.2025)
<https://bcmbcnw.tn.gov.in> (Last visited on 25.5.2025)

equality among the OBC. Access to education and employment and opportunities among OBC is enhancing due to the implementation of exclusion of creamy layer. Present criteria for exclusion of creamy layer just and fair.

1.5. Research questions.

1. Whether creamy layer exclusion is constitutionally valid?
2. Whether the creamy layer exclusion is justified with respect to the OBC reservation?
3. Whether the present criteria for fixing the limit of income for creamy layer is adequate or not?
4. Whether creamy layer exclusion enhanced, more deserving OBC candidates in bringing to the reservation fold and weeded out undeserved?

1.6. Hypothesis

In OBC reservation, exclusion of creamy layer benefitted to the OBCs, but the criteria for fixing the limit of income for identifying creamy layer is not sufficient. More components to be added while considering the limit for fixing the income for exclusion of creamy layer instead of present method.

1.7. Research Methodology

The method used in this study is doctrinal research. The material gathered is from various primary and secondary sources like Constitution of India, statutes, case laws and secondary sources like books, websites, articles, journals, judgements, Government of India, reports of various commissions and government departments.

1.8. Limitation of the study

1. Study to be conducted with respect to the exclusion of creamy layer in job reservation is a constraint.
2. Identifying creamy layer is very difficult as the study collection of data regarding income of family is almost impossible because sufficient records and documents are insufficient and not up-to-date.
3. There is time constraint in conducting empirical study due to which, analysis of case laws and policies are the only alternative.

1.9. Scheme of Study – The dissertation consists of 7 chapters in total.

Chapter 1 ‘Introduction’ which deal with an introductory aspect which consists of the evolution of the Reservation and Creamy Layer principle in India, which involves the essence of both pre- and post-independence situations. Regarding provisions of the Indian Constitution, Judicial pronouncements through which the creamy layer principle has been evolved in India. Recent judicial pronouncements and SC, ST sub-classification and EWS reservation to the unreserved categories also discussed here

Chapter 2 Reservation in India. Constitutional provisions are discussed here. Further First backward class commission, Second- backward class commission are elaborately discussed here.

Chapter 3 Reservation and Judicial interpretation, Origin and evolution, judicial approach towards OBC reservation is discussed elaborately. Key supreme court judgements are discussed in this chapter with greatest emphasis on creamy layer exclusion in OBC reservation.

Chapter 4 Analysis of Indra Sawhney v. Union of India, deals with the case and provides a case analysis that includes facts, Supreme Court judgement, Honorable judge’s comments and opinion and certain vital concepts regarding, exclusion of creamy layer in OBC reservation, cap on reservation etc.

Chapter 5 Creamy layer principles, in this chapter the origin, evolution of creamy layer principle in India through case laws elaborately discussed.

Chapter 6 New Development in Segregation of SCs And STs And EWS Reservation. Current judgements of Supreme Court regarding segregation of Scheduled castes in Jarnail Singh v. Lachhmi Narayan Gupta, 2018 and The State of Punjab v Davinder Singh, 2024 are discussed in detail. The 103rd Constitutional (Amendment) Act, 2017 and Janhit Abhiyan v. Union of India, 2018 discussed here on EWS reservation.

Chapter 7 Conclusion and suggestion, A conclusion along with suggestions from the study are enumerated in this chapter.

CHAPTER 2

RESERVATION IN INDIA

2.1. Introduction.

The Reservation in India is aimed at addressing the historical injustices and systemic inequalities faced by the marginalized communities. The Scheduled castes and Scheduled Tribes and backward communities are particularly affected by these injustices. The reservation system in India is rooted in the ideals of social justice, equality and affirmative action. The reservation system is aimed to provide fair representation in education, public employment, and political institutions. Over the years the scope and nature of reservation have evolved and shaped by socio-political movements, recommendations of various commissions and land mark judicial pronouncements. During the inception of the constitution of India, Articles were incorporated for providing reservation to the SCs and STs. Whereas the OBCs provided reservation after the recommendations of Mandal Commission. In *Indra Sawhney v. Union of India*⁴⁰, the Supreme Court of India validated the constitutionality of the OBC reservation, excluding the creamy layer. Then in recent judgements the Supreme court ordered sub classification of SCs and STs, which is under the review of the Supreme court. The introduction of EWS reservation expanded the reservation discourse to include economic disadvantaged sections of the unreserved categories. While the reservation policy has played a significant role in empowering the disadvantaged groups, the merit, equity, and efficiency, make it one of the most dynamic aspects of India's constitutional democracy.

2.2. Constitutional provisions related to reservations.

The Constitution of India is a comprehensive document which enumerate every function of all authorities specifically. It is the model document of Indian governance and is the supreme law of the land. Country's political system, structure, powers and duties of governmental institution like parliament, executive and legislature and the rights and duties of citizens are laid down with clarity. As regards fundamental rights of the citizens and non-citizens are concerned it is enumerated under Articles 12 to 35

⁴⁰ AIR 1993 SC 477

of the Constitution of India⁴¹. The rights include right to equality, freedom, protection from exploitation, freedom of religion, cultural and educational rights, and right to constitutional remedies.⁴² Since this is the longest written constitution in the world, while making this constitution, the makers inspired from the classic constitutions of the world like USA, UK, Irish, Canada, Australia, Germany and Australia and so on. It provides for democracy, secularism and equality and for all citizens⁴³.

2.3. Article 16 of the Constitution of India.⁴⁴

Article 16⁴⁵ of the Constitution of India envisages equality of opportunity in matters of public employment. Each clause of the Article is being discussed below as in the constitution of India.

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.⁴⁶
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.⁴⁷
- (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.

⁴¹ MP JAIN, Indian Constitutional Law, Dr. Sanjay Jain, ninth edition, powered by justice Dr. DY Chandrachud.

⁴² Lok Sabha Secretariat, New Delhi 1990. Published under 382 of the rules of procedure and conduct of business in Lok Sabha (seventh edition) and printed by M/s. S. Narayan & Sons, Delhi.

⁴³ MP JAIN, Indian Constitutional Law, 8th edition, Justi Jasti Chalameswar, Judge, Supreme Court of India, Justice Dama Seshadri Naidu, Judge High Court of Kerala, Lexis Nexis.

⁴⁴ V.N. Shukla's Constitution of India, Mahendra Pal Singh
Thirteenth Edition

⁴⁵ V.N. SHUKLA's Constitution of India, Mahendra Pal Singh, twelfth edition. P. 108

⁴⁶ V.N. SHUKLA's Constitution of India, Mahendra Pal Singh, Eastern Book Company, p. 108

⁴⁷ Subs. By the Constitution (7th Amendment) Act, 1956. S. 29 and Sch., for 'under any state specified in the First schedule or any local or other authority within its territory, any requirement as to residence within that State'

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion⁴⁸, with consequential seniority, to any class or classes of posts in the services under the State in favor of Scheduled Castes and Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.⁴⁹

(4 B) ⁵⁰Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are served for being filled up in that year in accordance with any provision for reservation made under clause(4) or clause(4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent, reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law, which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favor of any econ economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent, of the posts in each category.

The reservation provisions for job promotions, was broadened by the (77th Constitutional Amendment) Act, 1995⁵¹. This benefitted to the individuals belonging to the Scheduled Caste and Scheduled Tribes. From 1955 onwards the Scheduled Castes and Scheduled Tribes were provided reservation in the promotions. In *Indra Sawhney and others v. Union of India and others*,⁵² the Supreme Court of India restricted the reservation of posts in appointments under Article 16(4) of the constitution of India, This, was to initial appointments only. The supreme court cleared

⁴⁸ Ins. By the Constitution (85th Amendment) Act, 2001, S.2 (w. e. f. 17-6-1995)

⁴⁹ Ins. By the Constitution (77th Amendment) Act, 1995, S. 2.

⁵⁰ Ins by the Constitution (81st Amendment) Act, 2000. S. 2

⁵¹ <https://www.india.gov.in> (Last visited on 24.5.2025)

⁵² AIR 1993 SC 477

that this will not affect that the reservation in matters of promotions. This Supreme Court decision raised the eye brows of many as this decision was detrimental to the Scheduled Castes and Scheduled Tribes. The reservations in promotion for the Scheduled Castes and Scheduled Tribes necessary as these castes are not achieved the representation in the services at the expected level.

The government continued the prevailing policy of reservations in the promotion of the SCs/STs in order to safeguard these groups. In order to achieve the desired goal, it was become inevitable to amend article 16 of the constitution. The (77th Constitutional Amendment) Act,⁵³ was passed in 1995 for incorporating article 4A. After the amendment, clause 4A has been added to article 16 of the constitution of India. The constitution (81th Constitutional Amendment) Act⁵⁴, has been passed in 2000 to protect the reservation of the SCs and STs in the backlog of vacancies. A new clause 4(B) has been incorporated to article 16 of the constitution of India. The new Article conferred authority on state governments to treat the unfilled reserved vacancies from one year as a separate class of vacancies to be filled in the following year or years. This modification eliminated the 50% cap on reservations for backlog vacancies.⁵⁵ The major aim of (85th constitutional Amendment) Act, 2002⁵⁶, was to increase the benefits of the Scheduled Castes and Scheduled Tribes in matters of promotion, with consequential seniority, in clause (4A) of the article 16 of the constitution of India. Article 16 provides equality in opportunity of employment for all the citizens of India. There are six clauses under this article. Clause 1 and 2 talks about equality of opportunity and clause 3 to 6 are the exceptions of clause 1 and 2 of this article.

2.4. Article 15 of the constitution of India⁵⁷

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

⁵³ <https://www.india.gov.in> (Last visited on 24.5.2025)

⁵⁴ <https://www.india.gov.in> (Last visited on 24.5.2025)

⁵⁵ <https://www.india.gov.in> (Last visited on 24.5/2025)

⁵⁶ <https://www.india.gov.in> (Last visited on 24.5.2025)

⁵⁷ V.N. SHUKLA's Constitution of India, Mahendra pal Singh, Thirteenth Edition, EBC, p. 88

- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:
- (a) access to shops, public restaurants, hotels and places of public entertainment⁶; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (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.⁵⁸
- (5) Nothing in this article or in sub-clause(g) of clause(1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause(1) of article 30.⁵⁹
- (6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making –
- (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
 - (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses(4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or

⁵⁸ Added by the Constitution (1st Amendment Act), 1951, S. 2

⁵⁹ Ins. By the Constitution (93rd Amendment Act), 2005, S.2 (w. e. f. 20-1-2006)

unaided by the State, other than the minority educational institutions referred to in clause(1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten percent, of the total seats in each category.

Explanation: - For the purposes of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. The (first Constitutional (Amendment) Act, 1951⁶⁰, made several changes to the fundamental rights part of the Indian constitution. It was made clear that the right to equality does not preclude passing laws that give special consideration to society’s most vulnerable groups. Article 15(3) was expanded to prevent any special provisions made by the State for the social, economic, or educational progression of any disadvantaged class of citizens from being contested based on discrimination. The (constitution 93rd Amendment) Act, 2005, added clause (4) to article 15.⁶¹It was argued that state has the authority for the upliftment of any socially and educationally disadvantaged sections of the society, as well as to the scheduled castes and scheduled tribes, with respect to their enrolment to academic institutions, except minority institutions.

2.5. Article 46 of the constitution of India⁶²

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

2.6. Article 340 of the constitution of India⁶³.

Appointment of a Commission to investigate the conditions of backward classes

- (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

⁶⁰ <https://www.india.gov.in> (Last visited on 24.5.2025)

⁶¹ <https://www.india.gov.in> (Last visited on 24.5.2025)

⁶² V.N. SHUKLA’s Constitution of India, Mahendra Pal Singh, Thirteenth edition. P. 379

⁶³ V. N. SHUKLA’s Constitution of India, Mahendra pal Singh, Thirteenth edition, P. 1011

they labor 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 so 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, 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 think 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 each House of Parliament

2.7. First backward classes commission of 1953

Identifying who is “Backward Class” was not that much simple. Identification was conducted by the National Backward Class Commission which was appointed to identify ‘backward class of citizens’ as contemplated under Article 16(4) for the purpose of making reservation of appointments or posts in the government services. This Commission was first National Backward Class Commission named as Kaka Kalelkar Commission, appointed in 1953⁶⁴. This Commission⁶⁵ was constituted under Article 340 on 29.1.1953, when Pandit Jawahar Lal Nehru was the Prime Minister of India.⁶⁶

⁶⁴ Backward Class reservation and concept of creamy layer, Dr. PALLAVI GUPTA, powered by Dr. N. VEERAPPA MOILY.

⁶⁵ Reservational Justice to other backward Classes (OBCs): Theoretical and practical issues, ANIRUDH PRASAD. Deep and Deep Publications, New Delhi (ed. 1997), p 30

⁶⁶ Chairman KAKA Saheb KALELKAR
Shri. NARAYAN SADOBA KAHRIKJAR(MP) Member
Shri. BHEEKA BAI (MP) Member
Shri. DAYAAK SINGH CHAURASIYA, Member
Shri. RAJESHWAR PATEL, Member
Shri. AABDUL QAYUM ANSARI (MLA, Bihar) member
Shri. T. MARIAPPA, (MLA, Mysore) member
Shri. LALA JAGANNATH, member
Shri. ATMA SINGH NAMBHARI (MP), member
Shri. NRM SWAMY (MP), member
Shri. ARUNOMGHRHU DEY, member

The First National Backward Class Commission was asked to investigate the following to identify who are the backwards and who are not. Their task was enumerated here under:

- a) To determine the criteria to be adopted in considering whether any section of the people (in addition to the 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. Prepare a list of such classes in accordance with such criteria their approximate members and their territorial distribution.
- b) Investigate the conditions of all such socially and educationally backward classes and difficulties they are facing. Make recommendations.
 - i) to take steps by the Union or any State government to remove such difficulties to improve their condition;
 - ii) Grants that should be made for the purpose by the Union or any State government and the conditions subject to which such grants should be made;
 - iii) Investigate such matters as the President may hereafter refer to them; and
 - iv) To present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

After in depth study for two years the findings of the Commission were as following:⁶⁷

1. The Commission used the term ‘classes’ as if it were synonymous with ‘castes’ and ‘communities’ and prepared a list of backward classes on the basis of the caste. The commission listed 2,399 backward castes and communities out of which 837 backward castes and communities out of which 837 castes as ‘most backward castes’ for the purpose of development and upliftment and remaining 1562 castes as only backward castes. Out of these 2,399 castes of 913 castes accounted for an estimated population of 115millions (about 32% of the total

⁶⁷ Report of the Commission for the Scheduled castes and Scheduled Tribes 10th Report part I, p. 317 (1960-61).

The lists of backward Classes specified in Vol. II of the Report of BCC. Gazette of India, Extraordinary. 31.1.53

population of India).⁶⁸ About 70% of India Population was considered as backward. Commission recommended various measures to be taken for their economic and social advancements.

2. Commission identified various causes of educational backwardness among backward communities, as under:
 - i) Traditional lack of interest for education, on account of social and environmental conditions or occupational handicaps;
 - ii) Poverty and lack of educational institutions in rural areas;
 - iii) Living in inaccessible areas;
 - iv) Lack of adequate educational aids such as free studentships, scholarships and monetary grants.
 - v) Lack of residential hostel facilities.
 - vi) Unemployment among the educated which acts as a damper on the desire of the members to educate their children.
 - vii) Defective educational system which does not train students for appropriate occupations and professions.⁶⁹
3. The commission laid down the following four tests or criteria for classifying socially and educationally backward classes.⁷⁰
 - I) Low social position in the traditional caste hierarchy of Hindu Society;
 - II) Lack of general educational advancement among the major section of a caste or community;
 - III) Inadequate or no representation in government services; and
 - IV) Inadequate representation in the field of trade, commerce and Industry;
4. Commission suggested following measures for eradication of evils of backwardness as under:
 - a) A clear enunciation and effective implementation of the policy of social solidarity and national progress;
 - b) Necessary legislation on marriage and inheritance;
 - c) Prohibition of social disabilities by law;

⁶⁸ Report of the commission for the Scheduled Castes and Scheduled Tribes 10th Report part I, p.317(196061) The lists of backward Classes specified in Vol. Ii of the Report of BCC, Gazette of India, Extraordinary Dt. 31.1.1953.

⁶⁹ Ibid., at 30-31

⁷⁰ Ibid., at 31.

- d) Arrangement for production and distribution of literature on social problems;
 - e) Liberal use of the press, films, platforms and radio for removal of social evil;
 - f) Prohibition of all observances tending to promote caste feelings in governmental activities;
 - g) Reorganization of the educational system with special emphasis on the dignity of the manual labor;
 - h) Full assistance to promote education as speedily as possible among the backward classes;
 - i) Adequate representation in government services and the government-controlled establishments of these sections who had no chance so far; and
 - j) Encouragement of art, literature, special cultural groups and assistance and promotion of cultural activities with this social end in view.⁷¹
5. Important recommendations made by the Commission are as under:
- a) The government of India should undertake caste-wise record of population in the census of 1961;
 - b) It should seek to relate social backwardness of a class to its low position in the traditional caste hierarchy of Hindu society.
 - c) All women should be treated as 'backward' and subject to great social hardships, the Commission recommended the following measures for their upliftment:
 - i) Free education at all levels to all girls whose parent's income is less than Rs.3000 per annum;
 - ii) Scholarship for girls belonging to the backward classes;
 - iii) Residential Hostels for girl students, with priority for girls of backward classes.
 - iv) Samata Ashrams for girls of all communities to be run by trained staff of women and men;
 - v) Creation of special facilities for girls to study medicine, home sciences and other subject specially;

⁷¹ Backward Classes Commission Report Vol. I, pp. 106 – 7.

- vi) More facilities for training women in the fine arts and in social services;
- vii) Reformative measures for women, rescue homes and social workers involvement in tackling women problems to be encouraged.⁷²
- d) Reservation of 70% seats in all medical, scientific and technical and professional institutions for qualified students of backward classes.⁷³
- e) Minimum reservation of vacancies in all government services and local bodies for the listed backward classes and communities on the following scale:
At least 25% in class I.
33.5 in class II, and
40% in class III.⁷⁴

6. The commission suggested the creation of a separate ministry for Welfare Backward Classes.⁷⁵

The commission's report faced criticism from various corners. It was alleged that the data collected was not adequate on caste line and it was in doubtful. Caste-wise figure was available only up to year 1941 because in 1951 the caste enumeration in the census records was abandoned. The caste-wise data on income and occupation was not available to the Commission. Nor the data of representation in services was not there. In the absence of reliable data, the only option was to rely on the statistics available from various governments⁷⁶

The Commission concluded based on the existing list of backward classes⁷⁷. The commission also included in its list even few financially to do communities considering their educational backwardness. The Commission realized that the backward classes faced problem in the rural India is a reality.⁷⁸ They gave importance on 'caste' in the classification of the other backward classes. It understood that "Indian society is not built on economic structure but on the ideas of varna, caste and a social hierarchy."⁷⁹ The

⁷² Reservational Justice other backward classes (OBCs): Theoretical and practical issues, ANIRUDH PRASAD, Deep and Deep Publications, New Delhi (ed. 1997) p. 32

⁷³ 1st BCC at p XIII, p. 125

⁷⁴ Ibid., at 140, the Commission prepared only one list both for the purposes of article 15(4) and 16(4)

⁷⁵ Ibid., at 143

⁷⁶ 1st BCC at 8, 47

⁷⁷ Ibid.

⁷⁸ 1st BCC at 55.

⁷⁹ Ibid., at 39

Commission concluded that the evils of caste could be removed by measures which could be considered in terms of caste along.⁸⁰ It observed: “We tried to avoid caste in the present prevailing conditions. We wish it were easy to (disassociate) separate caste from social backwardness at the present juncture”.⁸¹ The menace of caste system could be eliminated only by taking caste into account.⁸² “Three of the members⁸³ (Anup Singh, Arungshu De and PG Shah) were opposed to one of the most crucial recommendations of the commission, that is, the acceptance of caste as a criterion for determining the social backwardness and reservation of posts in government services” on that basis.⁸⁴

The Chairman revealed regarding Commission’s work. In his clarification Kaka Kalelkar observed, “My eyes were, however opened to the dangers of suggesting remedies on caste basis when I discovered that it is going to have a most unhealthy effect on the Muslim and Christian section of the nation.”⁸⁵ Repudiating the caste criterion the Chairman observed: “Once we eschew the principle of caste it will be possible to help the extremely poor and deserving from all communities. Care of course must be taken to give preference to those who come traditionally neglected classes”.⁸⁶ The Chairman said that” backwardness could be determined by factors other than caste, such as poverty, residence and occupation. He made a statement in favor of declassifying those members of the once-designated backward classes who have attained sufficient economic and educational advancement.⁸⁷” He rejected the caste, as criteria but as a unit for classification. He found caste criteria as a barrier to democracy and inimical to the creation of a casteless and classless society.⁸⁸

⁸⁰ 1st BCC at p. XIII (Extract of the following letter of the Chairman).

⁸¹ Ibid., at 41

⁸² In certain writing on the work of the Backward Classes Commission also the similar views have been expressed. Like Nirmal Kumar Bose, “who are the Backward Classes”, 34(2) men in India 89, 98 (2954); Nabendu Data Majumdar, “the Backward Classes Commission and its work” in social welfare in India (issued by the planning Commission), New Delhi (1960)

⁸³ ANUP SINGH, ARUNGHSU DE and PG SHAH

⁸⁴ Report of the Backward Classes Commission, (Chairman BP MANDAL), Part I, II, New Delhi 1981, p.1 (hereinafter cited as MANDAL Commission Report)

⁸⁵ 1st BCC at VI

⁸⁶ Ibid., at VII

⁸⁷ Ibid., at VIII

⁸⁸ Ibid., Besides the Chairman, three members also repudiates the Caste Criteria and favoured economic test, ANUP SSINGH, 3 BCC at 4, ARUNGHSU DE Ibid, at 5, PG SHAH Ibid., at 7.

The report of the Commission was laid before the Parliament on September 3, 1956, it was objected by many and criticized the government.⁸⁹ The use of caste test will generate “the dangers of separatism⁹⁰ and “the greatest hindrance in the path to country’s progress towards egalitarian society”.⁹¹ Govind Ballabh Pant, then Home Minister in the Government of India, was totally against caste-based reservation⁹². In fact, the Commission had failed to provide ‘positive and workable criteria’.⁹³ The only way was further investigation. It was advised that the State governments were to undertake ad-hoc surveys to determine number of backward classes in the states. In the mean-time to give “all facilities” to backward classes “in accordance with their existing lists and also, to such others who in their opinion deserve to be considered as socially and educationally backward in the existing circumstances”.⁹⁴

The report of Kaka Kalelkar Commission was finally discussed in 1965. The Government once again condemned caste criteria as shadow on the Constitution. And the Centre decided not to make any list “Backward Class/Other Backward Classes”. The States were advised to prepare their own lists using economic criteria rather than to go by caste⁹⁵ because for this it had support of the judiciary.⁹⁶

2.8. Second Backward Class Commission.

After the emergency period the Janata Party came to power. Once again to find out a suitable, criteria for defining backward classes the second National Backward Class Commission was constituted⁹⁷. This commission was constituted under Article 340 of the Constitution of India on 20.12.1978 under the Chairmanship of BP Mandal, who was renowned politician from Bihar, a previous Chief Minister of Bihar and leader of other backward classes.

⁸⁹ Government of India: Ministry of Home Affairs, Memorandum on the Report of the Backward Classes Commission; 1-5 (1956).

⁹⁰ Ibid., at 3 - 4

⁹¹ Ibid., at 3.

⁹² Backward class reservation and concept of creamy layer, Dr. PALLAVI GUPTA powered by VEERAPPA MOILY

⁹³ Ibid.

⁹⁴ Ibid, pp 4-5. Letters of Ministry of Home Affairs to Chief Secretaries of all State Governments/UT Aug. 14 1961.

⁹⁵ Government of India: Ministry of Home Affairs, 38 (1962)

⁹⁶ MR Balaji v. State of Mysore, 1963 AIR 649

⁹⁷ Backward class reservation and concept of creamy layer, Dr. PALLAVI GUPTA, powered by VEERAPPA MOILY.

