

Central and State Commissions on Reservation for Backward Classes: An Analysis

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Abstract

Caste as a social institution has been deeply rooted in our society. An individual is born, lived and dies within within the limits of his caste. The Scheduled Castes, Scheduled Tribes and OBC's represents the social group which suffered since the ages due to caste prejudices, educational backwardness and economic inequalities and they are lagging behind in the social fabric in comparison to certain advanced or forward castes. A conspectus of Article 14 to 17, Article 29, Article 48 and Article from 330 to 342 held out a promise for development and upliftment of backward classes and for ensuring social justice for them, which has been denied to them for centuries. Reservation for Scheduled Tribes in public services is one of the many ways which aims at empowering them and ensuring their participation in the decision making process of the state. Among the OBC's there has been great amount of resentment due to the fact that they had not been given the benefits as given to Scheduled Castes and Scheduled Tribes for their development and upliftment. Article 340(1) makes the provisions for appointing the Commission to investigate the conditions of socially and educationally backward classes and make recommendations for the removal of their difficulties and to improve their living conditions. President of India so far has appointed two Backward Classes Commissions under Article 340 of the Constitution i.e., (a) Kaka Kalekar Commission, (b) Mandal Commission. The present paper seeks to analyze the reports of National and State Commissions on Backward Classes.

Introduction

The Constitution of India gives a clarion call for establishing and ensuring equality to all. It contains specific provisions requiring the state not to deny to any person equality before law or the equal protection of laws within the country.

India which is secular and democratic country is regarded as a model of pluralistic society, which is reflected in its cultural pluralism of various religions, languages, castes and region. Social, economic and educational inequalities have existed from time immemorial in different

social segments of our Indian society. Caste as a social institution has been deeply rooted in our society. An individual is born, lived and dies within the limits of his caste. The Scheduled Castes, Scheduled Tribes and OBC's represent the social group which suffered since the ages due to the caste prejudices, educational backwardness and economic inequalities and they are lagging behind in the social fabric in comparison to certain advanced or the forward castes. In order to minimize the differences between the upper and lower caste certain social provisions were made to safeguard their interests along with the Constitutional guarantee of equality before the law¹ and protection of discrimination on the ground of race, religion and caste². Indian Constitution permits the state to adopt such affirmative action as it deem necessary and appropriate toward the advancement and upliftment of the backward classes of citizens to levels of equality with the rest of the country men³. A conspectus of Articles from Article 14 to 17, Article 29, Article 48 and Articles from 330 to 342 hold out a promise for development and upliftment of backward classes and for ensuring social justice for them which has been denied to them for centuries. Reservation for Scheduled Castes and Scheduled Tribes in public services is one of the many ways which aims at empowering them and ensuring their participation in the decision making process of the state. Article 362 (23) and (24) of the Constitution of India defines as to who would be Scheduled Castes and Scheduled Tribes and Article 341 and 342 makes the provision that President after consultation with Governor by public notification specify any caste, race and tribe as Scheduled Castes and Scheduled Tribes respectively. While tracing the history of reservation policy it can

be found that in 1934 the Government of India issued instructions to give a fair representation to depressed classes. This effort of the government of India neither did nor produced the results which were anticipated; they reviewed the whole issue and passed the order in the year 1943 to keep 8.33 percent posts reserved for these communities⁴. In the year 1946 this percentage was increased to 12.5 percent. After the independence and enforcement of the Constitution, the whole policy of reservation was laid down by the Government of India in the year 1950 in accordance with Article 16(4) and read with Article 335, providing therein reservation of 12.5 percent of vacancies for Scheduled Castes and 5 percent of vacancies for Scheduled Tribes. These percentages of reservation were subsequently enhanced in 1970 to 15 percent and 7.5 percent for Scheduled Castes and Scheduled Tribes respectively⁵. The State Governments have also enacted laws, issued order providing for reservation for Scheduled Caste and Scheduled Tribes in services under their control. In the mean time many concessions and relaxations which included reservations in promotions, etc., have been provided by both central and state governments. Generally the term 'Other Backward Classes' describes the totality of groups entitled to preferential treatment on the basis of their backwardness i.e. SCs and STs as well as OBCs. The Constitution does not define Other Backward Classes. However, in pursuance to the Judgment of Supreme Court in *Indira Sawhney and others V Union of India*⁶, the Government enacted the National Commission for Backward Classes (NCBC) Act in April, 1993. As per the Act, Backward Classes means such backward classes of citizens, other