The Mandal Commission was tasked to investigate the following:⁹⁸ i) to determine the criteria for defining the socially and educationally backward classes; ii) to recommend steps to be taken for the advancement of the socially and educationally backward classes; iii) to examine of making provision for the reservation of appointments or posts in favor of such backward classes of citizens who are not adequately represented in public services and posts under Union or any State; and iv) to submit a Report of their findings and its recommendations. The Commission was also advised to examine the recommendations of the earlier commissions. The commission travelled length and breadth of the country. Visited many states concerned to gather information about the socio-economic field survey already conducted. The commission adopted a multilateral approach to the collection of data⁹⁹. The commission issued detailed questionnaire to all the State governments and Union Territories and Ministries and departments of the government of India. All the agencies put lot of effort and compiled the data and provided to the commission¹⁰⁰.

The commission referred various case laws such as Balaji¹⁰¹, Periakaruppan¹⁰², Jayasree¹⁰³ and summed up their view after studying the situation regarding the other backward classes in various states as under:¹⁰⁴ i) Tamil Nadu and Karnataka had a long history of Backward Classes movements and various measures for their welfare were taken in a phased manner. In Uttar Pradesh and Bihar such measures did not mark the culmination of a mass movement. ii) In the South the forward communities have been divided either by the classification schemes or politically or both. In Bihar and UP the GOs have not divided the forward classes. iii) In the South, clashes between Scheduled Castes and the Backward peasant castes have been rather mild. In the North there resulting in acts of violence. This has further weakened the backward classes solidarity in the North. iv) In the non-Sanskritic south, the basic Varna cleavage was between Brahmins and non-Brahmins and Brahmins consolidated only about 3 per cent of the population. In the Sanskritic North, there was no sharp cleavage between the forward castes and together they constituted nearly 20 per cent of the population. In view of

⁹⁸ Mandal Commission report, p. (vii)

⁹⁹ Mandal Commission report, p.(vii)

¹⁰⁰ Mandal Commission Report, p.(ix), chapter I, p. 1

¹⁰¹ MR Balaji v. State of Mysore, 1963 AIR 649

¹⁰² Periakaruppan v. State of Tamil Nadu, 1971 AIR 2303

¹⁰³ KS Jayasree v. The State of Kerala, 1976 AIR 2381

¹⁰⁴ Mandal Commission report, chapter I, p. 6 - 11

this the higher castes in UP and Bihar were in a stronger position to mobilize opposition to backward class movement. 1. Owing to the longer history and better organization of Other Backward castes in the South, they were able to acquire considerable political clout. Despite the lead given by the Yadavas and other peasant castes, a unified and strong OBC movement has not emerged in the North so far. 2. The tradition of semi-feudalism in, Uttar Pradesh and Bihar have enabled the forward castes to keep tight control over smaller backward castes and prevent them from joining the mainstream of backward classes movement. This is not so in the south. 3. The economies of Tamil Nadu and Karnataka have been expanding relatively faster. The private tertiary sector appears to be growing. It can shelter many forward caste youths. Also, they are prepared to migrate outside the State. The private tertiary sectors in Bihar and UP are stagnant. The forward caste youth in these two States have to depend heavily on Government jobs. Driven to desperation, they have reacted violently.

The commission's studies regarding the other backward classes were their social, educational, and financial condition and representation in the government services. As a result of the above exercise the commission evolved eleven Indicators or criteria for determining social and education backwardness. These indicators were grouped under three broad heads. They are Social, Educational and Economic. The indicators are: A, Social¹⁰⁵ i) Castes/Classes considered as socially backward by others. ii) Castes/Classes which mainly depend on manual labor for their livelihood. iii) Castes/Classes where at least 25% females and 10% males above the State average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas. iv) Castes/Classes where participation of females in work is at least 25% above the State average. B, Educational¹⁰⁶ i) Castes/Classes where the number of children in the age group of 5 – 15 years is at least 25% above the State average. ii) Castes/Classes where the rate of student drop-out in the age group of 5 – 15 years is at least 25% above the State average. iii) Castes/Classes where the average value of family assets is at least 25% below the State average. C. Economic¹⁰⁷ i) Castes/classes where the average value of family assets is at least 25% below the State average. ii) Castes/Classes where the number of families living in Kuccha houses is at least 25% above the State average. iii)

¹⁰⁵ Mandal Commission report, Chapter XI, p. 52

¹⁰⁶ Mandal Commission report, Chapter XI, p. 52

¹⁰⁷ Mandal commission report, Chapter XI, p.52

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

As the above three groups are not of equal importance for our purpose, separate weightage was given to Indicators in each group. The commission has adopted a multiple approach for the preparation of comprehensive lists of Other Backward Classes for all the States and Union Territories main sources examined for the preparation of these lists were:¹⁰⁸ i) Socio-educational field survey; ii) Census Report of 1961 (particularly for the identification of primitive tribes, aboriginal tribes, hill tribes, forest tribes and indigenous tribes); iii) Personal knowledge gained through extensive touring of the country and receipt of voluminous public evidence as described, and iv) Lists of OBCs notified by various State Governments.

Report of Mandal Commission was, submitted on December 31, 1980, divided into VII Volume. Volume I is related with main report and recommendations. Vol II is related with composition and terms of reference of the first Backward Class Commission; Vol III is related with study prepared by the Indian Law Institute; Vol IV is related with analysis of the Court and legislative debates leading to the first amendment of the Indian Constitution, summary of cases under article 15(4). Constituent assembly debates and summary of Court cases under Article 16(4), and analysis of cases under 15(4); Vol. IV is related with report of the State Backward Class Commission, summary and conclusions; Vol V is related with socio-educational survey tables; Vol VI is related with state-wise list of other backward classes; Vol VII is related with minute of dissent.¹⁰⁹

The recommendations made by the commission are:¹¹⁰

Reservation: It is not at all contended 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 fought in the minds of the backward people. India Government service has always been looked upon as a symbol of prestige and power. By increasing their representation of OBCs in Government services, we give them a immediate feeling of participation in

¹⁰⁸ Mandal Commission report, Chapter XII, p. 54

¹⁰⁹ Mandal commission report.

¹¹⁰ Mandal commission report, Chapter XIII, p. 57 - 58

the governance of this country. When a backward class candidate becomes Collector or a Superintendent of Police, the material benefits accruing 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 the backward class candidature feels socially elevated. Even when no tangible benefits that flow to the community at large, the feeling that now it has its own man in the corridor of power acts as morale booster.

It is no doubt true that the major benefits of reservation and other welfare measures for Other Backward classes will be concerned by the more advanced sections of the backward communities. But it is not this a universal phenomenon. It is true that reservation for OBCs will cause a lot of heart burning to others. But should the mere fact of this heart burning be allowed to operate as a veto against social reform. It burns the hearts of all whites when the black protest against apartheid in South Africa. When a higher-castes constituting less than 20% of the country's population subjected the rest to all manner of social injustice, it must have caused a lot of heart burning to the lower castes. But now that the lower castes are asking for modest share of the national cake of power and prestige, a chorus of alarm is being raised on the places that this will cause heart burning to the ruling elite. Of all the spacious arguments advanced against reservation for backward classes, there is none which beats this one about heart burning in sheer sophistry.

2.9. Quantum of reservation and scheme of Reservation.¹¹¹

Scheduled Castes and Scheduled Tribes constitute 22.5% of the country's population. Accordingly, a pro-rata reservation of 22.5% has been made for them in all services and public sector undertakings under the Central Government. In the States also reservation for SCs and STs is directly proportional to their population in each State.

As stated in the last chapter¹¹² the, both Hindu and non- Hindu is around 52% of the total population of India. Accordingly, 52% of all posts under the Central Government should be reserved for them. But this provision may go against the law laid down in a number of Supreme Court judgements wherein it has been held that the total quantum of reservation under Articles 15(4) and 16(4) of the constitution of India should be below 50%. In view of this the proposed reservation for OBCs would have to be pegged

¹¹¹ Mandal commission report, Chapter XIII, p. 58

¹¹² Para 12.22

at a figure which, when added to 22.5% for SCs and STs remains below 50%. In view of this legal constraint, the Commission is obliged to recommend a reservation of 27% only, even though their population is almost twice this figure.

States which have already introduced reservation for OBCs exceeding 27% will remain unaffected by this recommendation.

With the above general recommendation regarding the quantum of reservation, the Commission proposes the following over-all scheme of reservation for OBCs: i) Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27%. ii) The above reservation should also be made applicable to promotion quota at all levels. iii) Reserved quota remaining unfilled should be carried forward for a period of three years and de-reserved thereafter. iv) Relaxation in the upper age limit for direct recruitment should be extended to the candidate of OBCs in the same manner as done in the case of SCs and STs v) A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently one in respect of SC and ST candidates.

The above scheme of reservation in its totality should be made to all recruitment to public sector undertakings, both under the Central and State governments, and also to nationalized banks. All private sector undertakings which have received financial assistance from the government should also be obliged to recruit personnel on the aforesaid basis.

All universities and affiliated colleges should also be covered by the above scheme of reservation. In order to give proper effect to the above recommendations, required statutory provision are made by the government to amend the existing enactments, rules, procedures etc.

Educational Concessions:¹¹³

Various State governments are giving a number of educational concessions to Other Backward Class students¹¹⁴ like exemption of tuition fees, free supply of books and clothes, mid-day meals, special hostel facilities stipends, etc. It is well known that most backward class children are irregular and indifferent students and their drop-out rate is

¹¹³ Mandal commission report, Chapter XIII, p. 58 - 59

¹¹⁴ Chapter IX paras 9.30 – 9.33

very high. It is also known that even if all the facilities are provided to OBC students, they will not be able to compete with others in securing admission to technical and professional institutions. In view of this it is recommended that seats should be reserved for OBC students in all scientific, technical and professional institutions run by the central as well as the state governments. This reservation falls under Article 15(4) of the constitution and the quantum of reservation should be the same as in the government services i.e. 27%. Those states which have already reserved more than 27% seats for OBC students will remain unaffected by this recommendation.

Financial Assistance:¹¹⁵

The share of OBCs in the industrial and business sector of the country is negligible and this contemplates their extremely low-income levels. As a part of over-all strategy to uplift the backward classes, it is imperative that all State governments are suitably advised and encouraged to create a separate network of financial and technical institutions for foster business and industrial enterprise among OBCs.

Structural changes:¹¹⁶

The root of the problem of the OBCs shall be attended otherwise all efforts will be in vain. Most of the small land-holders, tenants, agricultural laborers, are reeling under acute financial constraints and poor the village artisans, unskilled workers, etc. belong to Scheduled Castes, Scheduled Tribes and Other Backward Classes. Apart from social traditions, they are dominated by the money lenders and others through informal bondage which arises mainly through money-lending, leasing out of small bits of land and providing house-sites and dwelling space to poor peasants. Due to the above situation even if their numbers are high, the backward classes continue to remain in mental and material bondage of the higher castes and rich peasantry. Even after the coming into being of the constitution, nearly 3/4th of the country's population, Scheduled castes, Scheduled Tribes and Other backward Classes could not acquire political clout, even though adult franchise was introduced more than three decades back.

¹¹⁵ Mandal commission report, Chapter XIII, p. 59 - 60

¹¹⁶ Mandal commission report, Chapter XIII, p. 60

Through the monopoly of means of production the higher castes are able to manipulate and coerce the backward classes into acting against their own interests. The commission's firm conviction that a radical transformation of the existing production relations is the most important single step that can be taken for the welfare and upliftment of all backward classes. The commission therefore strongly recommends that all the State governments should be directed to enact and implement progressive land legislations so as to affect basic structural changes in the existing production relations in the countryside.

Certain sections of some occupational communities like Fishermen, Banjaras, Bansforas, Khatwes etc. still suffer from the stigma of untouchability in some parts of the country. They have been listed in OBCs by the Commission but their inclusion in the lists of Scheduled Castes/Scheduled Tribes may be considered by the Government. Backward classes Development Corporation should be set up both at the Central and State levels to implement various, socio-educational and economic measures for their advancement. A separate Ministry/Department for OBCs at the Centre and States should be created to safeguard their interests. With a view to giving better representation to certain very backward sections of OBCs like the Gaddis in Himachal Pradesh, Neo Budhists in Maharashtra, Fishermen in the Coastal areas, Gujjars in J&K, it is recommended that areas of their concentration may be carved out into separate constituencies at the time of delimitation. At present no Central Assistance is available to any State Government for implementing any welfare measures for Other Backward Classes. The Commission fully shares the views of the State Governments in this matter and strongly recommends that all development programmes specially designed for Other Backward Classes should be financed by the Central Government in the same manner and to the same extent as done in the case of Scheduled Castes and Scheduled Tribes.

Regarding the period of operation of the commission's recommendations, the entire scheme should be reviewed after twenty years. We suggest that this span of one generation, as the raising of social consciousness is generational progress. Any review in a shorter interval would be rather arbitrary and will not give a fair indication of the impact of our recommendations on the prevailing status and life-styles of OBCs¹¹⁷.

¹¹⁷ Mandal commission Report, Chapter, XIII, p. 60, para 13.40

The recommendations Mandal commission has been implemented by VP Singh government at the center despite of huge agitations. The decision of the central government had been challenged in the Supreme Court of India through Indra Sawhney v. Union of India¹¹⁸. The Supreme court given substantial rulings with regard to the OBC reservation. The OBC reservation finalized as 27%, total reservation 50%, and importantly the principle of exclusion of creamy layer from the OBC reservation. The Mandal Commission summarized their findings and made a comprehensive report and submitted to the central government for evaluation and implementation. The central government elaborately studies the report and took action for further implementation.

2.10. Conclusion.

The reservation in India has been the instrumental in promoting inclusive development and providing the historically marginalized communities relief. It represents the commitment of the country to repair deep rooted socio-economic disparities and promoting more just and equitable society. Judicial interpretations and policy decision paved way for evolution of the present reservation system in India. The periodic changes and refining of the reservation system is necessary to achieve progress and equitable growth and social justice. By balancing the principles of merit and equal opportunity as defined by the constitution the reservation upholds inclusive growth and the spirit of the constitution.

¹¹⁸ AIR 1993 SC 477

CHAPTER – 3

RESERVATION AND JUDICIAL INTERPRETATION

3.1. Introduction

The reservation in India is affirmative action that provides historically disadvantaged communities representation in education, employment and legislatures. While the constitution was incepted the reservation benefits were provided to Scheduled Castes, and Scheduled Tribes. Presently in addition to the Scheduled Castes and Scheduled Tribes, Other Backward Classes and Economically weaker sections are also availing the benefits of reservation. The reason for providing reservation was to achieve India's commitment to social justice and equality. It was the duty of the government to bring the marginalized sections to the mainstream. Articles 15 and 16¹¹⁹ incorporated in the constitution in order to provide them opportunity by way of reservation and make them at par with the other advanced sections of the society. However, the scope, implementation, and evolution of the reservation would not have been possible without judicial scrutiny. The judiciary played pivotal role in shaping, modifying, redefining the affirmative action through its landmark judgements. It was spanned from Champakam Dorairajan, Janhit Abhiyan and Davinder Singh cases. In all the cases judiciary addressed complex questions concerning extent of reservation, creamy layer exclusion, sub-classification and introduction of EWS reservation based on economic criteria. Judiciary's role in shaping jurisprudence of affirmative action was significant.

3.2. Judicial Intervention on Reservation

Judiciary is one of the three organs of the state, which was conferred power by the constitution of India to safeguard the interests of the citizens. Key supreme court judgements are discussed in this chapter with greatest emphasis on reservation and creamy layer exclusion in OBC reservation. In independent India, the Supreme Court of India intervened in the matter of reservation since 1950 onwards. The first reservation case came before the Supreme court was State of Madras v. Champakam Dorairajan¹²⁰. The fact of the case was that the Madras government issued communal GO in which seats were reserved in educational institutions for different communities.

¹¹⁹ MP JAIN Indian Constitutional Law, 7th edition, p. 932 – 991, Lexis Nexis

¹²⁰ AIR 1951 SCR 525

This was based on caste and religion. The Brahmins (2%), Muslims (1%), Christians (1%), Harijans (2%), Backward Hindus (6%), and Non-Brahmin-Hindus (6%). This order has been challenged by Champakam Dorairajan who was as Brahmin girl. She challenged in her petition that her fundamental rights under Article 15(1) and Article 29(2) of the Constitution of India is infringed. Supreme court struck down the Communal GO promulgated by the Madras government saying it is unconstitutional. The decision of this case led to the first amendment of the constitution of India and the first amendment incorporated clause (4) in Article 15¹²¹ of the constitution.

After the enactment of the above (first constitutional Amendment) Act.¹²² MR Balaji and others v. State of Mysore¹²³ was the first case came up before the Supreme Court of India. The fact of the case was, an order of the Mysore Government reserved seats for backward classes and more backward classes in medical and engineering colleges on the basis of caste. This was in addition to the reservation of seats for the Scheduled Castes (15%) and for the Scheduled Tribes (3%). Backward and more backward classes classifications were made on the basis of caste and communities. In this case the main issue before the Supreme court was that the caste has been made sole criteria for determining social and educational backwardness. The Supreme court in this case held that reservation should not exceed 50% to maintain a balance between social justice and meritocracy, ensuring fair opportunities for all.

Then in N.M Thomas v. State of Kerala,¹²⁴ the Supreme court delivered a remarkable judgement. The fact was that the Kerala Government made rules saying that promotion from the cadre of lower division clerks to the higher cadre of upper division clerks depended on passing test within two years. For SC/STs, exemption could be granted for a longer period. These classes were given two extra years to pass the test. This exemption was challenged as discriminatory under Article 16(1) on the ground that Art.16 permitted only reservation in favor of backward classes but it was not a case of reservation of posts for SC/STs under Article 16(4) and that these persons were not entitled to any favored treatment in promotion outside Article 16(4). The Supreme court upheld the rule and said it is constitutionally permissible. The court reasoned that

¹²¹ MP JAIN Indian Constitutional Law, 7th edition, p. 932

¹²² <https://legislative.gov.in>, (Last visited on 24.5.2025)

¹²³ AIR 1963 649

¹²⁴ 1976 AIR 490

Article 16(4) which permit preferential treatment for backward classes, does not contradict Article 16(1) but rather reinforces it.

The implementation of Mandal Commission recommendation was challenged in *Indra Sawhney v. Union of India*,¹²⁵ saying that the implementation of the Mandal commission recommendation is unconstitutional. This case was land mark and the Supreme Court of India given directions to the government of India, State government and the Administration of Union Territories. A) Government of India, each state government and Administration of Union territories, within 4 months constitute a permanent body for entertaining, examining and recommending requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. B) Within 4 months government of India specify basis for applying socio economic criteria to exclude socially advanced persons/sections (Creamy Layer) from other backward classes. Not applied to states reservation already in operation.¹²⁶ All objections to the criteria as well as the classification among backward classes and equitable distribution of the benefits of the reservation has been settled by the Supreme Court in this case. *Indra Sawhney* was a landmark judgement and it shaped the landscape of the reservation system in India. The formulation of creamy layer principle was the significant step towards social justice and inclusiveness. In many of the Supreme Court judgements had held that the reservations for backward classes was an exception to the general rule laid down by Art 16(1) and (2), therefore such reservation should not exceed 49 percent of the vacancies available for open competition.

Dr. BR Ambedkar, the architecture of the Constitution of India has pointed out that the equality of public employment was the rule and reservation was an exception and that the exception could not be allowed to swallow up the rule.¹²⁷ The reservation exceeding 49 percent had been permitted by the Supreme Courts's Judgement in *NM. Thomas v. State of Kerala*¹²⁸, on the ground that Scheduled Castes were not castes in a real sense and the Art. 16(4) was not an exception. Krishna Iyer J. who had propounded this theory abandoned it in the *Karma Chari Sangh*¹²⁹ case in which he held that they were

¹²⁵ AIR 1993 SC 477

¹²⁶ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

¹²⁷ <https://legislative.gov.in> (last visited 24.5,2025)

¹²⁸ 1976 ASC 490

¹²⁹ 1981 ASC 293

castes and in any event Art. 16(4) was an exception.¹³⁰ Again in *KC. Vasant Kumar v. Union of India*,¹³¹ the question of correct interpretation of Article 16 was raised. Article 335 of the constitution provides for consideration of the claims of backward classes in making appointments to services and posts in connection with the services of the Union and of a State, consistently with the maintenance of efficiency of administration.¹³² Therefore, these arrangements to be made without compromising the quality.

3.3. Articles 15 and 16 - A New Approach.

A new approach has been taken by the Supreme Court after *Thomas*¹³³ case in *Karam Chari Sangh*¹³⁴ Case. Till the majority decision in *Thomas's* case¹³⁵ there was a consensus in Supreme Court decisions that the reservation permitted by Arts. 16(4) and by Art.15(4) must be less than 50 percent, subject to a minimum adjustment. There was a lone dissent in *Devadasan's*¹³⁶ case was from Subba Rao J. He propounded the theory of "legislative device". However, in the *Karmachari Sangh Case*¹³⁷ Krishna Iyer J. abandoned the theory of "legislative device" and accepted the position that Art.16(4) was an exception to Art. 16(1). However, *Thomas's*¹³⁸ case, this has got a blow as it was held by a majority that Art.16(4) was not an exception.

3.4. Reservation.

The Supreme court observed in *State of Kerala & Anr v. NM Thomas & Ors*¹³⁹ that Article 15(1) of the constitution of India would have come in the way of making favourable provisions for backward sections of society. The Madras government issued an order (properly known as communal GO) allotting seats in the State medical colleges community-wise. It has been challenged in *The State of Madras v Champakam Dorairajan and Others*¹⁴⁰, The Supreme Court of India was declared this GO invalid because it classified students merely on the basis of 'caste' and 'religion' irrespective

¹³⁰ Para 9, 280 to 9,287para

¹³¹ AIR 1985 1495

¹³² Backward class reservation and concept of creamy layer, Dr. PALLAVI GUPTA, powered by Dr. VEERAPPA MOILY.

¹³³ *State of Kerala v. NM. Thomas*, 1976 ASC 293

¹³⁴ 1981 ASC 293

¹³⁵ AIR 1976 490

¹³⁶ *T. Devadasan v. Union of India*, 1964 AIR 179

¹³⁷ *Akhil Bharatiya Soshit Karmachari Sangh v. Union Of India*, AIR 1981 298

¹³⁸ *The State of Kerala & Anr. V. N.M. Thomas & Ors.*, 1976 AIR 490

¹³⁹ 1976 AIR 490

¹⁴⁰ AIR 1951 226

of their merit. A seven Judge Bench of Supreme Court struck down the classification its being based on caste, race and religion for the purpose of admission to educational institutions on the ground that Art.15 did not contain a clause such as Art.16(4).¹⁴¹ In order to contain the problems created by the decisions and to help backward classes Art. 15(4) was added to the Constitution in 1951¹⁴². Article 15(4) says that the state is not prevented from making any special provisions for ‘the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes’¹⁴³.”

Article 15(1) of the constitution of India, is a favourable provision for backward class of society, which has been held in *State of Kerala v. NM. Thomas*.¹⁴⁴ Art.15(4) of the constitution of India envisages ‘positive action’ while Art.16(4) is a provision “positive discrimination”, the Supreme Court has observed in *Indra Sawhney v. Union of India*.¹⁴⁵ By now, it is well settled that reservation in educational institutions and other walks of life can be provided under clause (4) just as reservation can be provided in services under Art. 16(4). Art.15(4) is wider than Art.16(4). Art.16(4) speaks only of one type of remedial measures, namely, reservation of appointments/posts. However, reservation of posts and appointments must be within reasonable limits. viz. 50% maximum. The same limit applied to Art.15(3). reservation to a backward class is not a constitutional mandate, it a prerogative of the State.¹⁴⁶ In *E. V. Chinnaiha v. State of Andhra Pradesh & Ors.*¹⁴⁷ the court also said that Art.341 indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races, or Tribes or part of groups notified in that Presidential list. Scheduled Castes” can only be refers to the list prepared by the President under Article 341 and no reference to any subclassification or division in the said list can be made. If it is made it can be only for the limited purpose of Article 330. Therefore, it is clear that this group cannot be subdivided for any purpose. The principle laid down in *Indra*

¹⁴¹ *The State of Madras v. Champakam Dorairajan and others*, AIR 1951 226

¹⁴² <https://legislative.gov.in> (Last visited on 24.5.2025)

¹⁴³ MP JAIN, *Indian Constitutional Law*, 7th edition, p. 943, Lexis Nexis.

¹⁴⁴ 1976 AIR 490

¹⁴⁵ AIR 1993 SC 477

¹⁴⁶ MP JAIN, *Indian Constitutional Law*, 7th edition, p. 937

¹⁴⁷ On 5 November, 2004

Sawhney¹⁴⁸ case, for subclassification of other Backward Classes cannot be applied as a precedent for subclassification or subgrouping of Scheduled Castes¹⁴⁹.

3.5. Socially and Educationally Backward Classes.

A major problem raised by Art.15(4) is regarding the identification of 'socially and educationally backward classes.' Article' 15(4) lays down no criteria to identify 'backward classes'; it put the burden on the state to specify backward classes. But the courts can inquire whether the criteria used by the state for the purpose are relevant or not.¹⁵⁰ The question of defining backward classes has been considered by the Supreme Court in number of cases. In *M.R. Balaji and others v. State of Mysore*,¹⁵¹ the Court equated the 'social and educational backwardness' to that of the Scheduled Castes and Scheduled Tribes'. The Court observed: "in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the Scheduled Castes and Scheduled Tribes. Some special provision ought to be made even for them". In *Balaji*¹⁵², the Supreme Court sensed the danger in treating 'caste' as the sole criteria for determining social and educational backwardness. The Supreme Court "said that economic backwardness would provide a reliable yardstick for determining social backwardness. Because more often educational backwardness is the outcome of social backwardness." The Court drew line between 'caste' and 'class'. An attempt to finding a new basis for ascertaining social and educational backwardness in place of caste is reflected in the *Balaji* discussion¹⁵³. "Secondly, poverty alone cannot be the test of backwardness in India.¹⁵⁴ Thirdly backwardness should be comparable, though not exactly similar, to the Scheduled Castes and Scheduled Tribes." "Fourthly, 'caste' may be a relevant factor to define backwardness. But it cannot be sole criterion. If classification for social backwardness were to be based solely on caste, then the caste system would be perpetuated in the Indian society.¹⁵⁵ Fifthly, poverty, occupations, place of habitation, all contribute to backwardness and such factors cannot be ignored" "Sixthly, backwardness may be defined without any reference to caste. As the Supreme

¹⁴⁸ AIR 1993 SC 477

¹⁴⁹ AIR1993 SC 477

¹⁵⁰ MP JAIN, Indian Constitutional Law, 7th edition, p. 941

¹⁵¹ 1963 AIR 649

¹⁵² *MR Balaji v. State of Mysore*, 1963AIR 649

¹⁵³ *MR Balaji v. State of Mysore*, 1963 air 649

¹⁵⁴ *Janki Prasad Parimoo v. State of Jammu & Kashmir*, AIR 1973 SC 930

¹⁵⁵ See also, *infra*, Safeguards to Minorities, Ch. XXX, Sec. A

Court emphasized, Article 15(4) does not speak of castes, but only speaks of classes,” and that ‘caste’ and ‘class’ are not synonyms”.

After the Balaji case¹⁵⁶ the further judicial interpretation happened in various cases. “An order saying that a family whose income was less than Rs.1200 per year, and which followed such occupation as agriculture, petty business, inferior services, crafts etc. would be treated as ‘backward’, was declared to be valid in Chitrallekha v. State of Mysore¹⁵⁷. When backwardness is defined with reference to castes, the Court wants to be satisfied that not ‘caste’ alone, but other factors have also been considered for the purpose. In Rajendran,¹⁵⁸ the court said “if the reservation in question had been based only on caste and had not taken into account the social and educational backwardness of the castes in question, it would be violative of Article 15(1)”. Similarly, in Balaram,¹⁵⁹ a list prepared by the Backward class Commission appointed by the Andhra Government was held valid even though backward classes were listed mainly by their caste names because the Court found that the Commission had prepared the list after a detailed inquiry and applying several tests like general poverty, occupation, caste and educational backwardness.

The Supreme Court emphasized in K.S. Jayashree v State of Kerala¹⁶⁰, that” social backwardness is the result of caste and poverty. Caste cannot also be the sole or dominant test for the purpose.” “Caste and poverty are both relevant for determining the backwardness. But neither caste alone nor poverty alone will be the determining tests”. The Supreme Court has clarified in Jagadish Negi v. State of Uttar Pradesh¹⁶¹, that “no class or citizens can be perpetually treated as socially and educationally backward. Backwardness cannot continue indefinitely. Every citizen has a right to develop socially and educationally. The State to review the situation from time to time.” The Supreme Court has observed in Indra Sawhney¹⁶², that “the policy of reservation has to be operated year-wise and there cannot be any such policy in perpetuity. The State can review from year to year the eligibility of the class of socially and

¹⁵⁶ MR Blaji v. State of Mysore, 1963 AIR 649

¹⁵⁷ AIR 1964 SC 1823

¹⁵⁸ C.A. Rajendran v. Union of India, 1968 AIR 507

¹⁵⁹ State of Andhra Pradesh and others v. U.S.V Balram etc., 1972 AIR 1375

¹⁶⁰ AIR 1976 SC 2381: (1976) 3 SCC 730, Also see, Chhotey Lal v. State of Uttar Pradesh, AIR 1979 All 135

¹⁶¹ AIR 1997 SC 3505: (1997) 7 SCC 203

¹⁶² AIR 1993 SC 477 Indra Sawhney v. Union of India, see, Ch. XXIII, see. F, infra

educationally backward class of citizens. Further, it has been held that Art.15(4) does not mean that the percentage of reservation should be in proportion to the percentage of the population of the backward classes to the total population”.

3.6. Quantum of Reservation

What would be the quantum of reservation made under the Article 15(4). After the incorporation of this Article, it was a question before the Supreme Court of India. The extent of reservation could be made under Art.15(4), for the first time, in *Balaji*,¹⁶³ the issue was raised before the Supreme Court. This was related to the special provisions which the States can make under Art.15(4). In this case, reservation up-to 68% was made by the State of Mysore for backward classes for admission to the State medical and engineering colleges. In effect, 68% seats were reserved in medical, engineering and other technical colleges for the weaker sections of the society, leaving only 32% seats for the merit pool. The Court observed that “a special provision contemplated by Art.15(4) must be within reasonable limits. The interests of the weaker sections of society have to be adjusted with the interests of the community as whole. The considerations of national interest and the interests of the community or society as a whole cannot be ignored in determining the reasonableness of a special provision under Art.15(4)”. In *Balaji*,¹⁶⁴ the Supreme Court clearly indicated that “in giving effect to reservation for SCs, STs and OBCs, a balance to be struck so that the interests of the backward classes, STs and SCs are properly balanced with the interests of the other sections of the society”. This will promote inclusive justice.

3.7. Reservation in Admissions

The issue of reservation has become a very important socio-political issue of the day. The competition became very tight as the opportunities are limited. The governments are struggling to meet the demands of the groups and forced to provide in all kinds of reservations for all kinds of groups apart from reservations for Scheduled Castes, Scheduled Tribes and backward classes. The candidate belonging to the reserve quota is preferred to the one having no reserve quota. Many deserving candidates feel frustrated because they feel reservation is unconstitutional.¹⁶⁵ Constitution is a living and dynamic organ and rights are to be determined by the judiciary by interpreting the

¹⁶³ MR Balaji v. State of Mysore, 1963 AIR 649

¹⁶⁴ 1963 AIR 649

¹⁶⁵ MP Jain, Indian constitutional law, 7th edition, p. 948, 949, Lexis Nexis.

Constitution. Right of a meritorious student to get admission in a postgraduate course is a fundamental and human right which is required to be protected. The SCs and STs form a separate class by themselves and outside the creamy layer exclusion. Art. 46,¹⁶⁶ are to be taken care of at every stage and even in specialised institutions like IITs.

3.8. Equality of Opportunity in Public Employment

The equality of opportunity in public employment is mandated by the constitution of India under Article 16. Article 16(1) is a facet of Art.14. Articles 14, 16(1) are closely inter-connected/ Article 16(1) takes its roots from Art.14. Article 16(1) particular and Article 14 general. It identifies, in a constitutional sense, “equality of opportunity” in matters of employment under the state. An important point of distinction between Art.14 and 16 is that while Art.14 applied to all persons, citizens as well as non-citizens¹⁶⁷. Article 16(1) guarantees equality of opportunities to all citizens “in matters relating to employment or “appointment” to any office” under the state, on the grounds only of religion, race, caste, sex, descent, place of birth or residence or any of them¹⁶⁸. The recruitment rules are to be framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.¹⁶⁹

3.9. Matter of Public Employment

The Constitution of India Under Art. 309,¹⁷⁰ empower to regulating service conditions of government servants can be made by the parliament. But such rules have to stand the tests of Articles 14 and 16. and, thus have to be reasonable and fair and not grossly unjust.¹⁷¹ In the absence of a rule or regulation, service conditions may be prescribed by executive instructions.

3.10. Reservation in Services: Article 16(4)

The constitution of India under Article 16(4), says that the state may make reservation of appointment or posts in favour of any backward class of citizens if it feels. The Central and the State Governments and their instrumentalities can do it.¹⁷² The term ‘state’ denotes both the Central and the State Governments for degree holders Print

¹⁶⁶ MP Jain, Indian constitutional Law, 7th edition, p. 950, Lexis Nexis.

¹⁶⁷ MP Jain, Indian constitutional Law, 7th edition, p. 964, 965, Lexis Nexis.

¹⁶⁸ MP JAIN, Indian constitutional Law, 7th edition, p. 965, Lexis Nexis.

¹⁶⁹ Principal, Mehar Chand Polytechnic v. Anu Lamba, (2006) 7 SCC 161: AIR 2006 SC 3074

¹⁷⁰ MP JAIN, Indian constitutional Law, 7th edition, p. 967, Lexis Nexis.

¹⁷¹ State of Uttar Pradesh v. Ramgopal, Air 1981 SC 1041: (1981) 3 SCC 1.

¹⁷² See supra. Ch XX, Sec. D

diploma holders and certificate holders in exercise of its rule making power under Art.309.¹⁷³ Explaining the nature of Art.16(4), the Supreme Court has stated in *Mohan Kumar Singhania v. Union of India*,¹⁷⁴ that it is “an enabling provision”. It confers a discretionary power on the state for making any provision or reservation of appointments or posts in favour of any backward class of citizens who are not adequately represented in the service of the state. Article 16(4) neither imposes any constitutional duty nor confers any Fundamental Right on any one for claiming reservation.¹⁷⁵ The selection of candidates or students must be based upon their merit in each category. The disadvantaged group or the weaker sections of the people may not be able to compete with the open category people. But that would not mean that they would not be able to pass the basic minimum criteria laid down therefore.¹⁷⁶

Further Article 16(4) has to be interpreted in the background of Art.335¹⁷⁷. The equality of opportunity guaranteed by Art.16(1). While Art.16(4) contemplates special provisions to be made in favour of the socially disadvantaged classes. Neither should be allowed to overlap. Accordingly, the rule of 50% reservation in a year should be taken as a unit and not the entire strength of the cadre, service or the unit as the case may be.¹⁷⁸ The term backward class, used in Art.16(4), includes Scheduled Castes and Scheduled Tribes. Article 15(4) says about ‘socially and educationally backward classes of citizens. Article 16(4) says “any backward class of citizens”. Judicial decisions settled the expression “backward class of citizens” in Art.16(4) as the same as the expression “any socially and educationally backward classes of citizens in Art. 15(4). To qualify for called a “backward class citizen” under Art.16(4), one must be a member of a “socially and educationally backward class”.¹⁷⁹ Supreme Court ruled in *Venkataramana*,¹⁸⁰ that “Art.16(4) expressly permits reservation of posts in favour of backward classes but not with regard to those not regarded as backward”.

The epicentre of this issue is the *Balaji* case¹⁸¹, In this case the Court attempted to impose a constitutional limit on the extent of preference, not on the “narrower ground

¹⁷³ *Chandravati P.K v. C. K. Saji*, (2004) 5 SCC 618: AIR 2004 SC 2212

¹⁷⁴ AIR 1992 SC, 26: 1992 Supp (1) SCC 594

¹⁷⁵ MP JAIN, *Indian constitutional Law*, 7th edition, p. 986, Lexis Nexis.

¹⁷⁶ *Andhra Pradesh Public Service Commission v. Baloji Badhavath*, (2009) 5 SCC 1: (2009) 5 JT 563.

¹⁷⁷ For discussion on Art.335, see, *infra*, Ch. XXXV, Sec. F

¹⁷⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477: 1992 Supp (3) SCC 217; see, *infra*, Sec. Ga

¹⁷⁹ *Janki Prasad Parimoo v. State of Jammu & Kashmir*, AIR 1973 SC 930: (1973) 1 SCC 420

¹⁸⁰ *B. Venkataramana v. State of Tamil Nadu*, AIR 1951 SC 229

¹⁸¹ *Balaji v. State of Mysore*, AIR 1963 SC 649: 1963 Supp (1) SCR 439; *supra*, Ch. XXII

of reservation”. “The court spoke of adjusting the interests of the weaker section of society with the interest of the community as whole. Speaking generally and in broad way, a special provision should be less than 50%; how much less than 50 per cent would depend upon the relevant prevailing circumstances in each case.” Immediately thereafter came the Devadasan¹⁸² case before the Supreme Court in which it adjudged the validity of the ‘carry forward rule’. The carry forward rule envisaged that in a year, 17.5 per cent posts were to be reserved for Scheduled Castes/Tribes, if all the reserved posts were not filled in a year for want of suitable candidates from those classes, then the shortfall was to be carried forward to the next year and added to the reserved quota for that year, and this could be done for the next two years.

Based on the Balaji¹⁸³ principle, the Supreme Court “declared that more than 50 per cent reservation of posts in a single year would be unconstitutional as it per se destroys Art.16(1). By a majority of 4:1, the Court held that as Art.16(4) was a proviso or an exception to Art.16(1).” The minority opinion in *The General Manager, Southern Railway v. Rangachari*¹⁸⁴ case confined Art.16(4) to initial appointments only. But the majority view in the Rangachari case was full of pit-falls was soon revealed in the Devadasan case¹⁸⁵. In *State of Kerala v. N.M. Thomas*¹⁸⁶, the Supreme Court held that “it was permissible to give preferential treatment to Scheduled Castes/Tribes under Art.16(1) outside Art.16(4)”. In *T. Devadasan v. The Union of India and Another*,¹⁸⁷ the majority had taken the view that “Art.16(4) was an exception to Art.16(1) and 16(2).” This was the view expressed in Balaji¹⁸⁸ and Rangachari¹⁸⁹. On the other hand, in Devadasan¹⁹⁰, in a dissenting opinion that Art. 16(4) was not an exception to Art.16(1).

In Thomas¹⁹¹ majority accepted this view of Subba Rao J. Accordingly, the Court observed “Art. 16(4) is not in the nature of an exception to Art.16(1). Two judges expressed dissenting view in” Thomas.¹⁹² This accepted the majority view in

¹⁸² T. Devadasan v. The Union of India, 1964 AIR 179

¹⁸³ 1963 AIR 649,

¹⁸⁴ 1962 AIR 36

¹⁸⁵ T. Devadasan v. Union of India, AIR 1964 SC 179: (1964) 4 SCR 680

¹⁸⁶ AIR 1976 490

¹⁸⁷ 1964 AIR 179

¹⁸⁸ 1963 AIR 649

¹⁸⁹ 1962 AIR 32

¹⁹⁰ 1964 AIR 179

¹⁹¹ The State of Kerala v NM Thomas, 1976 AIR 490

¹⁹² The State of Kerala v. NM Thomas, 1976 AIR 490

Devadasan¹⁹³, that Art.16(4) was an exception to Art.16(1) and (2). Thomas¹⁹⁴ marks the beginning of a new judicial thinking on Art.16 and leads to greater concessions to SC, ST and other backward persons. If the Supreme Court had stuck to the view propagated in earlier cases that Art.16(4) was an exception to Art.16(1), then no reservation for any other class, such as army personnel, freedom fighters, physically handicapped, could have been made in services.¹⁹⁵ The fact in Thomas¹⁹⁶ was that the Kerala Government made rules saying that promotion from the cadre of lower division clerks to the higher cadre of upper division clerks depended on passing test within two years. For SC/STs, exemption could be granted for a longer period. These classes were given two extra years to pass the test. This exemption was challenged as discriminatory under Art.16(1) on the ground that Art.16 permitted only reservation in favour of backward classes but it was not a case of reservation of posts for SC/STs under Art.16(4) and that these persons were not entitled to any favoured treatment in promotion outside Art.16(4).

By majority, the Supreme Court rejected the argument. “It ruled that art.16(1) being a facet of Art.14, would permit reasonable classification and, thus, envisaged equality between the members of the same class of employees but not equality between members of a separate, independent class”. The majority adopted a liberal attitude in Thomas¹⁹⁷ as regards SCs and STs and Backward classes. The result of the pronouncement is to enable the state to give the backward classes a preferential treatment in many ways other than reservation of posts as envisaged in Art.16(4). The guarantee of equality could be completely eroded if this preferential treatment is due to under political pressure.

3.11. Basis of Classification to be Backwardness

What would be the basis of classification of backwardness. This question was addressed by the Supreme Court of India through various judgements. “The preferential treatment to the backward classes to be reasonable and must have nexus to the object, namely, adequate representation of the under-represented backward classes. On the over-all administrative efficiency should be kept while giving preferential treatment to the

¹⁹³ T Devadasan v. The Union of India and another, 1964 AIR 179

¹⁹⁴ The State of Kerala v. NM Thomas, 1976 AIR 490

¹⁹⁵ Also see, Indra Sawhney, *infra*, Sec. F.

¹⁹⁶ The state of Kerala v. NM Thomas, 1976 AIR 490

¹⁹⁷ The State of Kerala v. NM Thomas, 1976 AIR 490

backward classes”. The observations that in Thomas¹⁹⁸, the Court has taken a more flexible view of Art.16(1) than had even by it in earlier cases. After the N M Thomas¹⁹⁹ case, in ABSK Sangh (Rly) v. Union of India,²⁰⁰ The Supreme Court again went into the question of reservation in public services vis-a-vis Art.16. The Court “upheld reservation of posts at various services making of various concessions in favour of the members of the Scheduled Castes and Scheduled Tribes. Thus, reservation in selection of posts in railways for Scheduled Castes and Scheduled Tribes held valid.” In A.B.S.K. Sangh²⁰¹, the Court took the facts, rather than the paper rules, into candidates. The Court found that the actual intake of the Scheduled Castes and Scheduled Tribes against vacancies reserved for them in recruitment and promotion categories in the railways been slow and minimal.

The Mandal commission was appointed by the Government of India in terms of Art.340 of the Constitution in 1979 to investigate the conditions of socially and educationally backward classes²⁰². The major recommendations made by the commission was that, besides the Scheduled and Scheduled Tribes, for Other Backward Classes which constitute above 50% of the component of the population, 27% of government jobs be reserved so the total reservation of all SCs, STs and OBCs, amounts to 50%. Action was taken on the basis of the Mandal Report²⁰³, which was submitted long ago. The V.P. Singh Government at the centre issued an office memorandum accepting the Mandal Commission recommendation²⁰⁴ and announcing 27% reservation for the socially and educationally backward classes in vacancies in civil posts and services under the Government of India.

In 1990, the Narasimha Rao government modified the above memorandum in two respects: one, the poorer sections among the backward classes would get preference over the other sections; two 10% vacancies would be reserved for other economically backward sections” of the people who were not covered by any reservation scheme.

¹⁹⁸ The State of Kerala v. NM Thomas, 1976 AIR 490

¹⁹⁹ The State of Kerala v. NM Thomas, 1976 AIR 490

²⁰⁰ Akhil Bhartiya Soshit Karmachari Sangh (Railways) v. Union of India, AIR 1981 SC 298 : (1981) 1 SCC 246

²⁰¹ Akhil Bhartiya Soshit Karmachari Sangh (Railways) v. Union of India, AIR 1981 SC 298: (1981) 1 SCC 248

²⁰² For Art 340, see, *infra*, Ch XXXV, Sec. E.

²⁰³ Backward class reservation and concept of creamy layer Dr. Pallavi Gupta, powered by Veerappa Moily

²⁰⁴ Backward class reservation and concept of creamy layer, Dr. Pallavi Gupta, powered by Veerappa Moily

The constitutional validity of the memorandum challenged in the Supreme Court through several writ petitions. The question was considered by a Bench of 9 Judges. Six opinions were delivered. The leading opinion was delivered by Jeevan Reddy, J., on behalf of himself, Kania, CJ, Venkatachalaiah, and Ahmadi, J. and two judges, Pandian and Sawant, JJ., in separate opinions concurred with Reddy, J., on the below points.

While referring to the previous decision of the Supreme Court on Arts. 15 and 16.²⁰⁵ and also after taking into account of some of the decisions of the U.S. Supreme Court on racial discrimination, Reddy, J., in his elaborate judgement answered the several questions which emerged in the instant case, on the significant points emerging from Judge's opinion are noted that i) "Parliament or Legislature or Executive through administrative instruction on central services and the local bodies and 'other communities' as contemplated by Art. 12, in matter of their services." ii) "The provisions made by the executives under Art. 16(4) becomes effective and sufficient itself without its being enacted into a law made by the legislature." iii) "The Court has reiterated the view, expressed by it earlier in *Thomas*.²⁰⁶ that Art. 16(4) provides classification for ensuring attainment of equality of opportunity assured by Art. 16(1) itself and Art. 16(1) is a facet of Art. 14". iv) "Article 16(4) permits reservation in favour of any "backward classes of citizens". No further classification or special treatment is permissible in their favour apart from Art. 16(4)". v) "The requirement of maintenance of efficiency of administration – the administration of Art. 335²⁰⁷. The Constitution has specified the nature of special treatment and no further classification or special treatment is permissible in their favour apart from or outside of Clause (4) of Art. 16"²⁰⁸ vi) "Even under Art. 16(1), reservation cannot be made on the basis of economic criteria alone". vii) "The court made emphasis on the integral connection between caste, occupation, poverty and social backwardness. Social, educational and economic

²⁰⁵ Reference was made inter alia to the following cases: *State of Madras v. Champakam*, *Dorairajan*, supra; *Venkataramana v. State of Madras*, supra; *Balaji v. State of Mysore*, supra; *General Manager, Southern Rly. v. Rangachari*, supra; *Devadasan v. Union of India*, supra; *Chitralkha v. State of Mysore*, supra; *P Rajendran v. State of Madras*, supra; *Triloknath v. State of Jammu & Kashmir*, supra; *Periakaruppan v. State of Tamil Nadu*, supra; *State of Andhra Pradesh v. USV Baram*, supra; *Janki Prasad Parimoo b. State of J & K*, supra; *State of Uttar Pradesh v. Pradip Tandon*, supra; *State of Kerala v. NM Thomas*, supra; *KC Vasanth Kumar v. State of Karnataka*, supra; *Comptroller & Auditor-general v. Mohan Lal Mehrotra*, AIR 1991 SC 2288: (1992) 1 SCC 20

²⁰⁶ *The State of Kerala v. NM Thomas*, 1976 AIR 490

²⁰⁷ For Art. 335, see, infra, Ch. XXXV

²⁰⁸ AIR 1993 SC 477, at 541.

backwardness are closely intertwined in the Indian context. As regards identification of backward classes, caste may be used as a criterion”.