1 Article 14, *The Constitution of India*.

2 Article 15, *Id*.

3 M.P JAIN, *Indian Constitutional Law* 963(2009).

4 Francine R. Frankel, *Dominance and State Power in Modern India: Decline of Social Order* 234 (1990).

5 Government of India, *Report of the Commission for Scheduled Castes and Scheduled Tribes* 227 (1981).

6 AIR 1993 SC 47.

than Scheduled Castes and Scheduled Tribes, as may be specified by the Central Government in the lists⁷. Previously only Scheduled Castes and Scheduled Tribes were given the benefit of reservation in Central Government jobs, only after the recommendations of Mandal Commission 27 percent of reservation was introduced for 'Other Backward Classes'⁸. Article 340 of the Indian Constitution makes provision for appointing a Commission to investigate the conditions of socially and educational backward classes and makes recommendations for the removal of their difficulties and improves their conditions. Driving the power from Article 340, the President of India so far has constituted two Backward Classes Commissions at the central level. The two central commissions have different approaches in fixing up the criteria for identification of OBCs. The State Governments Commissions also have different considerations.

Central Backward Classes Commissions

Among the OBCs there has been great amount of resentment due to the fact that they had not been given the benefits as given to Scheduled Castes and Scheduled Tribes for their development and upliftment. Article 15(4) and 16(4) of the Indian Constitution empowers the state to make special provisions for the progress of socially and educationally backward classes of citizens. Article 340(1) makes the provision for appointing the commission to investigate the conditions of socially and educationally backward classes and make recommendations for the removal of their difficulties and to improve their living conditions. President of India so far has

appointed two Backward Classes' Commissions under Article 340 of the Constitution⁹.

(A) Kaka Kalekar Commission;

(B) Mandal Commission.

(A) The First Backward Classes Commission or Kaka Kalekar Commission of 1953:-

The first Backward Classes Commission i.e; Kaka Kalekar Commission was appointed on 29 January 1953. It consisted of eleven members, mostly the representation was from the lower castes but the President of the Commission Kakasaheb Kalekar was Brahmin. The Commission started functioning from 18 March in 1953 and was supposed to submit its report by 31 January 1954 and which was extended to 31 March 1955. The Commission finally tabled its report on 3rd December 1955¹⁰. The first Backward classes Commission consisted of the following members:-

- a) Shri Kakasaheb Kalekar, M.P - Chairman
- b) Shri Narayan Sadoba Kajrolkar, M.P- Member
- c) Shri Bhukha Bhai, M.P - Member
- d) Shri Shivdayal Singh Chaurasia - Member
- e) Shri Rajeshwar Patel, M.P – Member
- f) Shri Abdul Qaiyum Ansari, MLA (Bihar) – Member
- g) Shri T. Mariappa, MLA (Mysore) – Member
- h) Lala Jagannath - Member

7 Section 2 of sNational Commission for Backward Classes (NCBC) Act, 1993.

8 Gaya Pandey, *Developmental Anthropology* 129 (2008).

9 Ratan G.Revankar, *The Indian Constitution:- A Case Study of Backward Classes* 65(1971).

10 Mulchand S. Rana, *Reservation in India: Myths and Realities* 103(2008).

- i) Shri Atma Singh Namdhari. M.P – Member
- j) Shri N.R.M Swamy, M.P – Member
- k) Shri Arunangshu De – Member Secretary

Unfortunately one of the members, Shri Atma Singh Namdhari died on January 7, 1954, Dr Anup Kumar was nominated in his place on February 27 1954. Lala Jagannath, resigned from the membership to take up another appointment and Shri P.G Shah was appointed in his place with effect from 2 August 1954. The terms of the reference of the Commission as laid down in the notification announced by the Ministry of Home Affairs on 29 January 1953 were:

- i. To determine the criteria to be adopted in considering whether any particular sections of people in India except those who are already registered as Scheduled Castes and Scheduled Tribes “should be treated as socially and educationally backward classes”. The Commission then in accordance with criteria established, prepared a list and territorial distributions of such persons.
- ii. The Commission was to investigate the conditions and difficulties faced by such socially and economically backward population.
- iii. Presents to the President a report setting out the facts as found by them and making such recommendations as they think proper¹¹.

Recommendations of Kaka Kalekar Commission

The Commission submitted its report in 1956. The Commission recommended reservation of 70% seats in all technical and professional institutions for qualified students of backward classes and also minimum reservation of vacancies

11 B.K Roy Burma, *Beyond Mandal and After* 140(1992).

in all government services and local bodies for other backward classes on the following scale¹²

- Class I- 25percent
- Class II- 33.5 percent
- Class III- 40 percent
- Class IV- 40 Percent