Backwardness under Art.16(4) need not be social as well as educational as is the case under Article 15(4).²⁰⁹ Article 16(4) does not contain the qualifying words “socially and educationally” as does in Article 15(4). It is not correct to say that “backward class of citizens in Art.16(4) are the same as the socially and educationally backward classes” in Article 15(4). Backwardness contemplated by Art.16(4) is mainly social backwardness. A Very important recommendation made by the Court is that the “Creamy layer”, the socially advanced members of a backward class, should be excluded from the benefit of reservation. Such exclusion would benefit the truly backward people and, thus more appropriately serve the purpose of Art.16(4).²¹⁰ “This ruling of the court aims to ensure that the benefit of reservation should be available to the deserving and the weakest section of the backward class. For the idea of excluding the ‘Creamy Layer’ of a backward class of the benefit of reservation, reference may be made to the opinion of Krishna Iyer, J., in Thomas,²¹¹

Total reservation includes, 27% reservation in favour of backward classes together with reservation in favour of Scheduled Castes and Scheduled Tribes, comes to a total of 49.5%. The extraordinary situations meriting exceptions from the 50% rule.²¹² Further, if a member belonging to, a Scheduled Caste gets selected in the open competition on the basis of his own merit, he will not be counted against the quota reserved for the Scheduled Castes; he will be treated as open competition candidate. A significant point made by the” court is not to apply the rule of reservation to promotion. Under Article 16(4), reservation is permissible only at the stage of entry into the State service, i.e. only at the initial stage of direct recruitment and not at the subsequent promotional stage. The Court has reached this conclusion as a result of the combined reading of Art.16(4) and Art.335²¹³. “

²⁰⁹ See, Supra, Ch. XXII, Sec. C

²¹⁰ Backward class reservation and concept of creamy layer, Dr. Pallavi Gupta, powered by Dr. M. Veerappa Moily

²¹¹ See, Supra, Ch. XXII, Sec. C

²¹² AIR 1993 SC 477, at 566.

²¹³ For Art. 335 see, *infra*, Ch. XXXV, Sec. F.

The court over ruled Rangachari²¹⁴ which was the precedent for the last thirty years. The Court directed that “it would be operative only prospectively and wherever reservation had been provided in promotion it would continue for a period of five years.”²¹⁵ For the reserved category in service, minimum standards can be prescribed. In fact, Art.335 such standards be prescribed.²¹⁶ For certain services and certain posts, it may not be advisable to apply the rule of reservation. These are posts where merit alone counts. The Court has included the following posts in this:²¹⁷ i) Defence services including all technical posts therein but excluding civil posts; ii) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defence equipment; iii) Teaching posts of professors – and above, if any; iv) Posts in super specialities in Medicine, engineering and other scientific and technical subjects; v) Posts of pilots (and co-pilots) in Indian Airlines and Air India. The above list is only illustrative.

“The services/posts enumerated above, on account of their nature and duties attached, are such as call for highest level of intelligence, skill and excellence. Reservation therein may not be consistent with “efficiency of administration contemplated by Art.335.” The Court has rejected the reservation of 10% posts (made by the Narasimha Rao Government in favour of “Other economically backward sections of the people who are not covered by schemes of reservations. The Court has “directed to establish a permanent body – commission or both at the centre and in each State. It can look into the complaints and address genuine grievances. There should be a periodic revision of lists of OBCs so as to exclude those who have to be backward or to include new classes”.²¹⁸

In *Kumar Thakur v. State of Bihar*,²¹⁹ the Supreme Court has assessed the validity of high levels of income prescribed by the legislatures of Uttar Pradesh and Bihar as criteria to identify the creamy layer. Further he Kerala Legislature passed an Act in 1995 declaring that there was no creamy layer in the State of Kerala. The validity of

²¹⁴ Gen. Manager Southern Rly v. Rangachari, AIR 1962 SC 36: (1962) 2 SCR 586

²¹⁵ On the doctrine of Prospective Overruling, see, *infra*, Ch. XL

²¹⁶ AIR 1993 SC, at 576

²¹⁷ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²¹⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²¹⁹ AIR 1996 SC 75: (1995) 5 SCC 403.

the State Act was challenged in the Supreme Court. In *Indra Sawhney V Union of India* (II),²²⁰ In the instant case, the Court has “declared the Kerala Act declaring that there are no socially advanced sections in any backward class in the State as unconstitutional as being violative of Arts.14 and 16(1). Non-exclusion of creamy layer is breach of Article 14, the basic structure of the Constitution and, therefore, totally illegal. The Court has observed;²²¹ the Act is unconstitutional, as the State enacted the Act without any consultation with the concerned Court”.²²²

In *M. Nagaraj v.& Ors v. Union of India*,²²³ the Supreme Court upheld the constitutional validity of all the impugned Amendments related to reservation in promotion for SCs and STs. The state must collect the quantifiable data to justify the reservation, the 50 per ceiling, and the concept of creamy layer. Court emphasized on catch up rule. In *Nagraj*²²⁴ the Supreme court introduced the creamy layer test in disguise for SCs and STs despite prohibition by the constitutional texts and court precedents. Twelve years later in *Jarnail Singh and others v. Lachmi Narain Gupta and others*,²²⁵ the court attempted to hold justification of the creamy layer test that *Nagraj*²²⁶ introduced to SCs and the STs through different nomenclature and procedure. The creamy layer concept appeared for the first time in *State of Kerala v. N.M. Thomas*²²⁷ as early as in 1976.

*Jarnail Singh*²²⁸ case applies the creamy layer test to all reserved categories at all stages of reservation under Article 16. *Jarnail Singh* needs urgent attention from the court in the interest of judicial consistency as well as accurate constitutional interpretation. The transition from quantifiable data in *Nagaraj*²²⁹ to the creamy layer in *Jarnail Singh*. In this case the supreme Court placed SCs, STs and OBCs under same umbrella. All of these categories reduced to synonyms. It also undermined the purpose of notifying Scheduled Castes and Scheduled Tribes in the constitution. In this case Article Article 16A has been declared as to be an enabling provision while at the same time interfering with the application. In *EV Chinnaiha v. State of A.P.*,²³⁰ five judge bench of supreme

²²⁰ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²²¹ *The State of Kerala Creamy Layer case*, supra, footnote 82, at 521

²²² *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²²³ AIR 2007 SC 71

²²⁴ AIR 2007 SC 71

²²⁵ AIR 2018 SC 4729

²²⁶ *M Nagaraj v. Union of India*, AIR 2007 SC 71

²²⁷ AIR 1976 490

²²⁸ *Jarnail Singh and others v. Lachmi Narayan Gupta and others*, AIR 2018 SC 4729

²²⁹ AIR 2007 SC 71

²³⁰ (2005) 1 SCC 3941

court “held that Scheduled castes form a homogenous class and there cannot be any sub division amongst them. The sub classification of SCs and STs is contrary to Article 341 of the constitution”. The Supreme Court now overturned the decision in EV Chinnaiha²³¹ case. In State of Punjab and Ors v Davinder Singh and Ors,²³² the Supreme Court given a decision that SCs and STs sub categorisation can be reconsidered. In 2014 the Supreme Court in Davinder Singh²³³ case reconsidered EV Chinnaiha²³⁴ decision.

The (103rd constitutional Amendment) Act²³⁵, 2019 passed by the Parliament, introduced a 10% reservation for economically weaker sections (EWS) in educational institutions and government jobs adding Articles 15(6) and 16(6) to the Constitution of India. The amendment aims to address economic disparities in Indian society by providing affirmative action for the economically disadvantaged sections, who are not covered by the existing reservation policies for SCs, STS and OBCs. In Janhit Abhiyan v. Union of India,²³⁶ the 103rd constitutional Amendment Act, 2019. Challenged saying it is unconstitutional. In this case on a 3:2 the Supreme Court delivered the decision. The majority opined that the 103rd constitutional amendment Act 2019 is not violative of Constitution of India. The minority held that 103rd constitutional Act, 2019 is unconstitutional. Article 15(6) is violative of constitution of India. They excluded the poorest sections of the society who are both socially and economically disadvantaged. Therefore, it was discriminatory, and against fundamental right to equality.

Further, with regard to Article 16(6), it is ruled that it was unconstitutional. Providing the EWS with reservations under Article 16 excluded the already socially and educationally disadvantaged classes. Though reservation for Scheduled Castes and Scheduled Tribes was originated from constitution of India, the reservation for other backward classes and creamy layer principle evolved through various stages from appointment of commissions, study and submission of reports of the commissions and judicial interpretation through various cases. This is a clear mandate and the system is evolving further classifying the Scheduled Castes and Scheduled Tribes.

²³¹ (2005) 1 SCC 3941

²³² 1 August 2024

²³³ 1 August 2024

²³⁴ (2005) 1 SCC 3941

²³⁵ <https://legislative.gov.in> (last visited 24.5.2025)

²³⁶ On 7 November, 2022

3.12. Conclusion

India's reservation system shaped and its boundaries are defined by the Judiciary in India. The judiciary upheld the constitutional mandate of affirmative action through its series of landmark judgements. It has introduced important principles like creamy layer principle, limited the extent of reservation to reasonable level and recently validated EWS quota, which is a shift towards economic disadvantage. These shown judiciary is not only interpreting the constitution but also act as guardian of spirit of social justice. It promotes evolution of a equitable and inclusive society and maintaining the balance of competing rights, safeguarding democratic values.

CHAPTER 4

ANALYSIS OF INDRA SAWHNEY V. UNION OF INDIA.

4.1. Introduction

The Indra Sawhney v. Union of India²³⁷ was a landmark judgement in the history of Judicial pronouncements in India. Judiciary put its seal on the reservation of Other backward classes which was an unresolved issue since independence. This judgement commonly known as Mandal Commission case, stand as a watershed moment in the constitutional and legal discourse on reservation in India. While the constitution was in the making there were demands to provide reservation to backward classes also because it was contended that they are living under acute poverty and their representation in the public employment was meagre. But the majority not accepted this argument and no reservation had been given to OBCs. Immediately after independence, during 1953 the central government constituted a commission to study and report the conditions of the backward classes. This commission was known as Kaka Kalelkar Commission which submitted its report which invited widespread criticism. The Government of India put it in cold and no action could be taken by the government on this report.

Then during 1979 under the government of Prime Minister Morarji Desai, a commission has been constituted to investigate and report to the government regarding the present conditions of the backward classes. This commission was headed by BP Mandal a renowned OBC leader from Bihar, which intensively travelled length and breadth of the country and conducted surveys and collected data and summarized and submitted the report to the central government. The report of Mandal Commission was realistic and justifiable, therefore the government decided to implement it. Huge unrest took place in the country, mainly in Northern part of India against the implementation of the Commission report and subsequently challenged it in the Supreme Court of India in Indra Sawhney case²³⁸ This case upheld the constitutional validity of OBC reservation. But also laid down key principles governing affirmative action, including the exclusion of the creamy layer and the 50% ceiling limit on reservations. This serves as judicial benchmark in balancing the principle of equality and affirmed social justice.

²³⁷ AIR 1993 SC 477

²³⁸ Indra Sawney v. Union of India, AIR 1993 SC 477

This case is the foundational reference in any critical study of reservation policy in India.

4.2. Case Analysis

The Indra Sawhney case is analyzed in detail including the facts, Supreme, Honorable judge's comments and opinion and certain vital concepts regarding, exclusion of creamy layer in OBC reservation, cap on reservation, percentage of reservation etc. Before going into the facts of the instant case, certain vital concepts need to be understood regarding OBC reservation and exclusion of the creamy layer principle. OBC reservation was the demand while the constitution in making in the constituent assembly. The leaders of OBC demanded to include this concept in the constitution through relevant articles so that they can also avail this facility and rise to the main stream. The leaders argued that many of the OBC communities are living under extreme conditions. It is the responsibility of the state to bring them at par with the other advanced communities of the country. It has denied because the majority members of the constituent assembly thought that many of the OBC communities are living in a commanding position barring a miniscule. But they included Article 16(4) which provided scope for future affirmative actions towards backward classes.

After independence there was pressure from prominent OBC leaders belonging to various political parties for constituting a commission in order to study the conditions of the OBCs in the country. Then the central government constituted firstly Kaka Kalelkar commission²³⁹ and then Mandal commission to investigate and study the reality. These commissions studied the conditions of the backward classes and submitted the reports to the central government. Mandal commission report revealed that in reality the backward classes are living under poor conditions, which enabled the government to implement the Mandal commission report²⁴⁰. This has been challenged in the Supreme Court of India saying it is unconstitutional. But the supreme court pronounced a land mark judgement in which cleared that OBC reservation is constitutionally valid and ordered for exclusion of the creamy layer.²⁴¹

²³⁹ First backward class commission.

²⁴⁰ 2nd backward class commission report.

²⁴¹ Indra Sawhney v. Union of India, AIR 1993 SC 477

Indra Sawhney V. Union of India,²⁴² known as the Mandal case, was a significant in the reservation history of India. On the question of reservation of posts for backward classes the Supreme Court has dealt with an exhaustive manner. The Supreme Court examined all the aspects regarding the recommendations of the Mandal commission and framed questions and delivered answers to the questions categorically. Court examined the constitutionality of Mandal commission.²⁴³ The commission had recommended that in addition to the reservation to the Scheduled Castes and Scheduled Tribes, reservation shall be made available for Other Backward Classes also which constitute above 50% of the population of the country. There was a recommendation of reservation of 27% of government jobs to them, so that total reservation of all SCs, STs and OBCs, will be 50 percent.²⁴⁴

The Bench heard this land mark case in the Supreme Court were Honourable JJs MH. Kania, MN. Venkatachalaiah, S. Ratnavel Pandian, TK. Thommen, AM. Ahmedi, Kuldip Singh, PB. Sawant, RM. Sahai, BP. Jeevan Reddy.²⁴⁵ Judgement of The Chief Justice, MN. Venkatachalaiah, AM. Ahmedi, and BP. Jeevan Reddy JJ opened their judgement saying that “Forty and three years ago was founded this republic with the fourfold objective of securing to its citizens justice, liberty, equality and fraternity”.²⁴⁶ Major questions before the court were:²⁴⁷

1. whether the reservation to the other backward classes violative of the fundamental right to the equality under Article 14 of the constitution of India?
2. Whether the 50 percent cap on reservation should be strictly adhered to? Whether economic criteria alone can be the basis for reservation? Whether reservation apply in promotions? Whether caste alone could be a determinant for defining the backwardness? Whether the creamy layer within the OBCs should be excluded from the benefits of reservation?

Honourable Justice BP Jeeva Reddy, wrote the judgement for other judges noted above. He opened the judgement²⁴⁸.” that the constituent assembly was elected on the basis of

²⁴² AIR 1993 SC 477

²⁴³ Indra Sawhney v. Union of India, AIR 1993 SC 477

²⁴⁴ Mandal commission report.

²⁴⁵ Indra Sawhney v. Union of India, AIR 1993 SC 477

²⁴⁶ Judgement of Indra Sawhney v, Union of India, AIR 1993 SC 477 case, para no.1

²⁴⁷ Indra Sawhney v. Union of India, AIR 1993 SC 477

²⁴⁸ Indra Sawhney v. Union of India, AIR 1993 SC 477

limited franchise. It included representative of all sections of society. They were having the knowledge about the historic injustice and inequalities meted out to the sections of the people of the country. They said that Liberty, equality and fraternity was the battle cry of the French Revolution. It is also the motto of our constitution²⁴⁹. The constitution contains the concept of justice of social, economic and political.

The doctrine of equality has many facets. Equality is dynamic and evolving concept. Its main facet is referred in the preamble and articles of constitution of India. Article 14 envisages that “the state shall not deny any person equality before law or the equal protection of the laws within the territory of India”. The content of expression equality before law is illustrated in Article 15 to 18 and also in part IV under articles 38, 39, 39A, 41 and 46. The equality before law and equal protection of laws in Article 14 is same as in positive and affirmative terms in Articles 13 to 18. Article 16 has met with a minor amendment in clause (3). But in Article 15 clause (4) has been inserted by the First Amendment Act, 1951.

The judgement elaborated regarding the constitution of first and second backward class commissions to substantiate the reason for identifying the backward classes. The Second Backward Classes Commission submitted its report to the central government. The Chapter VII of the report of the Commission deals with social justice, Constitution and Law. The judgement referred the case of MR Balaji and Ors. V. State of Mysore²⁵⁰, and various decisions, by referring the relevant provisions of the constitution of India. It also referred the decisions of the supreme court in CA. Rajendran v. Union of India,²⁵¹ State of Andhra Pradesh and Ors. v. P. Sugar²⁵², and State of Andhra Pradesh and Ors. v. USV. Balaram²⁵³ etc., which was marked a shift from the original position taken in Balaji²⁵⁴ on important points. Further it referred a statement in A. Periakaruppan etc. v. State of Tamil Naud,²⁵⁵ that as a caste has always recognised as class.

After hearing the arguments of both sides supreme court framed eight questions which was to be discussed and decided. They are:²⁵⁶

²⁴⁹ Judgement Indra Sawhney v. Union of India, AIR 1993 SC 477case, para 3

²⁵⁰ (1963) Suppl. 1 SCR 439

²⁵¹ 1968 AIR 507

²⁵² 1968 AIR 599

²⁵³ 1972 AIR 1375

²⁵⁴ MR Balaji v. State of Mysore, 1963 AIR 649

²⁵⁵ 1971 AIR 2303

²⁵⁶ Indra Sahney judgement para 26

1. Whether Article 16(4) is an exception to Article 16(1) and would be exhaustive of the right to reservation to posts in services under the State?
2. What would be the content of the phrase Backward Class in Article 16(4) of the constitution and whether caste by itself could constitute a class and whether economic criterion by itself could identify a class for Article 16(4) and whether backward Classes in Article 16(4) would include the Article 46 as will?
3. If economic criterion by itself would not constitute a Backward Classes under Article 16(4) whether reservation of posts in services under the State⁴ based exclusively on economic criteria would be covered by Article 16(1) of the Constitution?
4. Can the extent of reservation to posts in the services under the State under Article 16(4) or, if permitted under Articles 16 (1) and 16 (4) together, exceed 50 percent of the posts in a cadre or Service under the State or exceed 50 percent of the appointment in a cadre or Service in any particular year and can such extent of reservation be determined without determining the inadequacy of representation of each class in the different categories and grades of Services under the State?
5. Does Article 16 (4) permit the classification of Backward Classes into Backward Classes and most Backward classes or permit Classification among them based on economic or other considerations.?
6. Would making any provision under Article 16 (4) or reservation by the State necessarily have to be by law made by the Legislature of the State or by law made by Parliament. Or could such provisions be made by an executive order?
7. Will the extent of judicial review be limited or restricted in regard to the identification of Backward Classes and the percentage of reservations made for such classes, to a demonstrably perverse, identification or a demonstrably unreasonable percentage.?
8. Would reservation of appointments or posts in favour of any Backward Class be restricted to the initial appointment to the post or would it extend to promotions as well?

The Supreme Court before framing the questions they viewed various aspects related to the debate of constituent assembly as regards the affirmative action. The Drafting committee under the Chairmanship of DR. BR. Ambedkar inserted the word backward

which contemplate while reading in the between the words in favour of any and class of citizens. After implementation of the constitution of India, two cases came before the supreme court from the State of Madras. One under Article 15 and the other under Article 16. Both the cases decided by the same Bench on the same date. One is State of Madras v. Champakam Doraierajan,²⁵⁷ on Article 15 and other was Venkatraman v. State of Madras,²⁵⁸ on Article 16. As soon as the above two decisions are delivered the Parliament amended Article 15 and inserted Clause (4). After the enactment of the First amendment, Act, 1951, the famous of MR Balji v. The state of Mysore²⁵⁹ Case came before the supreme court. This case dealt with Article 15 and made some observations with respect to Article 16. As soon as this case settled next case before the supreme court was relating to Article 16. That case was T. Devadasan v. Union of India²⁶⁰. In this case carry forward rule was settled. During 1964 another case came under Article 15, from Mysore, Chitralkha v. State of Mysore²⁶¹. In this case it was held that the identification or classification of backward classes on the basis of occupation-cum-income, without reference to caste, is not bad and does not offend Article 14 (4).

From 1968 to 1971, the supreme court had to consider the validity of identification of backward classes made by Madras and Andhra Pradesh Governments. In Minor P. Rajendran v. State of Madras²⁶² related to specification of socially and educationally backward classes with reference to castes, the supreme court concluded that the list is prepared caste-wise and the castes included are wholly educationally and socially backward.²⁶³ Therefore, the list is not violative of Article 15. The Rajendran²⁶⁴ was referred and followed in Periakaruppan v. State of Tamil Nadu²⁶⁵, it was held that the identification made on the basis caste for reservation is in accordance with Article 15 (4). Again, in State of Andhra Pradesh v. Balram,²⁶⁶ it was held that identification made by Andhra Pradesh Government on the basis of caste, which is under social and educational backwardness and passed various tests is in order. The above contemplates

²⁵⁷ (1951) SCR 525

²⁵⁸ AIR 1951 SC 229

²⁵⁹ 1963 AIR 649

²⁶⁰ 1964 AIR 179

²⁶¹ 1964 AIR 1823

²⁶² 1968 AIR 1012

²⁶³ 1968 AIR 1012

²⁶⁴ Minor P Rajendran v. State of Madras, 1968 AIR 1012

²⁶⁵ 1971 AIR 2303

²⁶⁶ 1972 AIR 1375

that in *Indra Sawhney*²⁶⁷ the Supreme Court referred various cases which are finalised on various issues related to the backward class reservation. Along with the Mandal Commission report and earlier decisions are also compared to find valid reasons. Whereas in *Janaki Prasad Parimoo v. State of Jammu & Kashmir*²⁶⁸ and *State of Uttar Pradesh v. Pradip Tandon*²⁶⁹, the question was whether the poverty alone could be considered as a basis for social and educational basis. But Supreme Court in these cases held that poverty alone cannot be the basis for identifying the social and educational backwardness.

Honourable Justice Chandrachud, in *K.C. Vasant Kumar and Anr. V. State of Karnataka*,²⁷⁰ observed that “the present reservations should be continue for 15 years making a total of 50 years from the date of commencement of constitution”. This contemplates the concern that even the original reservation to SCs and STs given during the inception of the Constitution was only for 10 years. But as on date nothing could be done to mitigate the reservation system in the country. As regard the power of Executive wing of Union or state to legislate under Article 16(4), Sri. KK Venugopal, learned Counsel for the petitioner argued that Clause (4) of Article 16 can be made by the Legislature, not by executive or any other authority. But the court agreed that in *Balaji*²⁷¹, by Article 16(4) can also be made provision by executive wing of the Union or of State. The decision in *Balaji* has been followed in *Comptroller and Auditor General of India v. Mohan Lal Mehrotra*²⁷².

The court further said that the government can make orders or instructions with respect to the matters where rules are silent. In *Sant Ram Sharma v. State of Rajasthan*²⁷³, it was already cleared. This view has been reiterated in *Comptroller and Auditor General v. Mohan Lal Mehrotra*²⁷⁴. Some circulars were issued by Railway Board, reservation for SCs and STs in the Railway service. This decision has been upheld in *Akhil Bhartiya Soshit Karamchari Sangh (Railways) v. Union of India*²⁷⁵. In *Devadasan*,²⁷⁶ assumed

²⁶⁷ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²⁶⁸ 1973 AIR 930

²⁶⁹ 1975 AIR 563

²⁷⁰ (1985) Suppl. 1 SCR 352

²⁷¹ *MR Balaji v. State of Mysore*, 1963 AIR 649

²⁷² 1991 AIR 2288

²⁷³ 1967 AIR 1910

²⁷⁴ 1991 AIR 2288

²⁷⁵ 1981 AIR 298

²⁷⁶ *T Devadasan v. Union of India*, 1964 AIR 179

that Article 16(4) is an exception to Article 16(1). But this view has been shattered in the majority view in *State of Kerala v. N.M. Thomas*²⁷⁷. Sri. K.K. Venugopal, while argued that backward classes of citizens in Article 16(4) cannot be construed as backward castes. He further argued that backwardness may be social and educational and may also be economic.

Sri. PP. Rao appearing for the supreme court bar association argued that only basis for identifying backward classes should be occupation-cum-means as was done in *State of Karnataka*, which approved by supreme court in *Chitralkha and Ors. v. State of Mysore*²⁷⁸. A secular, socialist society, can never accept identification of backward classes on the basis of caste, which create conflict between castes. Sri. Ram Jethmalani, counsel for the Bihar state argued that backward castes in Article 16(4) is only the members of Shudra castes which is located between the tree upper castes, referred to Scheduled Castes. Dr. Rajiv Dhawan, counsel for Sree Narayana Dharma Paripalana Yogam argued that Article 16 (4) and 15 (4) occupy different fields and their purpose is also different. Article 15 (4) for state positive actions and Article 16 (4) for positive discrimination.²⁷⁹ Sri. RK. Garg counsel for Communist party of India, argued that caste plus poverty plus location plus residence should be the basis of identification and not mere caste. He further said there should be national consensus to introduce reservation for other backward classes under Article 16 (4), efforts must be taken to bring such consensus. Sri. Siva Subramaniam appearing for the State of Tamil Nadu supported the Mandal commission report in its entirety. Sri. P.S. Potti appearing for the State of Kerala supported the identification of backward classes solely and exclusively on the basis of caste. Sri. Ram Awadesh Singh. M.P, President of Lok Dal and President of All India Federation of Backward Classes, Scheduled castes, Scheduled tribes and Religious Minorities said that caste should be the sole criteria for determining backwardness. Sri. K. Parasaran counsel appearing for the Union of India urged that:²⁸⁰

- i) reservation provided under Clause (4) of Article 16 is not in favour of backward citizens, but in favour of backward class of citizens.
- ii) Caste is a relevant consideration. It can even dominant consideration. ii) if reservation is made in favour of backward Class of citizens the bar contained

²⁷⁷ 1976 AIR 490

²⁷⁸ 1964 AIR 1823

²⁷⁹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²⁸⁰ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

in Clause (2)²⁸¹ is not attracted, even if the backward classes are identified with reference to castes. iv) the criteria of backwardness evolved by Mandal commission is perfectly proper and unobjectionable.

In *Minor P Rajendran*²⁸², the caste vis-à-vis caste vis-à-vis class debate took a heavy turn., “It was held in this case that a caste is also a class of citizens and the and if the caste as a whole is socially and educationally backward reservation can be made in favour of such a caste on the ground that it is a socially and educationally class of citizens within the meaning of Article 15 (4)”.²⁸³ If backward class of citizens are within the meaning of Article 16 (4),²⁸⁴ there shall be ‘means test’ and ‘creamy layer test’ in order to identify them precisely. Means test is imposition of an income limit for the purpose of excluding persons whose income is above the said limit. This is always referred to the ‘creamy layer’. But the counsels of State of Bihar, Tamil Nadu, Kerala and others for respondents strongly oppose any such distinction. Based upon the arguments and debate the supreme court directed the government of India to specify the basis of exclusion that is whether on the basis of income, extent of holding or otherwise of ‘creamy layer’. Finally, the question number three the court held that Creamy layer can be and must be excluded. It is not correct to say that the backward class contemplated by Article 16 (4)²⁸⁵ is limited to the socially and educationally backward referred to Article 15 (4) and Article 340²⁸⁶. The test of requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes who fall within the expression backward class of citizens. Clause (4) speaks of adequate representation and not proportionate representation. Adequate representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the constitution. That too for a limited period. These Articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of Scheduled tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. Therefore, reservations contemplated

²⁸¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

²⁸² *Minor P Rajendran v. State of Tamil Nadu*, 1968 AIR 1012

²⁸³ Constitution of India. (Bare Act), Universal

²⁸⁴ Constitution of India. (Bare Act), Universal

²⁸⁵ Constitution of India. (Bare Act), Universal

²⁸⁶ Constitution of India. (Bare Act), Universal

in Clause (4) of Article 16 should not exceed 50 percent. The reservations under Article 16 (4) do not operate like a communal reservation.

The Supreme Court struck down the rule providing for carry forward of unfilled reserved vacancies, as modified in 1965 in *Devadasan*²⁸⁷. The view of the Court was that the reservation in the case of promotion is normally provided only where the promotion is by selection i.e. on the basis of merit. Similarly in *State of Punjab v. Hiralal*²⁸⁸, validity of an order made by the Government of Punjab providing for reservation in promotion, an order of the High Court was reversed by the supreme court. The court upheld the validity of order following the decision of *Rangachari*²⁸⁹. The Supreme Court in *comptroller and Auditor General v. K.S. Jaganathan*²⁹⁰, continued its pronouncements in favour of backward classes promotions, and it was held that reservation in favour of backward classes of citizens including SCs and STs as contemplated in Article 16 (4) can be made not merely in initial recruitment but also the posts to which promotions are to be made. For example, in *Akhil Bhartiya Soshit Karam Chari Sangh v. Union of India*.²⁹¹ It has been held that the posts to which promotion are to be made also affected reservation.

The *Rangachari*²⁹² has been the law for more than 30 years and the attempt to re-open the issues were repelled in *Karam Chari Sangh*²⁹³. In *Blaji*²⁹⁴ and others cases, it was assumed that reservations are necessarily anti meritorious. For example in *Janki Prasad Parimoo*²⁹⁵ it was observed, “it is implicit in the idea of reservation that a less meritorious person be preferred to another who is more meritorious”. To substantiate this the court referred the case of *State of M.P. v. Nivedita Jain*,²⁹⁶ the admission to medical course was regulated by an entrance test. Court observed that “Article 16 (4) is also a measure to ensure equality of status besides equality of opportunity. There is no particular or special standard of judicial review in matters arising under Articles 16(4) and 15 (4).”

²⁸⁷T. Devadasan v. Union of India, 1964 AIR 179

²⁸⁸1971 AIR 1777

²⁸⁹The General Manager, Southern Railways v. Rangachari, 1962 AIR 36

²⁹⁰1987 AIR 537

²⁹¹(1989) 1 SC 246

²⁹²The General Manager, Southern Railways v. Rangachari, 1962 AIR 36

²⁹³Soshit Karam Chari Sangh v. Union of India, (1989) 1 SC 246

²⁹⁴MR Balaji v. State of Mysore, 1963 AIR 649

²⁹⁵Janki Prasad Parimoo v. State of J & K, 1973 AIR 930

²⁹⁶1981 AIR 2045

4.3. Concept of Positive Action and Positive Discrimination

It is settled that reservations in educational institutions and other walks of life can be provided under Article 15 (4) in services under Article 16 (4). If so, it would not be correct to confine Article 15 (4) to programmes of positive action alone. It was argued that a permanent statutory body to examine complaints of over inclusion/under inclusion should be there. The court clarified that “they are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal to check complaints of wrong inclusion or non-inclusion of groups, classes and section in the list of Other Backward Classes can be made”.²⁹⁷ Whether the matter go back to constitution bench to find the defects of the Mandal Commission report. The court, “it is not necessary to send back the report to a five-judge bench. But in the future as argued by the counsels about inclusion non-inclusion of some sections shall be send to a five-judge bench”. The Andhra Pradesh Reports of the commission headed by Sri K.M. Anantharaman and Shri Muralidhara Rao. The State’s GO based on the report of the Anantharaman Commission was upheld by the supreme court in Balaram case.²⁹⁸ The supreme court summarise the following points:²⁹⁹

1. It is not necessary that the provision under Article 16 (4) should necessarily be made by the Parliament/Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory corporations and other instrumentalities of the State falling Article 12 of the constitution are themselves competent to make such a provision, if it so advised.³⁰⁰
2. An executive order making a provision under Article 16 (4) is enforceable the moment it is made and issued. Clause (4) of Article 16 is not an exception to Clause (1) It is an illustration of the classification inherent in Clause (1).³⁰¹
3. Article 16 (4) exhaustive of the subject of reservation in favour of backward class of citizens, as explained in the judgement.³⁰²
4. Reservation can also be provided under Clause (1) of Article 16.³⁰³

²⁹⁷Indra Sawhney v. Union of India, AIR 1993 SC 477

²⁹⁸AIR 1972 SC 1375

²⁹⁹Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁰⁰Para 55

³⁰¹ Para 57

³⁰² Para 58

³⁰³ Para 61 to 82

5. Neither the constitution nor the law prescribes the procedure or method of identification of backward classes.³⁰⁴
6. It is not necessary for a class to be designated as a backward class that it is situated similarly to the Scheduled Castes/Scheduled Tribes³⁰⁵.
7. Creamy layer can be and must be excluded.³⁰⁶
8. It is not correct to say that the backward class of citizens contemplated in Article 16 (4) is the same as the socially and educationally backward classes referred to in Article 15 (4).³⁰⁷
9. The adequacy of representation of a particular class in the services under the state is a matter within the subjective satisfaction of the appropriate Government.³⁰⁸
10. It is, of course, permissible for the Government or other authority to identify a backward class of citizens on the basis of occupation-cum-income, without reference to caste, if it is so advised³⁰⁹.
11. There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories. Para.³¹⁰
12. Reservation contemplated in Clause (4) of Article 16 should not exceed 50 percent.
13. The rule of 50 percent should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be.³¹¹
14. ³¹²Devadasan³¹³ was wrongly decided and is accordingly over-ruled to the extent it is inconsistent with this judgement.
15. Article 16 (4) does not permit provision for reservations in the matter of promotion. This rule has only prospective operation.³¹⁴

³⁰⁴ Para 83,84

³⁰⁵ Para 87.88

³⁰⁶ Para 86

³⁰⁷ Para 85

³⁰⁸ Para 90

³⁰⁹ Para 91

³¹⁰ Para 92

³¹¹ Para 96

³¹² Para 97-99

³¹³ T Devadasan v. Union of India, 1964 AIR 179

³¹⁴ Para 100-107

Directions given to the government of India, the State governments, and the Administration of Union Territories.³¹⁵

- a) Government of India, each state government and Administration of Union Territories, within 4 months constitute a permanent body for entertaining, examining and recommending requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens.
- b) Within 4 months government of India specify bases for applying socio economic criteria to exclude socially advanced persons/sections (Creamy Layer) from other backward classes. Not applied to states reservation already in operation.
- c) All objections to the criteria as well as the classification among backward classes and equitable distribution of the benefits of the reservation.

The Honourable Justice, S. Ratnavel Pandian, observed that “ our constitution is unquestionably unique in its character and assimilation having its notable aspirations contained in Fundamental rights in Part III through which the illumination of Constitutional rights comes to us not through an artless window glass but refracted with the enhanced intensity and beauty by prismatic interpretation of the constitutional provisions dealing with equal distribution of justice in the social, political and economic spheres³¹⁶. There is various constitutional provision such as Articles 14, 15, 16, 17, 38, 46, 332, 335, 338 and 340³¹⁷ which are designed to redress the centuries old grievances of the scheduled castes and scheduled tribes as well as the backward classes and which have come for judicial interpretation on and off. It is not merely a part of the constitution but also a national commitment.³¹⁸ In *Keshavananda Bharti v. State of Kerala*³¹⁹ it was observed that “the blood and soul of our constitutional scheme are to be achieved the objective of our constitution contained in the Preamble which is part of our constitution”³²⁰. During a debate in the Parliament by Dr. B. R. Ambedkar as a Minister of Law on the explanation of Article 16 (4) expressed that backward

³¹⁵ *Indra Sawhney v. Union of India*, 1993 SC 477

³¹⁶ Para 125- 131

³¹⁷ The Constitution of India, Bare Act, (Universal)

³¹⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 447

³¹⁹ 1993 (Suppl) SCR 1

³²⁰ *Kesavananda Bharati v. Union of India*, AIR 1973 SC 1461

classes which are nothing else but a collection of certain castes.³²¹ Article 15(4), 16(4) and 340(1) do not speak of caste but only class. The word caste is not used in the constitution as identifying any section of people or community except in relation to Scheduled Castes, which are defined in Article 366(24). But, the word caste in Article 15(2), 16 (2) and 29 (2) does not include scheduled caste but it refers to a caste within the ordinary meaning of caste. Supporting the argument of Parasaran that Articles 16 (4) and 335 are worded as to give wide meaning to the State in the matter of reservation and Article 16 (4) has a non-obstante clause reading “Nothing in this Article shall prevent the State from making any provision” has an overriding effect on Article 16 (2).

In support of the above argument based on the non-obstante clause, various decisions are pronounced such as *Punjab Province v. Daulat Singh and Ors.*³²², *Orient Paper and Industries Ltd. v. State of Orissa*,³²³, *re-Hatschek’s Patents*³²⁴ and *Hari Vishnu Kamath v. Syed Ahmed Ishaque and Ors.*³²⁵. In *B. Venkataramana v. State of Madras*,³²⁶ a seven-judge bench of supreme court held that “reservation of posts in favour of any backward class of citizens cannot, be regarded as unconstitutional”. Similarly in a judgement of Punjab and Haryana High Court in *State of Punjab v. Hiralal and Ors.*³²⁷, the court upheld that the reservation made by the executive order is constitutional. This has been substantiated in *Mangal Singh v. Punjab State Police*³²⁸. The court invited attention that the directive principles laid down under Article 46 is to promote with special care the educational and economic interests of the weaker sections of the people and in particular of the scheduled castes and the scheduled tribes and to protect them from social injustice and all other forms of exploitation. In this connection the cases mentioned below are cited. *Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd.*³²⁹, *Official Liquidator v. Dharti Dhan*³³⁰, *Delhi Administration v. I.K. Nangia and Jaganathan*,³³¹

³²¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³²² 1942 F. C. R. 67 at 87 and 88

³²³ 1961 AIR 1438

³²⁴ 1909 Chancery Division Vol. II 68 at 82 and 85

³²⁵ AIR 1995 SC 234

³²⁶ AIR 1951 SC 229,

³²⁷ 1971 AIR 1777

³²⁸ 1996 CRILJ 3258

³²⁹ (1950) SCR 536

³³⁰ 964, 10th Feb. 1977

³³¹ (Supra)

The court explains that what all are the institutions coming under the purview of State under Article 12, and observed that the expression of the opinion of the state means that the formation of opinion by the state which is purely subjective process, If the opinion suffers from non-application of mind, beyond scope of statute or irrelevant and extraneous material then that opinion is challengeable. Making provisions for reservation of appointments or posts in favour of backward class exclusively within the decision of government and ordinarily do not attract judicial review.

Then court looked into the factor of exclusion of sections from the same category of SEBCs. In this regard the court said that for elimination or exclusion of section from the same category SEBCs, government to decide policy and that policy should not be violative of any constitutional or legal provisions. If the annual gross income of a government servant derived from all his sources during a financial year is taken as a test for identifying poorer sections that test could be defeated by reducing his income below the ceiling limit by voluntarily going to leave or loss pay. Similarly, a person having extensive land, dispose of a portion to bring his agricultural income below the ceiling limit to fall within the category of poorer sections. The income test for ascertaining poverty may suffer from the vice of corruption and also encourage patronage and nepotism.³³² Whether Article 16 (4) contemplates reservation in the matter of promotion. In *Mohan Kumar Singhania v. Union of India*,³³³ three judge-bench of supreme court held that “once a candidate even from reserved communities are allotted and appointed to a service based on their ranks and performance and the they also to be treated on par with all other selected candidates, there shall not be any preferential treatment. Article 16 (4) does not permit provision for reservation in the matter of promotions. In *Indra Sawhney*,³³⁴ the Supreme Court has taken cognizance of many questions which are complex and meritorious, having grip on the future welfare and stability of the Indian society. The Supreme Court has delivered a very thoughtful, creative opinion dealing with various aspects of the reservation problem. Basically, reservation in government services is in meritocracy, because when a candidate is appointed to a reserved post, it inevitably excludes more meritorious candidate”.

³³² *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³³³ (1992) Supp. 1 SCC 594

³³⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

But reservation is now a fact of life and it is very difficult to remove the reservation in the near future. The Supreme Court decision was highly positive.³³⁵ The court ruled that the over-all reservation in a year is limited to a maximum of 50%” “amongst the classes granted reservation, those who are benefited from reservation may have thus improved their social status (called the creamy layer by the Court), should not be allowed to benefit from reservation over and over again”. This means that the benefit of reservation may not be misappropriated by the upper level of the backward classes, but it should reach up-to the lowliest level, so that they may benefit from reservation to improve their positions. This necessitated to find suitable socio-economic tests to identify the creamy layer among the backward classes. The Court admits that” identifying the elite class may not be an easy exercise”. Accordingly, the Court has imposed the method of criteria to be adopted to in the shoulder of the concerned governments.

The Court has given one clear indication on this issue. The Court has said that “if a member of a backward family becomes a member of IAS, IPS or any other All India Service, his social status rises; he is no longer socially disadvantaged. This means that, in effect, a family can avail of the reservation only once”. There, an element of merit has now been introduced into the scheme of reservation. This has been done in several ways³³⁶, e.g.,

- a) Promotions are to be merit-based and are to be excluded from the reservation rule.
- b) Certain posts are to be excluded from the reservation rule and recruitment to such posts into be merit based;
- c) Minimum standards have to be laid down for recruitment to the reserved pots. In fact, the Court has insisted that some minimum standards must be laid down even though the same may be lower than the standards laid down for the non-reserved posts.³³⁷

“Finally, it is necessary to the courts, or tribunals to take action for affirmative action enhancement or preferential by the legislature or executive. The history of discrimination and segregations of the SCs/STs and socially, educationally and economically backward in the darkest chapter of social history for which no comparison

³³⁵ Para 681

³³⁶ Para 682

³³⁷ Para 682 Indra Sawhney v. Union of India, AIR 1993 SC 477, Judgement

in the world. The most anticipated formation of egalitarian society is deeply rooted to the constitutional mandate and remembering the past discrimination and sufferings”³³⁸ “Our effort to build a progressive society and that can only be achieved by breaking the social barriers and allow the lowest to participate in the nation building process and share power and also maintaining an equilibrium. But that should have to be done without compromising on the efficiency. Also, in the process utmost care to be given to the upliftment of the have-nots the real and genuine backward class and shall not permit the haves among the Sudra of the intermediate backward classes”.

The Mandal commission recommendations must be taken into consideration for backward class reservation in India. As the Commissions are only fact-finding bodies the actual action must be taken by the governments as per the constitutional mandate. In conclusion the court finalised the followings³³⁹:

1. The reservation in public employment by legislature or executive action are not a matter of policy or a political issue. The higher courts in India are constitutionally obliged to undertake judicial review in every matter which constitutional in nature or suppression of constitutional mandate.
2. a) constitutional bar under Article 16(2) against state for not discriminating on race, religion or caste is as much applicable to Article 16 (4) as to Article 16 (1) as they are party of the same scheme and serve same constitutional purpose of ensuring equality. Identification of backward class by caste is against the constitutional.
b) The prohibition is not mitigated by using the word, only in Article 16 (2) as a cover. Evolving some socio-economic indicators and then applying it to caste as the identification then suffers from the same vice.

Identification of a group by any criteria other than caste, such as, occupation cum social cum education cum economic criteria ending in caste may not be invalid.³⁴⁰

c. Social and educational backward class under Article 340 being narrower in import than backward class in Article 16 (4) it has to be construed in restricted manner.

³³⁸ Para 694 Indra Sawhney v. Union of India, AIR 1993 SC 477, Judgement

³³⁹ Para 696 Indra Sawhney v. Union of India, AIR 1993 SC 477, Judgement

³⁴⁰ Para 696 Indra Sawhney v. Union of India, AIR 1993 SC 477, Judgement.

And the words educationally backward in this Article cannot be disregarded while determining backwardness.

3. Reservation under Article 16(4) being for any class of citizens and citizen having been defined in Chapter II of the Constitution includes not only Hindus, but Muslims, Christians, Sikhs, Buddhists, Jains etc. the principle of identification has to be of universal application so as to extend to every community and not only to those who are either converts from Hinduism or some of who carry on the same occupation as some of the Hindus.

4. Reservation being extreme form of protective measure or affirmative action it should be confined to minority of seats. Even though the constitution does not lay down any specific bar but the constitutional philosophy being against proportional equality the principle of balancing equality ordains reservation of any manner, not to exceed 50%

5. Article 16(4) being part of the scheme of equality doctrine it is exhaustive of reservation therefore no reservation can be made under Article 16(1).

6. Reservation in promotion is constitutionally impermissible as, once the advantaged and disadvantaged are made equal and are brought in one class or group then any further benefit extended for promotion on the inequality existing prior to be brought in the group would be treating equals unequally. It would not be eradicating the effects of past discrimination perpetuating it.

7. Economic backwardness may give jurisdiction to state to reserve provided it can find out mechanism to ascertain inadequacy of representation of such class, but such group or collectivity does not fall under Article 16 (1)³⁴¹.

8. Creamy layer amongst backward class of citizens must be excluded by fixation of proper income, property or status criteria.³⁴²

On an elaborate study of the judgement of Indra Sawhney it can be understood that the Court has not been able to completely eliminate the caste factor in identifying the backward classes. But the Court has tried to keep the caste factor within the limits. Caste can be one of the factors, but not the sole factor, to identify backwardness. Reservation has become the bane of the contemporary Indian life. More and more

³⁴¹ Constitution of India, Bare Act (Universal)

³⁴² Para 696 Indra Sawhney v Union of India, AIR 1993 SC 477, judgement.

section of the society is demanding reservation for themselves in government services. The politicians are also vying among themselves for demanding reservations to all. Needless to say, reservation is inequitable principle, because the meritorious candidate may have to compete with much less meritorious candidate of the reserved category.

The very purpose of reservation is to protect the weaker sections against competition found in the unreserved category candidates.³⁴³ The very idea of reservation implies 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 adversely affect efficiency in administration. But, for the present, the system of reservation has to be accepted as necessary. However, while accepting reservation up to a point as present-day politico-sociological necessity, it does not mean that it could be continued without end.

In *Ashok Kumar Thakur v. State of Bihar*³⁴⁴, the Supreme Court has assessed the validity of high levels of income or holding of other conditions prescribed by the legislatures of Uttar Pradesh and Bihar as criteria to identify the creamy layer. For example, while the Supreme Court in the *Mandal* case has categorically said that the Children of IAS or IPS, etc. without anything more could not avail the benefit of reservation. In the scheme drawn in UP and Bihar, a few more conditions were added for falling in the creamy layer, such as he/she should be getting a salary of Rs.10,000/- per month or more; the wife or husband to be a graduate and owning a house in an urban area. Or, if a professional doctor, surgeon, lawyer, architect, etc., he should be having an income not less than Rs.10.00 lakhs, his/her spouse is a graduate and having family property worth 30 lakhs. Similar conditions were added in case of others, such as teachers, artisans etc.

The Supreme Court has quashed these conditions as discriminatory. The Court has ruled that the conditions laid down by the two states have no ‘nexus’ with the object sought to be achieved. The criteria laid down by the two States to identify the creamy layer are violative of Art.16(4), unreasonable, arbitrary, violative of Art.14, and against the law laid down by the Supreme Court in the said case, where the Court has expressed

³⁴³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁴⁴ 1996 AIR 75

the view that a member of the all-India Service with anything more ought to be regarded as belonging to the “Creamy Layer”.

The Court has observed in this regard:

“The backward class under Art.16(4) means the class which has no element of ‘creamy layer’ in it. It is mandatory under Art.16(4), as interpreted by this Court, that the state must identify the ‘creamy layer’ in a backward class and thereafter, by excluding the ‘creamy layer’ extend the benefit of reservation to the ‘class’ which remains after such exclusion³⁴⁵. The Court has laid down, clear and easy to follow guidelines for the identification of ‘creamy layer’. The States of Bihar and Uttar Pradesh have acted wholly arbitrary and in utter violation of the law laid down by this Court in Mandal case. It is difficult to accept that in India where the per capita national income is Rs.6929(1993-1994), a person who is a member of the IAS and a professional who is earning less than Rs.10.00 lakhs per annum is socially and educationally backward. They were of the view that the criteria laid down by the States of Bihar and Uttar Pradesh, for identifying the ‘creamy layer’ on the face of it is arbitrary and has to be rejected.” it has no factual basis. In toto we can say the Indra Sawhney³⁴⁶ was a great judgement and the court with utmost care laid down principle in accordance with the constitution of India and social, educational and economic landscape of the country. The exclusion of creamy layer was a great step towards social justice and it enabled inclusion more and more down trodden in the other backward classes into the reservation fold. This was a great leap towards mitigating the historical injustice and bring social justice in the present. The Indra Sawhney judgement was landmark in the landscape of Indian legal system it will always be considered as a bench mark in the judicial interpretation.

4.4. Conclusion

Indra Sawhney³⁴⁷ judgement remains a cornerstone in the jurisprudence of affirmative action in India. The decision of this case reaffirmed the obligation of state to uplift socially and educationally backward classes, at the same time put barriers on misuse of affirmative action. The ceiling on reservation as 50% and the exclusion of creamy layer

³⁴⁵ Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁴⁶ Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁴⁷ Indra Sawhney v. Union of India, AIR 1993 SC 477

are the most important aspect of the judgement. It also clarified that Article 16(4) is not an exception to, but a facet of, the equality principle enshrined in Article 14. This case continues to influence subsequent policies of the government and judicial decisions. The decision of this case serves the foundational precedent for the study of scope, implementation and reformation of reservation in India.

CHAPTER 5

THE CREAMY LAYER PRINCIPLE.

5.1. Introduction

Creamy layer is the exclusion of affluent sections of the other backward classes from the enjoying the benefit of reservation. These creamy layer sections form the forward sections of the backward classes. This is like the upper layer or the cream formed on the top of the milk while it is boiled. Similarly, some process is conducted to find out the cream which is assimilated in the whole community and weeded out so that remaining members could get the benefits of the reservation. The concept has been first mentioned by the Sattanathan commission in its report to the government of Tamil Nadu as in Indian reservation. Then this concept mentioned in *NM Thomas v. State of Kerala* in 1976³⁴⁸. In this case Justice Krishna Iyer observed that, as regards reservation in promotions there was a risk that the benefits of reservation could be monopolized by the affluent individuals within the backward castes. After that when Mandal commission submitted its report, suggested that the financial status could be considered for eligibility for benefits of reservation rather than caste alone. Then in 1992 this concept became a reality in *Indra Sawhney v. Union of India*³⁴⁹. The court held that while the state provides reservations to the OBCs it must exclude those belongs to the creamy layer of that sections, who have achieved certain level of economic and social advancement. This was the materialization of the creamy layer in Indian reservation. The creamy layer principle is highly relevant in the context of reservation system in India, with regard to OBC. The creamy layer principle excludes the affluent and well advanced OBCs from availing reservation benefits and ensures truly disadvantaged sections within the OBC category get the benefits of reservation. This avoids monopolization and uplift the marginalized and bring social justice and inclusion.

5.2. Principle of Creamy Layer

The concept of Creamy Layer settled in *Indara Sawhney v. Union of India* by the Supreme Court of India.³⁵⁰ The term “Creamy Layer” was introduced by the

³⁴⁸ 1976 AIR 490

³⁴⁹ AIR 1993 SC 477

³⁵⁰ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

Sattanathan Commission³⁵¹ in 1971 and directed the state government that the “creamy Layer” should be excluded from the reservation of civil posts and services granted to the OBCs. Mandal commission’s recommendation paved way for excluding the economically and socially advanced individuals of the OBCs from reservation so that the monopolizing the reservation could be avoided and the real deserving individuals get reservation. The Supreme court has said that the benefit of reservation should not be given to OBCs children of constitutional functionaries such as the President, Judges of the Supreme Court and High Courts, employees (Class I and Class II) of Central and state bureaucracies, public section employees, members of armed forces and paramilitary personnel above the rank of colonel, lawyers, chartered accountants, doctors, financial and management consultant, engineers, film artists, and authors. OBC children belonging to any family that earns a total gross annual income of Rs.4.5 lakhs, belong to the creamy layer and are also excluded from being categorized as “socially and educationally backward” regardless of their social/educational backwardness. On analysis we can find that the Supreme was in favor of the exclusion of creamy layer among the backward classes for the purpose of reservation³⁵².

In the Mandal³⁵³ case the Court formulated these principles after considering almost all relevant aspect viz historical, social, economic, political and developmental. Besides this, different methods of judicial pronouncements like historical, logical and sociological have been adopted by the Court in formulating this new legal principle, which had far-reaching impact on social, economic political consequences. The reasoning, given by different panel of judges had provided adequate theoretical foundation to the principle. To defeat this new principle there were attempts from the political and legal spectrum but failed due to the stern stand of the Supreme Court. In *Indra Sawhney and others v. Union of India*,³⁵⁴ petitioner’s argument was that some members of the backward class are highly advanced socially as well as economically and educationally. They constitute forward section of that particular backward class and are as forward as any other backward class member. It was further argued that this upper layer among backward are usurping all the benefits of reservation meant for that

³⁵¹ Sattanathan committee was formed in 1970 by Government of Tamil Nadu to study the position of backward classes under the Chairmanship of AN Sattanathan.

³⁵² *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁵³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁵⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

class, therefore not reaching up to real deserving candidates of the backward class. The petitioner relied on *K.S. Jayasree v. State of Kerala*,³⁵⁵ case wherein the Supreme Court had approved the Kerala scheme to keep certain classes out from the reservation benefit by fixing economic ceiling. Case of *State of Kerala v. NM Thomas*,³⁵⁶ was also cited where Krishna Iyer, J. pointed out one of the dangers of reservation to be that, “it benefits, by and large, are snatched away by the top creamy layer of the ‘Backward Caste’ or class keeping away weak and leaving the fortunate layers to consume to the whole case.” Therefore, seed of concept of creamy layer has been bowed in the above cases before the *Indra Sawhney*³⁵⁷ case had been settled.

In *Indra Sawhney*³⁵⁸ the first and foremost issue was whether the philosophy of creamy layerisation would be limited to OBCs only or would include Scheduled Castes and Scheduled Tribes also, for whom reservation benefit has been given since long. The second issue was; who were the opponents of giving benefits to all OBCs including their upper crust of OBCs outside the purview of reservation side by side the vacation of stay order against the union policy? On the first issue Honorable Chief Justice Kania and Venkatachalaiah, Ahmadi and Jeevan Reddy, JJ had observed, that “this discussion is confined to other Backward Class only and has no relevance in the case of Scheduled Castes and Scheduled Tribes.”³⁵⁹ Although in *M. Nagaraj & others v. Union of India & others*³⁶⁰ case with five judges bench it was laid down that concept of creamy layer could be applied in case of SCs and STs also. But Attorney General Milon Banerjee said that here court’s view is obiter dicta and it is not part of decision. While in *Indra Sawhney*³⁶¹ decision was given by nine judges’ bench that principle of creamy layer is applicable only on OBCs, whereas in *Nagaraj*³⁶² case decision is given by five judges bench, and, there is another precedent that a similar panel could not overturn a larger bench’s verdict.

Recently in 2008, in *Ashokkumar Thakur v. Union of India*,³⁶³ five-judge bench “laid down that ‘creamy layer’ principle cannot be applied to SCs and STs as SCs and STs

³⁵⁵ 1979, 3 SCC 730

³⁵⁶ AIR 1976 SC 490

³⁵⁷ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁵⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁵⁹ Mandal case, para 792, *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁶⁰ (2006) 8 SCC 212

³⁶¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

³⁶² *M Nagaraj v. Union of India*, (2006) 8 SCC 212

³⁶³ (2008) 6 SCC 212

are separate classes by themselves”. Principle of creamy layer applicable to OBCs as Chief Justice KG Balakrishnan³⁶⁴ stated: “by excluding those who have already attained economic well-being or educational advancement, the special benefits cannot be further extended to them and, if done so, it would be unreasonable, discriminatory or arbitrary resulting in reverse discrimination. But this logic is applied exclusively for OBCs and the logic is not applied for SCs, STs and the unreserved category seats. The criterion is also not applicable to minority institutions. Chief justice KG Balakrishnan also said that we are bound by larger bench decision of the Supreme Court in Indra Sawhney³⁶⁵ case”. This observation had been criticized that if the rule of exclusion of upper layer of OBCs is advocated then SCs and STs how spared.

Because of this there was tug of war between legislature and judiciary in which it was contended that the will of the legislature is undermined by the utopian concepts/perception of the Supreme court. The question was that whether judges interpreting constitution can decide based on the income of the parents of the socially and educationally backward class child combined yearly of Rs.4.5 lakhs, since the exclusion is used to discriminate within OBCs only. Mr. KC Yadav³⁶⁶ challenged the discriminatory use of Creamy Layer formula, and said “Art. 16(4) takes care of the Backward Classes as a genus of which the Scheduled Castes, Scheduled Tribes and Other backward Classes constitute different species”. There is no exclusion of the ‘creamy layer’ from the Scheduled Caste and Scheduled Tribes in matter of job reservation. Why should the other Backward Classes be subjected to this discriminatory provision? Mr. B.K Roy Burman³⁶⁷, one of the members of the Mandal Commission, has also repeated the same charges;” if there is no question of identifying the ‘creamy layer’ among the Scheduled Castes, Scheduled Tribes, why there should be an effort to do so in relation to the Other Backward Classes”.

Other than Honorable Justice Pandian, all the other eight honorable justices out of nine opined that reservation to OBCs should be allowed subject to exclusion. Honorable Chief justice Kania and Venkatachallih, Ahmadi and Jeevan Reddy, JJ, viewed that creamy layer exclusion enable to compete with the forward classes. Thommen, J, accepted the economic level for exclusion. Kuldip Singh accepted means test to

³⁶⁴ First Chief Justice of India belong to Scheduled Caste.

³⁶⁵ Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁶⁶ K.C. Yadav, Flaws in the Creamy Layer Concept, The Times of India.

³⁶⁷ The Times of India, March 12, 1993, p.3.

exclude the elite section of the backward classes. Sahai, J, opined that there is a social purpose in exclusion through proper income, property or status criteria. While Pandian, J, as dissenting opinion affirmed with the view of Chinnappa Reddy, J, when he quoted in Vasanta Kumar Case.³⁶⁸ The majority view favored application of creamy layer but they were in confusion that instead of benefitting some-one it should not snatch his accorded facility. They ruled” that the basis of exclusion should not merely be economic one unless economic advancement is so high that it necessarily means social advancement like ownership of a factory.³⁶⁹” Jeevan Reddy, J. while delivering the judgement said that there should be clear line between creamy layer and remaining class and a limit to be prescribed which may indicate the social advancement. The Court pointed out "certain positions to be recognized as socially advanced like becoming a member of IAS or IPS or any other All India Services³⁷⁰. Exclusion of such advance class must be to identify the real backward class under Article 16(4)³⁷¹.

Justice Sawant, gave his judgement about ‘creamy layer’ on two grounds; first, “the natural progress is that when the society move forward some individuals and families in backward class gain sufficient means to develop to compete with others. Even if they born in less advanced class they cannot be considered as part of backward class. If the reservation benefits pass on to them then it will be a violation of equality and treating equals unequally.³⁷² Second, if consider them with the rest of the backward classes would equally violates the right to equality of the rest in those classes, since it would amount to treating unequal’s equally³⁷³.According to him, hence, taking out forwards from among the backward classes is not only permissible but obligatory under the Constitution’.³⁷⁴ Thommen and Kuldip Singh, JJ., preferred means test. In his view, “classes for which reservation is meant are those classes who are totally unable to join mainstream of upward mobility because of their utter helplessness arising from social and educational backwardness and aggravated by economic disability.³⁷⁵”

³⁶⁸ AIR 1985 SC 1495

³⁶⁹ Mandal Case, p. 428 (para 792), Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁷⁰ Ibid., p. 429.

³⁷¹ Constitution of India, Bare Act (Universal)

³⁷² Mandal Case, p. 257 (para 520), Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁷³ Ibid.

³⁷⁴ Ibid.

³⁷⁵ Ibid., p .159 (para 295)

Justice Kuldeep Singh, said that “benefits of special privilege like job reservations were mostly consumed by richer or more elite sections of backward classes and the poorer and the really backward sections among them keep on getting poorer and more backward. It is therefore, recommended that means test is imperative to trim of the affluent sections of the backward classes.³⁷⁶” He, reiterated for the necessity of Creamy Layer, observed: “the jobs are very few in comparison to the population of the backward classes. It is difficult to give them adequate representation in the State services. It is, therefore, necessary that the benefit of the reservation must reach the poorer and the weaker section of the backward class. Economic ceiling to cut-off the backward class for the purpose of job reservation is necessary to benefit the needy sections of the class. Means test is imperative to weed out the affluent sections of the backward classes’.³⁷⁷

Even S Ratnavel Pandian, J., in dissenting opinion, said that, “The office memorandum based on Mandal Commission report does not speak of any ‘creamy layer test’. It is the judiciary which laid down principle of creamy layer to justify reservation for OBCs. He further state that, ‘there is no dispute that the pseudo-communities who have smuggled into the backward classes should be weeded out from the list of backward class. But he pointed out that the act of weeding out must be done only by the Government on proper verification’³⁷⁸”

A nine bench of apex court authoritatively came to the conclusion with majority view of BP. Jeevan Reddy, J., that ‘Creamy layer’ can be, and must be excluded from the said classes, and the classes which remains after excluding the ‘creamy layer’ would more appropriately serve the purpose and object of Art. 16(4).³⁷⁹ They observed that, “The very concept of a class denotes a number of persons having certain common traits distinguish them from the others. In determining backward class under Art. 16 clause. (4), if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are for too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. When reservations are making for Backward Class, Creamy layer can be and must be excluded. In fact, such exclusion benefits the truly backward”. The

³⁷⁶ Ibid., p. 196

³⁷⁷ Ibid., at para 611

³⁷⁸ Ibid., p. 28

³⁷⁹ Constitution of India, Bare Act, (Universal)

Supreme Court therefore directed the Government of India to specify the basis of exclusion-where on the basis of income, extent of holding or otherwise-of creamy layer and held that after exclusion of creamy layer reservation is valid.³⁸⁰

Justice R.M. Sahai, separately observed that, “While reserving posts for backward classes the departments should make a condition precedent that every candidate must disclose the annual income of the parents beyond which one could not be considered to be backward. What should be that limit can be determined by the appropriated state. Income apart provision should be made that ward of those backward classes of persons who have achieved a particular status in society either political or social or economic or if their parents are in higher services then such individuals should be precluded to avoid monopolization by the services reserved for backward classes by a few”. “Creamy layer, thus, shall stand eliminated. And once a group or collectivity itself is found to have achieved the Constitutional objective then it should be excluded from the list of backward class. Creamy layer, amongst backward class of citizens must be excluded, by fixation of proper income, property or status criteria”.³⁸¹

Regarding the legality of Creamy Layer principle R.M. Sahai, J. observed that, “the importance of word “is” in Art. 16(4)³⁸² should not be lost of Backwardness and inadequacy should exist on the date the reservation is made. Reservation for a group which was educationally, economically and socially backward before 1950 shall not be valid unless the group continues to be backward today. The group should not have suffered only but it should be found to be suffering with such disabilities. If a class or community ceases to be economically and socially backward or even if it so it is adequately represented then no reservation can be made as it no more continues to be backward even though it may not be adequately represented in services or it may be backward but adequately represented.”³⁸³ It is argued that the government was not aware that some of the individuals who socially and educationally attained advancement and are above the average entered in the All-India services. The Government has accepted the listed groups of SEBCs as annexed to the report and it has not eliminated those individuals. Therefore, in such circumstances, it is doubtful that the judicial supremacy can work in the broad area of social policy. It directed the

³⁸⁰ Ibid. at para 86, 121(3)(d), 450, 451

³⁸¹ Ibid. at Paras 700, 694

³⁸² Constitution of India, Bare Act, (Universal)

³⁸³ Ibid. at Para 662.

exclusion of any section of the people from the accepted list of OBCs. The ground was that they are all “Creamy Layer”. To find out creamy layer it shall be tested with reference to various factors or make suggestions for exclusion of any sections who are otherwise entitled for the benefit of reservation, Therefore, the Supreme Court is not called upon to lay a test or give any guide line as to who are all to be eliminated from the listed groups of the Report, there is no necessity to lay any test much less “creamy layer”.³⁸⁴

As Justice S. Ratnavel Pandian, observed that, “no section of the SEBCs can be excluded on the ground of creamy layer till the government takes a decision in this regard on a review on the recommendations of a Commission or a committee to be appointed by the government.”³⁸⁵ Finally, it could be said that there is no disagreement on the principle of “creamy layer”. Creamy layer amongst backward class of citizens must be excluded by fixation of proper income, property or status criteria. But the task to identify creamy layer is the job of government by appointing a commission.³⁸⁶ As per the direction of Supreme Court R.N. Prasad committee was established to identify creamy layer among backward class for the exclusion from the benefit of reservation on February 1993 and this committee submitted the report to the government on 10th March 1993.³⁸⁷ In *Ashok Kumar Thakur v. State of Bihar*³⁸⁸ and UP case the Government O.M. dated 8.9.1993 based on Rama Nandan committee Report³⁸⁹ was approved by the Division Bench of the Supreme Court consisting of Kuldeep Singh and S. Saghir Ahmad, JJ. For the exclusion of creamy layer during giving benefit of reservation to the backward classes under section 16(4)³⁹⁰. In this case the constitutionality of determining ‘creamy layer’ for the purpose of exclusion from OBCs lay down lay by the State of Bihar and State of UP was challenged. The division bench declared the creamy layer formula of both the States as invalid for being against the

³⁸⁴ Ibid. at Paras 351, 358

³⁸⁵ Ibid. at Para 121(3)(d), 450, 451, 366

³⁸⁶ *Indira Sawheney v. Union of India*, AIR 1993 SC 477

³⁸⁷ Annexure enclosed

³⁸⁸ (2008) 6 SCC 1 138

³⁸⁹ Ram Nandan Committee appointed by the Central Government, submitted its report in 1993 outlining criteria for identifying socially advanced persons (creamy layer) within the other backward classes. <https://archive.pib.gov.in>

³⁹⁰ Constitution of India.

norms indicated by the Hon'ble Supreme Court in Mandal case³⁹¹ and RN Prasad Committee³⁹².

The creamy layer formula of two States were like this; The Governor of Bihar promulgated ordinance called 'the Bihar Reservation of vacancies in Posts and services (for scheduled Castes Scheduled Tribes and Other Backward Classes) (Amendment) Ordinance, 1995. This Ordinance amended the section 4 of Bihar Act 3 of 1992 and after the second proviso, the following proviso was added: "Provided also that reservation under clause (d) shall not apply to the category of Backward Class specified in Scheduled III'. And in the state of Uttar Pradesh, the categories sought to be excluded from the backward classes (creamy layer) are mentioned in Schedule II read with section 3(b) of the Uttar Pradesh Act. A comparative evaluation of the identification of 'creamy layer' among OBCs by the States of Bihar and UP reveals that they had put some additional conditions for exclusion than what guidelines in Mandal case desired. The additional requirements put by the two States were that such person should draw a salary more than rs.10,000 or more per men sum, the wife and husband be graduate and one of them owning house in urban area. In case of professionals as income of rs.10 lakh per men sum was fixed as criterion. It further provided that the wife or husband should at least graduate and the family owns immovable property of the value of at least Rupees 20 lakhs.

Similarly, the criteria regarding traders, industrialist, agriculturists and others were very high example for industrialist it was required that they might have invested Rs. 10 crores for at least 5 years and spouse is at least graduate, for agriculturalists, an income of Rs. 10 lakhs in year from sources other than agriculture and graduation of spouse was essential, for any other person to mention the above categories, the income from all sources required for continuously 3 years was fixed at not less than Rs.10 lakhs, graduation of spouse and immovable property worth Rs.20 lakhs. In this case Supreme Court held that "the said criteria were ultra vires". Kuldip Singh, J. arrived at certain conclusions.³⁹³

³⁹¹ Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁹² Ram Nandan Prasad committee, appointed by the Indian government in 1993, focussed on identifying the creamy layer among other backward classes to exclude them from reservation benefits.

³⁹³ Indra Sawhney v. Union of India, AIR 1993 SC 477

1. The protective discrimination in the shape of job reservation under Art.16(4) has to be programmed in such a manner that the most deserving section of the backward class is benefited.
2. Means test by which 'creamy layer' is excluded ensures such a result.
3. Due to nature of things there may be disparity among backwards as all cannot be equally backward and therefore some of the members of the class may have individually crossed the barriers of backwardness but while identifying the class they may have come within collectivity.
4. It is often seen that comparatively rich persons in the backward class are able to move in the society without being discriminated socially.
5. The members of the backward classes are differentiated into superior and inferior and discrimination which was practiced by the affluent members of the backward class on the poorer members of the same class.
6. The benefit of social privileges like job reservations are mostly chewed up by the richer or more affluent sections of the backward class and the poorer and the really backward sections among them keep on getting poorer and more backward.

The Conclusion of Kuldip Singh, J. expressed in Ashok Kumar Thakur³⁹⁴ case is nothing but the echo or reproduction of the dissenting opinion of the learned judge (Pandian) in famous Mandal case³⁹⁵. Majority view laid down three conclusions³⁹⁶ in the said case: First; Means Test are imperative to skim off the affluent sections of the BCs; Second; only the most deserving – the weakest section among the SEBCs should be given the benefit of reservation, and; Third; identification of the OBCs under Article 16(4) can be made solely on the basis of economic criterion. Decision of the Ashokkumar³⁹⁷ case is not correlated with judgement of Mandal case³⁹⁸. BP Jeevan Reddy, Sawant JJ., observed that the ascent of backwardness does not economic consideration but on social considerations. Identification of the OBCs is to be based on social backwardness whose educational and economic backwardness is on account

³⁹⁴ Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1 138

³⁹⁵ Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁹⁶ Mandal case, Paras 385, 386, Indra Sawhney v. Union of India, AIR 1993 SC 477

³⁹⁷ Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1 138

³⁹⁸ Indra Sawhney v. Union of India, AIR 1993 SC 477

of social backwardness. This is so, because the purpose of reservation is not to alleviate poverty but to give an adequate share in power³⁹⁹.

The court also missed the point that the Court is not competent to issue guideline for identification of backward classes. The Government was given the upper hand. The direction of the Court indicates that the ultimate responsibility/to identify creamy layer lies with State Government. While allowing the writ petitions and quashing Bihar and UP schemes of identification of creamy layer, Kuldip Singh, J. “directed that the process of identifying backward class cannot be perfected to the extent that every member of the said class is equally backward”. It has been further observed by the Honorable judge that,⁴⁰⁰ ‘For the identification year 1995-96, the States of Uttar Pradesh and Bihar shall follow the criteria laid down by the Government of India. It will be open to the two states to lay down fresh criteria for the subsequent years in accordance with law.’ P.B. Sawant, J. spoke about the ‘creamy layer’ in the following words:⁴⁰¹ “The correct criterion for judging the forwardness of the forward among the backward classes is to measure their capacity not in terms of the capacity of the members of the forward classes, as stated earlier. If they cross the line of backwardness they should be taken out from the backward classes and should be made disentitled to the provisions meant for the said classes.” Honorable Justice B.P.⁴⁰²Jeevan Reddy, speaking for the court enunciated, the concept of ‘creamy layer’ in the following words: “The basis of the exclusion should not merely be economic, unless, of course, the economic advancement is so high that it necessarily means social advancement.”⁴⁰³

For example, a member of backward class, (member of carpenter caste), goes to Middle-East and works there as a carpenter. If you take his annual income in rupees, it would be fairly high from the Indian standard. Is he to be excluded from the backward class? Are his children in India to be deprived of the benefit of Art. 16(4)? Situation may, however, be different, if he rises so high economically as to become-say a factory owner himself. In such a situation, his social status also rises. He himself would be in a position to provide employment to others. In such a case, his income is merely a measure of his social status. Even otherwise there are several practical difficulties too

³⁹⁹ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴⁰⁰ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴⁰¹ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴⁰² AIR, 1996 SC 75, Para 5

⁴⁰³ Ibid.

in imposing an income ceiling. For example, annual income of rs.36,000 may not count for much in a city like Bombay, Delhi or Calcutta whereas it may be handsome income in rural India anywhere. The line to be drawn must be realistic one⁴⁰⁴ Another question would be, should such a line be uniform to the entire country or a given State or should it differ from rural to urban areas and so on. It is supposed that, income from agriculture may be difficult to assess and therefore, the line may have to be drawn with reference to the extent of holding. The income limit must be such as to mean and signify social advancement. At the same time, it must be recognized that there are certain positions, the occupation of which can be treated as socially advancement without any further enquiry.

If a member of a designated backward class becomes a member of IAS or IPS or any other All India Service, his status in society (social status) rises; he is no longer socially disadvantaged. His children get full opportunity to realize their potential. They are in no way handicapped in the race of life. His salary is also much that he is above want. It is but logical that in such a situation, his children are not given the benefit of the reservation. For by giving them the benefit of reservation, other disadvantaged members of that backward class may be deprived of that benefit. It is then argued that ‘one swallow does not make the summer’, and that merely because a few members of a caste or class become socially advanced, the class/caste as such do not cease to be backward. It is pointed out that clause (4) of Art. 16⁴⁰⁵ aims at group backwardness and not individual backwardness. While we agree that clause (4) aims at group backwardness, we felt that exclusion of such socially advanced members will make the ‘class’ a truly backward class and would more appropriately serve the purpose and object of clause (4). Keeping in mind all these considerations, we direct the Government of India “to specify the basis of exclusion – whether on the basis of income, extent of holding or otherwise of ‘creamy layer’”⁴⁰⁶.

It is difficult to draw a line where a person belonging to the backward class, ceases to be so and become part of the ‘creamy layer’. Although this court brought point briefly by illustrating various stages where a member of backward class ceases to be backward and starts floating with the ‘creamy layer’. Honorable Judges acknowledged that

⁴⁰⁴ Ibid.

⁴⁰⁵ Constitution of India, Bare Act, (Universal)

⁴⁰⁶ Ibid. at pp. 77, 78-82

pursuant to the directions by this court in Mandal case⁴⁰⁷ Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of P&T) issued office memorandum dated September 8, 1993 providing for 27% reservation for the Other Backward classes. Para 2© of the memorandum excludes the persons/sections mentioned in column 3 of the Scheduled (consisting of creamy layer) to the said memorandum.⁴⁰⁸ And this court has no hesitation in approving the rule of exclusion framed by Government of India.⁴⁰⁹ This is vehemently commented that the State Government should follow the Government of India and in lay down similar criteria for identifying the ‘creamy layer’ laid down by the State of Bihar and Uttar Pradesh has to be examined.⁴¹⁰ “This court authoritatively lay down that the prosperous part of a backward class called ‘creamy layer’ has to be excluded from the said class. The backward class under Art. 16(4) means the class which has no element of ‘creamy layer’ in it. It is mandatory under Art.16(4) that the State must identify the ‘Creamy Layer’ in a backward class and thereafter creamy layer are to be excluded and benefits of the Art. 16(4)⁴¹¹ could only be given to the ‘class’ which remains after the exclusion of the ‘Creamy Layer’”.⁴¹²

In *II Indra Sawhney v. Union of India*,⁴¹³ case validity of secs. 3,4 and 6 of Kerala State Backward Classes (Reservation of Appointment of posts in the Services) Act 1995⁴¹⁴ was challenged as unconstitutional and violative of Arts. 14 and 16 of the Indian Constitution, because sec. 3 declared that, “having regard to known facts in existence in the State of Kerala that there are no socially advanced sections in any backward classes who have acquired capacity to compete with forward classes” and the backward classes in the State were not adequately represented in the services under the State and they would continue to be entitled to reservation under clause (4) of Art. 16 of the Constitution. Sec. 4 provides that existing system of reservation shall continue as per rule made in 1958 and sec. 6 provides validity to the enforcement of these sections with retrospective effect. This Act was passed on 2.9.95 but was given retrospective effect

⁴⁰⁷ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴⁰⁸ *Ibid.* at Para 8

⁴⁰⁹ *Ibid.* at Para 9

⁴¹⁰ *Ibid.* at Paras 10-11

⁴¹¹ Constitution of India, Bare Act, (Universal)

⁴¹² *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴¹³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴¹⁴ Kerala State backward classes (Reservation of appointment of posts in the Services) Act 1995.

since 2.10.1992.⁴¹⁵ The following issues were raised for the consideration of the Court in this case:⁴¹⁶

1. What is the law declared and what are the directions given in Indra Sawhney case in regard to 'creamy layer' in the context of Arts. 14 and 16?
2. Can the declaration of law in regard to 'creamy layer' in the context of Arts. 14 and 16 in Indra Sawhney and in other rulings be undone by the Kerala Legislature by a reproductive validating law containing a statutory declaration whose effect is to say that no 'creamy layer' exists in the state of Kerala?
3. Are the provisions of Secs. 3,4 and 6 of the Kerala State of backward classes (Reservation of Appointments or Posts in the Services) Act violative of Articles. 14 and 16 of the Constitution of India.
4. If the provisions of 3, 4 and 6 of the Kerala Act are liable to be struck down, is the report of High-level Committee headed by Justice KJ Joseph to be accepted and are there any valid objections to the report?
5. If sec. 3,4 and 6 of the said Kerala Act struck down, what further directions are to be issued to the State of Kerala?

First-of-all before considering various issue Gannadha Rao, J. Said that "since Kerala Government failed to implement the directions of Indra Sawhney I⁴¹⁷ case by appointing a commission to identify the creamy layer among the designated backward classes in the State. This court, by its order dated 10.7.1995 held that the State of Kerala was guilty of contempt but gave a further opportunity to the State to purge the contempt and adjourned the matter 11.9.1995. As per the direction of this court a high-level committee under the chairmanship of K.J. Joseph was appointed to gather the necessary information regarding 'creamy layer' among the backward classes in the State of Kerala. This committee submitted its report to Supreme Court on 4.8.1997.⁴¹⁸ Regarding first issue Supreme Court with view of Gannadha Rao, D.P. Wadhwa and M.B. Shah, JJ., held that "although reservation is permissible in favor of backward class of citizens if it is not adequately represented in the services under the State. But the 'caste' only cannot be basis for reservation. Reservation can be for a backward class citizen of a particular caste. Therefore, from that caste, creamy layer and non-backward

⁴¹⁵ Indra Sawhney v. Union of India, AIR 2000 SC 498

⁴¹⁶ Indra Sawhney v. Union of India, AIR 2000 SC 498

⁴¹⁷ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴¹⁸ KJ Joseph commission Report on creamy layer, in Kerala.

class of citizens are to be excluded. If the caste has to be taken into consideration, then for finding out socially and economically backward class, creamy layer of the caste to be eliminated for granting benefit of reservation, because the creamy layer cannot be termed as socially and economically backward”.⁴¹⁹ This question exhaustively dealt with by nine judges in Indra Sawhney⁴²⁰ case, where it has been specifically held that ‘only caste’ cannot be the basis for reservation.

For the inclusion of the backward classes, apex court held that “care should be taken that the forward castes do not include in the backward castes list and cited observation of Pandian, J. in Indra Sawhney case⁴²¹ that before a conclusion is drawn that a caste is backward or is inadequately represented in the services”. “The existence of circumstances relevant to the formation of the opinion is a sine qua non. If the opinion suffers from the vice of non-application of mind or formulation of collateral grounds or beyond the scope of the statute, or irrelevant and extraneous material, then the opinion is challengeable”. He further pointed out that, “periodic examination of a backward class would lead to its exclusion if it ceases to be socially backward or if it is adequately represented in the services. Once backward, always backward is not acceptable”.⁴²²

“If the real object is to locate backwardness, and if such backwardness is found in a caste, it can be treated as backward; if it is found in any other group, section or class, they too can be treated as backward. Reservation is not being made under clause. (4) of Art. 16 in favor of a ‘caste’ but a backward class. Once a caste satisfies the criteria of backwardness, it becomes a backward class for the purposes of Art. 16(4).⁴²³ Where higher services like IAS IPS and All India Services not entitled to be treated a backward. They are to be treated as creamy layer “without further inquiry.” Likewise, persons living ins sufficient affluence who are able to provide employment to others are to be treated as having reached a higher social status and therefore outside the Backward Class. This judgement also refers to a classification of ‘affluent’ sections identified by way of income or property holding. It means those persons holding higher levels of agricultural land holdings or getting income from property, beyond a limit have to be

⁴¹⁹ Ibid. at Para 8.

⁴²⁰ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴²¹ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴²² AIR 1992 SCC 174

⁴²³ Constitution of India. Bare Act, (Universal)

excluded from the backward classes. This is a judicial ‘declaration’, although, norms may differ from state to state or from region to region”.⁴²⁴

The identification of ‘creamy layer’ in every backward class is in fact based upon horizontal division of every section of the backward class into creamy layer or non-horizontal division based on such norms will be applicable not only to those would also be applicable to those reaching that level in the future. This was the declaration of law made in *Indra Sawhney*⁴²⁵ case in relation to identification and exclusion of ‘creamy layer’. Regarding validity of Kerala Act (issue second and third) it is held that, the ‘creamy layer’ in the backward class is to be treated ‘on par’ with the forward classes and it not entitled to benefits of reservation, it is obvious that if the ‘creamy layer’ is not excluded, there will be discrimination and violation of Arts. 14 and 16(1) since unequal (the creamy layer) cannot be treated as equals that is to say, equal to the rest of the backward classes. Thus, any executive or legislative action refusing to exclude the creamy layer from the benefits of reservation will be violative of Arts. 14 and 16(10) and also of Art. 16(4).⁴²⁶

In the context of the law laid down in *Ashok Kumar Thakur & Indra Sawhney* case⁴²⁷ if the State does not take steps to remove the defect to exclude the ‘creamy layer’ then the benefits of reservations which are invalidly continued in favor of the ‘creamy layer’ cannot be declared retrospectively valid, merely by a legislative declaration. The creamy layer principle laid down in *Indra Sawhney*⁴²⁸ case, cannot be ignored as done by sec. 6 of the said Act. Therefore, both the sections are unconstitutional: If under the guise of elimination of the ‘creamy layer’, the legislature makes a law which is not indeed a true elimination but is seen by the court to be a mere violation, then the court will necessarily strike down such a law as violative of principle of separation of powers and of Art.14, 16(1) and Art. 16(4).⁴²⁹ Sub clause (b) of sec. 3 states that since there is no representation of the backward classes in the services of the State of Kerala. This is given as a reason by the State of Kerala for not excluding the creamy layer. For this apex court held that “in our view, the Kerala Act has mixed up two different concepts

⁴²⁴ Ibid. at Paras 22-23

⁴²⁵ 1992 AIR SCW 3682; AIR 1993 SC 477; 1993 Lab IC 129) and in *Ashok Kumar Thakur* (1995 5 SCC 403; 1995 AIR SCW3731.

⁴²⁶ Ibid. at Paras 27

⁴²⁷ AIR 1996 SC 75, p. 421, AIR 2000 SC 498

⁴²⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴²⁹ Ibid. at Paras 28-29

in this sub-clause (b) of section. Article 16 is an enabling provision which permits the State to provide reservation for backward classes if, in its opinion, such representation is felt necessary and if there is not adequate representation.⁴³⁰ The first step no doubt is the identification of the backward class which is inadequately represented. The second step is elimination of the creamy layer from the backward class. And this second step cannot be mixed up with the first step nor can it be forgotten.⁴³¹

“The mere inadequate representation of a particular backward class in public services flowing as a consequence of exclusion of creamy layer is not legally sufficient to provide or continue reservation to the creamy layer”.⁴³² Reservation even for backward classes can be made only if it will not undermine the efficiency of the administration in the particular department. For all the aforesaid reasons, sub-class (b) of sec. 3 does not provide any valid answer for not eliminating the creamy layer and must also be held to be unconstitutional and violative of Arts. 14, 16(1) and 16(4) of the constitution. Thus, sub-clause (a) and (b) of sec. 3 are both declared unconstitutional.⁴³³ Supreme Court held that continuance of Sec.4 will amount to ignoring the subsequent, judgement of this court in *Indra Sawhney*⁴³⁴ and *Ashok Kumar case*⁴³⁵ to the effect that creamy layer is necessarily eliminated. Neither Parliament nor the State Legislature can make any law to continue reservation to the creamy layer inasmuch as the said judgement of this court are bound on Arts. 14 and 16(1) of the Indian Constitution and no law can obviously be made to override the provisions of Articles 14 and 16(1)⁴³⁶. Thus, for the Aforesaid reasons, sec. 4 of the Act along with the non-obstante clause is declared unconstitutional and violative of the Arts. 14, 16(1) and 16(4) of the Constitution of India.⁴³⁷ The non-exclusion of creamy layer or the inclusion of forward castes in the list of the backward classes will, therefore, be totally illegal. It is not only violative of Arts. 14 and 16 but it also amounts to violative of basic structure of Indian Constitution.⁴³⁸ Regarding issue fourth, it is held that parliament and the legislature cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Art.

⁴³⁰ *Ajith Singh II v. State of Punjab* 1999 7 SCC 209

⁴³¹ *Ibid.* at Para 45

⁴³² *Ibid.* at Paras 49 and 54.

⁴³³ *Ibid.* at p. 516, Paras 55, 56.

⁴³⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴³⁵ AIR 1996 SC 75, p. 421, AIR 2000, SC 498

⁴³⁶ Constitution of India. Bare Act, (Universal)

⁴³⁷ *Ibid.* at Paras 60-61

⁴³⁸ *Ibid.* at Paras 66-67

14 of which Art. 16(1) is a facet. Whether creamy layer is not excluded or whether forward castes get included in the; list of backward classes, the position will be the same, that there will be a breach not only of Art. 14 but of the basic structure of the Constitution. The non-exclusion of the creamy layer or the inclusion of forward castes in the list of backward classes will therefore be illegal. Such an illegal Act offending the root of the Indian Constitution, cannot be allowed to be perpetuated even the constitutional amendment. Kerala legislature is therefore, least competent to perpetuate such an illegal discrimination.⁴³⁹

In the case of *Nair Service Society v. State of Kerala*,⁴⁴⁰ the Nair Service Society, challenged the report of Justice K.K. Narendran Commission⁴⁴¹ and its acceptance by the State of Kerala in issuing the impugned notification dated 27.5.2000. Society questioned the validity of the said notification by saying that in the guidelines seven categories of hereditary occupations calling, which had been excluded from the category of creamy layer, have been identified. As regards the income limit in terms of the Joseph Committee Report⁴⁴² (published in 1996) was Rs.1.5 lakhs; whereas the same according to the Narendran Commission Report, (published in 2000) raised to Rs. 3 lakhs. While in the year 2004 the Central Government fixed the income limit at Rs. 2.5 lakhs. In identifying the backward classes in several categories, i.e. category nos. I, II, III, V and VA, the exclusion was recorded only on the basis of status and not on the basis of annual income. However, in addition to category No.VI, it was stated that in calculating the annual income, the salary income or income from agriculture would not be taken into account. No reason, however, has been assigned as to why salary income or income from agriculture would not be included for determining the category of 'creamy layer'.

The Supreme Court (with bench of S.B. Sinha & P.P. Naolekar) said that, "at this stage it is necessary to be noticed that by judgement and order dated 13.12.1999 66 in *Indra Sawhney case*⁴⁴³ II, this court, hold the provisions of Sections 3, 4 and 6 of the State

⁴³⁹ Ibid. at Paras 66, 67.

⁴⁴⁰ 2007 (4) SCC 1.

⁴⁴¹ KK Narendran commission was an inquiry commission appointed by The Government of Kerala, in February 2000 to study and report on the adequacy or representation for backward classes in the state public services.

⁴⁴² Joseph committee constituted by state of Kerala to find limit of income for OBC reservation, creamy layer.

⁴⁴³ *Indra Sawhney v. Union of India*, II, AIR 2000 SC 498

Act to be unconstitutional, and accepted the objections to the report of the Joseph Committee, in toto, subject to certain additions of communities and sub-castes.” The recommendations made by the Joseph Committee⁴⁴⁴, however, were not implemented in terms of the directions of this court. The State, on the other hand, appointed another Commission headed by Justice K.K. Narendran. The Narendran Commission⁴⁴⁵ submitted an interim report and directed the state to implement the report of the Joseph committee. On 16.2.2000 the State issued fresh guidelines for identifying creamy layer in accordance with the Joseph Committee report. The Commission submitted its final report on 11.4.2000. The order issued by the State on 27.5.2000 wherein several guidelines were issued, which, inter alia, are on the following terms:

The rule of exclusion made mention in the schedule attached those guidelines will not apply to persons working as artisans or engaged in hereditary occupations, calling and included in Annexure ‘B’ appended herewith and person/group of persons coming within the definition of the expression “Fishermen Community” in Annexure C appended to these guidelines”. The exclusion of creamy layer played a pivotal role in evolving OBC reservation in India. The judiciaries extra initiatives allowed them to propound such a doctrine, so that it helped many to come into the fold of reservation. The creamy layer principle allowed the deserved candidates in the OBC sections to avail the facility broadly. If this doctrine would not have formulated the major chunk of the OBC reservation would have eaten away by the affluent sections in the OBCs.

Application of Creamy Layer.

The present application of exclusion of creamy layer enumerated below. On February 4, 2004 the central government acting on the recommendations of the National Commission for Backward Classes decided to raise the lower income limit for identifying the creamy layer among the OBCs to Rs. 2.5 lakhs per annum. In continuation to this in 2008 it was revised to 4.5 lakhs. In 2013 it was revised to 6 lakhs. In 2017 it was revised to 8 lakhs. In 2015, the National commission for Backward Classes proposed that a person belonging to OBC with gross annual income of parents up to 15 lakhs should be considered as the minimum ceiling for exclusion of creamy

⁴⁴⁴ Joseph committee constituted by the Kerala government to find the income limit for OBC reservation

⁴⁴⁵Narendran commission was an inquiry commission appointed by The Government of Kerala in February, 2000 to study and report on the adequacy or representation for backward classes in the State Public Services.

layer in OBC reservation. The NCBC also recommended the sub division of OBC into backward, more backward and extremely backward blocs and divide 27 percent quota which is available now amongst them in proportion to their population to ensure the elite groups in OBC should not eat away the reservation benefits.

The creamy layer categorization was meant only OBCs until 30th September, 2018. But in *Jarnail Singh v. Lachmi Narayan Gupta*,⁴⁴⁶ the Supreme court of India attempted to hold justification of the creamy layer test that *Nagaraj*⁴⁴⁷ introduced to SCs and STs through different nomenclature and procedure. Creamy layer test is not novel concept. The scope of creamy layer exclusion concept widened by the Supreme Court in *Jarnail Singh*⁴⁴⁸ Case. *Jarnail Singh* decision applies the creamy test to all reserved categories at all stages of reservation under Article 16. In this case the Supreme Court placed SCs, STs and OBCs under the same umbrella. All these categories reduced to synonyms. In this case Article 16A has been declared as to be an enabling provision while at the same time interfering with the application. In *EV Chinnaiha v State Andhra Pradesh*,⁴⁴⁹ five judge-bench of Supreme Court held that Scheduled Castes form a homogenous class and there cannot be any sub division amongst them. The sub classification of SCs and STs is contrary to Article 341 of the Constitution. The Supreme Court now overturned the decision in *EV Chinnaiha*,⁴⁵⁰ in *The State of Punjab v. Davinder Singh*,⁴⁵¹ in this case the Supreme Court of India held that the sub classification of SCs and STs could be conducted by the respective States. Only one dissenting opinion was by Honorable Justice Bela Trivedi.

The (103rd Constitutional Amendment), Act. 2019⁴⁵² enacted by the Parliament of India, which provided 10% reservation to the economically weaker sections of the unreserved categories of communities. This Act has been challenged in *Janhit Abhiyan v. Union of India*,⁴⁵³ saying it is unconstitutional. The Supreme Court held that the Constitutional Amendment Act is valid.

⁴⁴⁶ On 31st January 2023

⁴⁴⁷ *M Nagaraj v. Union of India*, AIR 2007 SC 71

⁴⁴⁸ On 31st January 2023

⁴⁴⁹ (2005) 1 SCC 3941

⁴⁵⁰ (2005) 1 SCC 3941

⁴⁵¹ 1st August 2024

⁴⁵² <https://www.legislative.gov.in> (Last visited on 24.5.2025)

⁴⁵³ 2(2000) 1 SCC 16

The creamy layer exclusion in OBC reservation is well settled by the Supreme Court and it is one of the best principles which is propounded by the Supreme Court. Creamy layer exclusion enabled to weed out the undeserved sections of the OBCs and real and deserving candidates provided the benefits. If this principle would not have promulgated by the Supreme Court many deserving candidates would have pushed back from the reservation fold. Therefore, this principle is always appraised.

5.3. Conclusion

The creamy layer principle is an essential tool for maintaining credibility, fairness and effectiveness in India's reservation system. By implementing creamy layer exclusion, the real and deserving individuals get reservation benefits and the mighty and affluent sections who economically and socially well to do of the OBCs weeded out, thus by purify the purpose of the reservation. Therefore, this system may further purify for inclusive growth and development of the communities.

CHAPTER 6

NEW DEVELOPMENT, SEGREGATION OF SCs AND STs, AND EWS RESERVATION.

6.1. Introduction

With regard to the reservation of SCs and STs, significant changes are visible. These changes may reflect evolving socio-political dynamics and legal interpretations aimed at refining affirmative action in India. There is a growing demand for sub categorization of SCs and STs in order to ensure equitable distribution of reservation benefits. Because certain castes in SC or ST lists are dominated and availing the benefits of reservation. In 2022 in *Jarnail Singh v. Lachmi Narayan Gupta*,⁴⁵⁴ the Supreme court of India observed that the creamy layer test applies to all reserved categories at all stages of reservation under Article 16 of the Constitution of India. Again, in *The State of Punjab v. Davinder Singh*,⁴⁵⁵ the Supreme Court ordered to sub classify the SCs and STs and it shall be done by the States. In reply to this judgement the central government given a reply to the Supreme Court that time is not ripe to take action on this regard. However, the later judgements have been questioned by many and the matter is currently under review by a larger constitutional bench.

Now there is a paradigm shift from caste, class-based reservation to purely economic criteria, based reservation in India. The 103rd constitutional amendment was passed by the Parliament of India during 2019. In (103rd Constitutional Amendment) Act, 2019⁴⁵⁶, 10% reservation has been provided to the economically weaker sections of the unreserved categories of the communities. This has been challenged in the Supreme Court of India in *Janhit Abhiyan v. Union of India*⁴⁵⁷, saying it is unconstitutional. The Supreme Court by majority put seal on this amendment Act and said that the amendment is constitutionally valid. These developments show a diversification in the framework of affirmative action from class only to mix of caste and economic criteria.

⁴⁵⁴ AIR 2018 SC 4729

⁴⁵⁵ 1st August 2024

⁴⁵⁶ <https://legislative.gov.in> (Last visited on 24.5.2025)

⁴⁵⁷ 7th November 2022

6.2. Application of creamy Layer in SCs and STs

The creamy layer categorisation was meant only for the OBCs until 30 September 2018. In many of its judgements the Supreme Court of India cleared that sub classification of the SCs and STs is constitutionally valid. But in December 2019 the central government appealed in the supreme court against the previous order of applicability of creamy layer to the SCs and STs in their reservation quota. All those developments occurred when the Supreme Court of India in *Jarnail Singh v. Lachmi Narayan Gupta*,⁴⁵⁸ during August 2024, made a ruling that states must identify and exclude the creamy layer within the SCs and STs from receiving reservation benefits. They said that the reservation benefits reach the economically and socially disadvantaged of SCs and STs also. The Supreme Court also expressed its opinion by ordering that the creamy layer exclusion can be applied in all category of reservation at all stages of reservation under Article 16 of the Constitution of India. The main contention was that many Scheduled castes and Scheduled Tribes are living under poor living condition is away from the reservation fold and they are still marginalised even after independence. In order to bring those marginalised sections of SCs and STs, remedy is to provide them reservation. That can only be possible by way of weeding out the affluent sections of the SCs and STs from the reservation fold. Some elite sections of SCs and STs are monopolised their reservation benefits and others are sidelined and pushed back.

While looking back at the background of judicial interpretations, there are opposing decisions pronounced by the Supreme Court of India regarding SCs and STs reservation. For example, in *M. Nagaraj v. Union of India*,⁴⁵⁹ the Supreme Court upheld the constitutional validity of all the impugned Amendments related to reservation in promotion for SCs and STs. The court said that the states must collect the quantifiable data to justify the reservation, the 50 per ceiling, and the concept of creamy layer. The Court emphasized on catch up rule also and said that the catch-up rule and consequential seniority are not beyond the amending power of the Parliament. The *Nagaraj*⁴⁶⁰ case was a significant one as regards SC/ST reservation is concerned. In this case the Supreme court introduced the creamy layer test in disguise for SCs and STs despite prohibition by the constitutional texts and court precedents. This was

⁴⁵⁸ AIR 2018 SC 4729

⁴⁵⁹ AIR 2007 SC 2006

⁴⁶⁰ *M Nagaraj v. Union of India*, AIR 2007 SC 2006

unexpected with respect to Indra Sawhney⁴⁶¹ judgement. Because, in Indra Sawhney⁴⁶² the supreme court unequivocally stated that sub classification of SCs and STs are not constitutionally valid. But twelve years later in Jarnail Singh and others v. Lachmi Narain Gupta and others,⁴⁶³ the Supreme court attempted to hold justification of the creamy layer test that Nagaraj⁴⁶⁴ introduced to SCs and the STs through different nomenclature and procedure. Creamy layer test was not a novel concept as the same appeared for the first time in State of Kerala v. N.M. Thomas⁴⁶⁵ as early as in 1976 but it was for OBC reservation not in reservation for SCs and STs.

6.3. Outcome of the Jarnail Singh case

The Jarnail Singh⁴⁶⁶ case was important after the decision of Nagaraj because the decision given in Nagaraj felt becoming law through the Jarnail Singh⁴⁶⁷ judgement. The transition from quantifiable data in Nagaraj⁴⁶⁸ to the creamy layer in Jarnail Singh⁴⁶⁹ is really different step taken by the Supreme Court of India. In this case the supreme Court placed SCs, STs and OBCs under same umbrella. All of these categories reduced to synonyms. The Supreme Court also undermined the purpose of notifying Scheduled Castes and Scheduled Tribes in the constitution. In this case Article Article 16A has been declared as to be an enabling provision while at the same time interfering with the application. The inquiry for application of creamy layer principle on the SCs and STs is categorical step taken by the Supreme Court to end monopolization of reservation in ST s and STs. The judgement in Jarnail Singh⁴⁷⁰ was in opposition to the In EV Chinnaiha v. State of A.P.,⁴⁷¹ case, in which five judge bench of supreme court held that Scheduled castes form a homogenous class and there cannot be any sub division amongst them. The court also emphasized on sub classification of SCs and STs saying it is contrary to Article 341 of the constitution.

⁴⁶¹ Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴⁶² Indra Sawhney v. Union of India, AIR 1993 SC 477

⁴⁶³ On 31 January, 2023

⁴⁶⁴ M Nagaraj v. Union of India, AIR 2007 SC 2006

⁴⁶⁵ 1976 AIR 490

⁴⁶⁶ Jarnail Singh v. Lachmi Narain Gupta, AIR 2018 SC 4729

⁴⁶⁷ Jarnail Singh v. Lachmi Narain Gupta, AIR 2018 SC 4729

⁴⁶⁸ M Nagaraj v. Union of India, AIR 2007 SC 71

⁴⁶⁹ Jarnail Singh v. Lachmi Narain Gupta, AIR 2018 SC 4729

⁴⁷⁰ Jarnail Singh v. Lachmi Narain Gupta, AIR 2018 SC 4729

⁴⁷¹(2005) 1 SCC 3941

In *Jarnail Singh*⁴⁷² case the petitioners argued that the aim of providing the reservation during the inception of the constitution of India was to bring the weaker and marginalised sections into the mainstream. But by the majority opinion of the Constituent Assembly, accepted that reservation could be provided to the SCs and STs for the time being for a period for 10 years. Now almost 70 years have passed after independence and a quiet number of them attained economic and social advancement. Many deserving candidates from their communities are sidelined and the affluent sections are enjoying the benefits of reservation. In order to promote the marginalised sub classification necessary. The petitioner argued that the need for sub classification necessary to ensure adequate representation of these marginalised ones. The petitioner's advocate pointed out that there was incorrect application of rationale in *EV Chinnaiha*⁴⁷³ judgement by the supreme court. The petitioner also argued that the State governments are the best authority to assess community backwardness in the society. It is also asserted that Article 16(4) allows for sub classification. They also argued that preferential treatment does not impact reservation, is rather a concept equal to creamy layer. They pointed out that in *EV Chinnaiha*⁴⁷⁴ case the supreme court failed to apply the twin test of reasonable classification.

The respondents argued that the Schedule castes deemed to be a homogeneous group. They constitute a single marginalised group. It is the power of the President under Article 341(2)⁴⁷⁵ to identify the SCs. The sub classification is not only violation of Article 16(2)⁴⁷⁶ of the constitution of India but also it will undermine the reservation. The noble aspiration of the constitution makers will be defeated if sub classification is made. The respondents argued that the Creamy layer is another way to exclude weaker sections. By applying creamy layer the exclusion of the Scheduled Castes and Scheduled Tribes from the reservation fold will be completed. The respondent's Advocate argued that the Article 15(4)⁴⁷⁷ and 16(4) of the constitution of India guarantee affirmative action to the socially and educationally backward classes of society by the state. The term backwardness subsumes SC and ST in Article 16(4)⁴⁷⁸.

⁴⁷² *Jarnail Singh v. Lachmi Narain Gupta*, AIR 2018 SC 4729

⁴⁷³ *EV Chinnaiha v. State of AP*, (2005) 1 SC 3941

⁴⁷⁴ *EV Chinnaiha v. State of AP*, (2005) 1 SCC 3941

⁴⁷⁵ Constitution of India, Bare Act, (Universal)

⁴⁷⁶ Constitution of India, Bare Act, (Universal)

⁴⁷⁷ Constitution of India, Bare Act, (Universal)

⁴⁷⁸ Constitution of India, Bare Act, (Universal)

They further argued that if sub classification is brought it will equal to denying adequate representation to the SCS and STs. Further the Article 15(4)⁴⁷⁹ makes special reference to SCs and STs.

The Supreme Court now overturned the decision in *EV Chinnaiha*⁴⁸⁰ case. Further the supreme court even thought to gradually implement the creamy layer principle among SCs and STs also. This was a different step taken by the Supreme Court as regards SC, ST reservation. This is a gateway to apply creamy layer to the SCs and STs in their reservation. Supreme court sees that many SCs and STs who are genuine to get reservation is sidelined and marginalised. The affluents who have political clout and have power is grabbing the benefits of reservation. This defeats the very objectives of the constitution makers but also defeat the programme of social justice. Someway a line should be drawn to end this monopolisation. This would be seen in the ensued case in this regard from Punjab in 2024.

6.4. Davinder Singh decision

To substantiate above the recent judgement of the Supreme court in *State of Punjab and Ors v Davinder Singh and Ors*,⁴⁸¹ is referred. In this case the Supreme Court of India delivered a decision in which it ordered for the sub classification of SCs and STs and the State Governments authorised to make the list. This decision is its deviation from *EV Chinnaiha*⁴⁸² and *Indra Sawhney*⁴⁸³ judgement. The Honourable Chief Justice of India, Misra said “sub classification is one of the means to achieve substantive equality”. Honourable Justice Gawai, unequivocally said “that duty of the state to give preferential treatment to the more backward communities”. Justice Gawai’s observation was considered most important because he was also belonging to backward community. Justice Pankaj Mithal observed that “it is to achieve the social objective of bringing every citizen on equal level that provision for reservation came to be made.” Justice Satish Chandra Sharma, said “Sub classification by the state must be supported by empirical data that underscores the more disadvantaged status of the sub group”.

⁴⁷⁹ Constitution of India, Bare Act, (Universal)

⁴⁸⁰ *EV Chinnaiha v State of AP*, (2005) 1 SCC 3941

⁴⁸¹ 1st August 2024

⁴⁸² *EV Chinnaiha v. State of AP*, (2005) 1 SCC 3941

⁴⁸³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

There was also a dissenting opinion from Justice Bela Trivedi who was a woman judge in the bench. Justice Bela Trivedi questioned the reference through which this judgement heard. Her main argument was that this bench is not competent to deliver the decision, because this is a smaller bench. She also contended that an important decision shall be heard by a higher bench than an earlier decision made. She said that there should be a justifiable reason for the basis of disagreement. She wrote in her dissenting judgement that the President under Article 341 has power and that power cannot be altered by State. This is against the scheme of the constitution and cannot be altered. State has no power to divide, subdivide or classify groups under Art.341⁴⁸⁴. Article 142⁴⁸⁵ cannot be employed to construct a new framework non-existent before. She strongly stated that by disregarding explicit statutory provisions related to the subject matter means that achieving something indirectly what cannot be achieved directly. If the state's action even if well intentioned and affirmative in nature, it cannot be validated by the Supreme Court under Article 142⁴⁸⁶ which violates specific provisions of the constitution.

6.5. EWS reservation

There was demand for reservation for economically weaker sections of the unreserved categories from long time. There was political pressure to provide reservation to them by amending the constitution of India. In order to provide for reservation to the economically weaker sections the Government appointed a commission chaired by Major General (Retd) S.R. Sinho.⁴⁸⁷ This commission was known as the commission for economically backward classes, was conferred responsibilities to find out economically weaker sections in the society. The commission submitted its report during 2010. Based on the recommendation of the commission, the Constitution (103rd Amendment) Act, 2019⁴⁸⁸ enacted by the central government providing 10% reservation to the economically weaker sections of the unreserved community. Some argued that this will eat away the privilege of the communities who are already getting reservation benefits. Many OBC organizations started agitations and they said this is against constitutional mandate. Then this enactment has been challenged in the Court

⁴⁸⁴ Constitution of India, Bare Act, (Universal)

⁴⁸⁵ Constitution of India, Bare Act, (Universal)

⁴⁸⁶ Constitution of India, Bare Act, (Universal)

⁴⁸⁷ <https://www.scobserver.in> (Last visited on 24.5.2025)

⁴⁸⁸ <https://www.legislative.gov.in> (Last visited on 24.5.2025)

through numerous petitions, under Janhit Abhiyan v. Union of India⁴⁸⁹. The main Issues framed in the case were the following:

1. Whether sole criteria are of economic status?
2. Whether SCs, STs and OBCs excluded scope EWS?
3. Whether this Could breach ceiling of 50%?
4. Whether this can be provided in Private institutions also?

Supreme Court addressed the above questions in its judgement. The judgement of the Supreme court repeatedly highlighted need for revisiting the existing system of reservation. The court emphasized that the aim of our constitution is to construct an egalitarian society. In order to achieve that aim every institution of the country must work towards that aim. For reaching that aim major changes are needed and that change must of structural changes in the reservation policies. Our society is diverse and every community must thrive and prosper for the betterment of our society. The main motto of our society is inclusiveness and we have to hold every-one in the forward march to prosperity. If reservation is the remedy to achieve the target provide the benefits of the reservation to the needy without any hindrance.

The judgement in Janhit Abhiyan⁴⁹⁰ case changed the landscape of reservation in our country. It brought huge structural change in reservation policies followed by the governments time to time. It brought a long-lasting impact in the social structure of our country and inclusive reservation policy has been adopted. Along with the majority opinion there was dissenting judgement also. In the majority judgement the Judges observed that the provision of reservation to unreserved category did not violate basic structure. Justice Maheswari, J. Trivedi, J. Pardiwala observed that “Equality of opportunity would also mean fair opportunity not only to one section or the other but to all sections by removing the handicaps. Act was form of affirmative action by Parliament. Economic criteria intrinsically related to the concept of “distributive justice”.” The judgment manifests that for inclusive development of the Nation it is necessary that each of the community in the country to be flourished. They also be brought to the mainstream along with others. The aspiration of our constitution makers were the inclusive growth and prosperity of the people.

⁴⁸⁹ 7th November, 2022

⁴⁹⁰ Janhit Abhiyan v. Union of India, 7th November, 2022

The Judges who wrote dissenting judgement were particular in interpreting the constitutional provisions and understanding its minute meanings. While delivering minority judgement, Justice Bhat expressed that “the inclusion of Art.15(6)⁴⁹¹ violative of constitution, discriminatory and against the fundamental right to equality. Because it excludes socially and educationally disadvantaged classes by providing reservation on sole basis of economic status violative of fundamental principles of the constitution. Chief Justice of India, UU Lalit has expressed that this action of the government is unconstitutional. The judges who delivered dissenting judgement argued that the reservation to the unreserved communities based on economic criteria is the violation of the constitutional provisions. It also violates the equality principle embodied in Article 14 of the constitution. Constitution makers aimed to provide reservation for only 10 years, and rather than trying to scrap the reservation system it is extended to even economically weaker sections is unconstitutional. A revision petition has been filed in Supreme Court. While deciding that petition Supreme Court upheld 103rd Amendment Act. 2014, on Nov. 7 2022. This decision was major shift from the traditional reservation policy in India

With regard to the sub classification of SCs and STs⁴⁹², the Supreme court itself given its reasoning which was widely discussed in the legal and political fraternity. It was argued that the SC and ST reservation has been monopolised by some prominent castes who are larger in number and the other ones with less population is sidelined by these prominent castes. Also, the castes which attained political power is misusing the reservation benefits so that it can be available to their community only. By sub classifying them a separate class among them could be layered and weeded out and this will lead to get more opportunity to the already marginalised sections in their community. In the Supreme court judgement even Honourable Justice Gawai, who himself is belonged to weaker section was also supported that there should be sub classification. After the decision of the Davinder Singh⁴⁹³ the Central government submitted reply to the Supreme Court that as of now they have no intention to do the sub classification of the SCs and STs.

⁴⁹¹ Constitution of India

⁴⁹² The State of Punjab v. Davinder Singh, 1st August, 2024

⁴⁹³ The State of Punjab v. Davinder Singh, 1st August, 2024

6.6. Conclusion

The new development in classifying the SCs and STs was a paradigm shift from the traditional reservation in India. The orders of Supreme Court in the Davinder Singh⁴⁹⁴ case opened a discussion in that direction. The decision of Davinder Singh was replied by the Central government and a revision petition is filed. The matter is under the consideration of Supreme Court higher bench. Similarly, in EWS reservation the matter has been settled by the Supreme court and marked its seal on it for 10% reservation to the economically weaker sections of the unreserved categories of the individuals. This shows the reservation system in India has been changed from caste, class based to economic criteria-based reservation also.

⁴⁹⁴ The State of Punjab v. Davinder Singh, 1st August, 2024

CHAPTER 7

CONCLUSION AND SUGGESTIONS

7.1. Introduction

The reservation policy in India was introduced as a means of affirmative action to address the historical injustices and social exclusion faced by Scheduled Castes, Scheduled Tribes, and the backward classes. While inception of the Constitution the makers incorporated required Articles in the Constitution to affirm their action. The Constitution of India is a living document which enshrines the policy aiming to ensure adequate representation in education, employment, and politics of all communities in India. The scheme of the constitutional frame work is inclusiveness. In order to attain the inclusive growth and development of all the members of the society the Constitution provided reservation to the Scheduled Castes and Scheduled Tribes and kept way open for reservation for backward classes. Since the Scheduled Castes and Scheduled Tribes lie in the last position in the caste hierarchy they away from power and political administration. The only remedy to resent this historic injustice was to provide reservation to them and bring them to the main stream. Over time, after providing reservation to the backward classes and exclusion of creamy layer from their reservation have led to intense debate on the basis of equality, justice and meritocracy.

7.2. Analysis

The reservation system can be traced its origin from pre-independence India, especially under the British rule in the princely states like Mysore and Kolhapur. During British period there was effort to provide reservation to the weaker sections of the society. But the country was divided under direct ruled states and princely states there were limitation to implement reservation in many princely states. Still some efforts were to provide reservation and in some states the Kings implemented the reservation in accordance with their respective state population.

Need for reservation was felt due the non-representation of the weaker sections in the employment and educational spere. After independence there was debates in the constitutional assembly over the question of reservation to the Scheduled Castes and Scheduled Tribes and backward sections of the society. Finally, the reservation to the

Scheduled Castes and Scheduled Tribes have been accepted through consensus. Consequently, the required Articles have been incorporated in the constitution. The aspiration of the constitution makers was that there should be an inclusive growth and development in the country. The Scheduled castes and Scheduled Tribes were living under very bad condition while India became independent. Dr. BR Ambedkar the Chairman of the constituent assembly drafting committee in reality was not in favor of the reservation. He thought by giving reservation to the Scheduled Castes and Scheduled Tribes they will be further segregated in the society and identified as a separate section. He thought of an inclusive society where all the communities live with equality and prosperity. By bracketing them under a special category will mar the very idea of greater and inclusive India.

After extensive discussions, deliberations it has been decided that reservation shall be provided to the Scheduled Castes and Scheduled Tribes for a period of 10 years and the action must be taken by the government to uplift these people within 10 years by implementing policies and schemes, so that these sections must be brought at par with the advanced sections in the society. Also, a provision has been left in favor of other backward classes if necessitated dealt with in the future.

The representation of backward communities in public employment and education were meagre and many of them were living under poverty. Then 1951 the Pandit Jawaharlal government appointed a commission under the Chairmanship of Kaka Kalelkar. This commission studied the conditions of the backward classes and submitted its report to the government. But the report faced criticism saying the report lack genuine data. Then the government put it in cold. Again, during the Morarji Desai Government appointed a commission under the Chairmanship of BP Mandal to study and submit a report on the conditions of backward classes. The Mandal commission submitted its report which was relatively with adequate data and acceptable to all. During the Prime Minister ship of VP Singh, the Mandal commission report was implemented.

Ater the implementation of Mandal Commission report there were Nationwide agitations which was nick named as Mandal versus Kamandalu. The agitation was huge and a student done self-immolation, which brought international attention. The agitation rattled the Indian society and there was a clear division visible in the society. The implementation of the Mandal Commission report has been challenged in the

Supreme court of India saying it is unconstitutional through, the case *Indira Sawhney v. Union of India*.⁴⁹⁵ The judgement of the case was landmark and a new precedent set in the history of judicial pronouncement. The *Indira Sawhney* settled many issues regarding the reservation. In *Indira Sawhney* OBC reservation has been affirmed by the Supreme Court. But the exclusion of creamy layer also made mandatory for OBC reservation. The overall reservation has been restricted to 50%. Reservation to OBCs opened a new chapter and creamy layer was the new principle propounded by the Supreme Court.

Creamy layer is the upper layer formed by the heating of milk and that layer is removed the remaining constitute reasonable. Like that if the advanced and affluent section, who are considered as the creamy layer of the other backward communities the remaining will be reasonable. This provides opportunities for the down trodden in OBC to avail reservation benefits. This will curtail monopolization of the reservation by the affluent and mighty ones. Creamy layer sections considered as the forward sections of the backward communities. The idea of creamy layer first noted by the Sattanathan commission to the Tamil Nadu government. Then in *NM Thomas* the Supreme court mentioned about the creamy layer.

The criteria for creamy layer principle based on income, professional status, and parental occupation, that is high income-threshold. The supreme court unequivocally clarified that the creamy layer exclusion applies only to OBCs and not to SCs and STs. The principle of creamy layer has been upheld to ensure substantive equality within the backward classes. However, inconsistent application and lack of clarity in implementation reduce its effectiveness. This principle prevented monopolization of benefits enjoying by the elite class among OBCs. The recent trends in the *Jarnail Singh v. Lachmi Narayan Gupta*, the judgement suggest to enquire about the possibility for applying creamy layer in the SC/ST reservation. Again in 2024 *The state of Punjab v, Davinder Singh*, the supreme court of India suggested for sub-classification of SCs and STs.

The reservation for Economically Weaker Sections of the unreserved categories also got relief by providing them 10 per cent reservation in public employment and educational institutions through the (103rd Constitutional Amendment) Act, 2019. This

⁴⁹⁵ *Indira Sawhney v. Union of India*, AIR 1993 SC 477

has been challenged in Janhit Abhiyan⁴⁹⁶ case, and the Supreme Court sealed the decision affirmatively.

The exclusion of creamy layer from the reservation really facing a problem that a robust data on socio-economic status of castes is not available. Without clear cut data it is difficult to understand the veracity of the real problem in exclusion of creamy layer. The major problem is political influence and vote-back considerations hinder objective policy making. The findings of this study support the hypothesis framed by the researcher.

7.3. Findings

I would like to state the findings and to suggest the following to improve the present system of identifying individuals for exclusion of creamy layer in OBC reservation.

Creamy Layer exclusion is constitutionally valid

The creamy layer exclusion principle propounded by the Supreme court of India is constitutionally valid. Because the creamy layer is inclusive in OBC reservation. The eligibility to avail the benefit of reservation is inclusive of creamy layer principle. Indra Sawhney⁴⁹⁷ case formulated a new normal in this regard. By excluding creamy layer, the deserving individuals in the OBCs can avail reservation benefits the affluent individuals could be weeded out. Otherwise, they have sidelined and marginalized by the affluent sections in their community.

The creamy layer exclusion is justified with respect to the OBC reservation.

The study suggest that the creamy layer exclusion is justified with respect to the OBC reservation. Because many OBC communities in our country are well to do and at the same time many of them are living under very poor condition. The poorer were not able to get adequate means to improve their living standards. These poorer sections educational, economic and social conditions were below the average.

By implementing the creamy layer principle, the poorer OBCs got opportunities to avail the benefits of the reservation. The affluent in OBC communities are weeded out. It is well known that if the creamy layer principle was not considered by the Judiciary the reservation benefits would have utilized by the affluents. They would have used the

⁴⁹⁶ Janhit Abhiyan v. Union of India, 7th November 202

⁴⁹⁷ Indra Sawhney v. Union of India, AIR 1993 SC 477

political and economic might to manipulate. The creamy layer exclusion work as a safety valve. This facilitated the real down trodden class of OBC is availing the reservation benefits.

In addition, when reserved category OBC is able to get a job like IAS, IPS or Central service, his position will improve and his children could be weeded out applying creamy layer principle. In totality creamy layer principle is justified with respect to the OBC reservation.

It is found during the study that periodic review of reservation list is not being updated which create difficulty. In order to update the backward class list and income threshold, empirical data to be used. This is laborious job and the government has to appoint expert agencies to undertake this job. Expert agencies with dedication can collect empirical data with precision and maximum accuracy. Those data can be reliable and used in future evaluations.

The present criteria for fixing the limit of income for creamy layer is not adequate.

Present income criteria to identify the creamy layer is not sufficient. The criteria must be broadened including total income of the family of the candidate who is claiming non creamy layer. This will help to provide opportunities to the poorer in the OBC who are out of reservation fold.

Also to find out the creamy layer the discretion of the authorities is mostly used. A secure method to be adopted to find out the creamy layer. Majorly due to political intervention local compulsions the method used may diluted. Present criterial to find out the income limit for creamy layer identification is not adequate.

The creamy layer exclusion enhanced, more deserving OBC candidates in bringing to the reservation fold and weeded out undeserved.

The creamy layer exclusion enhanced more deserving OBC candidates in bringing to the reservation fold. The societal structure of India is such that the economically strong can influence any one in his class and community. Therefore, any leverage without check will invite manipulation. Especially some OBC communities are so strong and they can influence whole community and avail the reservation facility.

By implementing the creamy layer exclusion, the chances of the poorer and weaker in the OBCs became bright. Many deserving candidates got reservation benefits and they became public employees as well as the students of IITs, Medical colleges and IIMs. This was possible because of the creamy layer.

Strengthening Data Collection

The government has to initiate a census which is based on caste so that exact position of the castes presently having could be understood. For this the central government can also include state governments and the detail collected could be accurate and genuine. More effort on this front has to be taken. A survey is needed to study socio-economic conditions of the castes who are availing the benefits of the reservation.

SC and ST Segregation

As regards segregation of SCs and STs, it is not time to do that. Even after passing 70 years the condition of SCs and STs are very poor and they could not rise as per the aspirations of the constitution makers. They are denied many opportunities and their opportunities are being taken away by the might with hook and crook. Still, most of them are reeling under acute financial constraints and their education level is not enhanced as per the expectation. The dream of our founding fathers is not fulfilled and the SCs and STs are really not in good living conditions.

Alternative affirmative measures

The government can now think of alternative affirmative measures so that dependence on reservation can be curtailed. Government can focus on education and skill development through targeted scholarships, special coaching, and mentoring than purely job reservation. Then burden on public employment reservation could be reduced.

EWS Reservation.

The government has to adopt a strong method to avoid any kind of malpractice and fraud for obtaining EWS certificate. Strict income and asset verification by creating a centralized database. Cross verification of the assets by the issuing authority. Third party audit and surprise field verifications could also be done.

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3. Mandal Commission (Second Backward Classes Commission) – 1979
4. Members: Shri B.P. Mandal (Chairman), Shri Dewan Mohan Lal, Justice R.P. Bhole, Shri K. Subramaniam, Shri Din Bandhu Saha, Shri L.R. Saha, Shri S.S. Gill (Secretary).
5. Sattanathan Commission – Tamil Nadu, 1970
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