Apart from the provisions of reservation in educational institutions and services, Kalekar Commission made wide ranging recommendations for affirmative action covering such diverse fields as land reforms, reorganization of village economy, Bhoodan movement and development of livestock, diary-farming, cattle insurance, bee-keeping, fisheries, development of rural water supply, adult literacy, university education etc. The Commission however could not present a unanimous report. Five out of eleven members of the Commission submitted separate notes of dissent because they were against the linking of caste with backwardness. However it was Kaka Kalekar Commission which made a beginning in analyzing the socio-educational status of the other backward classes in India on a systematic basis which triggered a national debate on the important issue. The Government of India appointed the Kaka Kalekar Commission with the intention of defining the term ‘Other Backward Classes’ to make certain concession for their upliftment and advancement. The recommendations of the commission were not accepted and it was informed to the state governments that they can draft their respective list of backward classes¹³

(B) Mandal Commission

In the year 1978 the Janta Coalition Government displaced the Congress power at

12 Peu Ghosh, *Indian Government and Politics* 84(2012).

13 K.S Chalam, *Caste based Reservation and Human Development in India* 46(2007).

the center. The Central Government once again took up the issue of preferential treatment with the substantial support in north India from the Socially and Educationally Backward Classes. On 20th December 1978, the then Prime Minister Morarji Desai announced on the floor of the Parliament the decision to appoint Second Backward Class Commission under the chairmanship of B.P Mandal with five other members, four were from the backward classes and one was from scheduled caste and it was finally appointed on 1st January 1979. The main purpose of the commission was to ascertain the present situation of the backward classes and recommend the steps for their advancement and redress caste discrimination going on in the society¹⁴. It was appointed by the Janata Government and it was given two extensions by the Congress Government under the Prime Minister ship of Smt Indira Gandhi. The Commission used the data of 1931 census to calculate the number of OBCs. However the Morarji Desai Government lost power before the Commission could complete its report and state got busy with the preparations of next general elections¹⁵. By the time union elections were over, nine state assemblies were dissolved and next stable government in the states were major concern. All these major developments had an unsettling effect on the work of the commission. As the result of this members of the Commission could not do tour to various states to do the ground work. In order to collect the appropriate data, the commission used detailed questionnaires to all the State Governments, Union Territories and the Ministers and Departments of the Government of India. The Commission submitted its report on 31st December 1980 but it was placed before

14 Shairam Maheshwari, *The Mandal Commission and Mandalisation: A Critique* 46(1991).

15 Ranbir vohra, *The Making of India: A Political History* 276(2014).

the Parliament only in 1982. The Congress Government neither took any decision on the report of Second Backward Classes Commission nor did it reject the report¹⁶. The composition of the commission was as follows¹⁷:-

1. Shri Bindeshwari Prasad Mandal, (ex M.P) - Chairman
2. Shri R. R Bhole, M.P- Member
3. Shri Dewan Mohan Lal- Member
4. Shri L.R Naik¹⁸, (ex- M.P)- Member
5. Shri K. Subramaniam – Member
6. Shri S.S Gill- Member

The Mandal Commission adopted eleven criteria which were grouped under the following three major headings in order to define backwardness¹⁹;

1. Social – Four Criteria,
2. Education – Three Criteria,
3. Economic – Four Criteria.

1. Social

- Caste or Classes considered as socially backward by other caste or classes,
- Caste or Classes, which mainly depend on manual and labour for their livelihood,
- Caste or Classes in which at least 25% of male and 10% of female get married at an age below the 17 years in rural India and at

16 Ghanshyam Shah, *Caste and Democratic Politics in India* 405(2005).

17 S.P & J.C Aggrawal, *Educational and Social Uplift of Backward Classes: At What Cost and How? Mandal and After* 30(1991).

18 Shri L.R Naik was appointed in place of Bina Bhandu Sahu, he resigned from the membership of the Commission on 5 November 1979 on health grounds.

19 Government of India, *Report of Second Backward Classes Commission* 57(1980).

least 10% of females and 5% of males do so in urban India,

- Caste or Classes where participation of women in work is at least 2 % above the state average.

2. Education

- Caste or Classes where the number of children who are in the age group of 5 to 15 years have never attended school is at least 25% above the state average,
- Caste or Classes where the rate of students dropout in age group 5to 15 years is at least 25% above the state average,
- Caste or Classes in which the proportion of matriculates is at least 25% below the state average.

3. Economic

- Caste or Classes where the average value of family asserts is at least 25% below the state average,
- Caste or Classes where the number of families living in kaccha houses is at least 25% above the state average,
- Caste or classes in which the source of drinking water is beyond half a kilometer for more than 50% of the families,
- Caste or Classes where the number of families having taken consumption loans is at least 25% above the state average.

All the indicators given in each group were given different weightage. Three points for each social indicator, two points for each educational indicator, one point each for the economic indicators and the total score on all the eleven indicators added up to twenty one. The Mandal Commission decided that all castes

which had a score of 50 percent i.e. 11 points or above were to be considered as socially and educationally backward and rest were not²⁰.

Recommendations of Mandal Commission

The Mandal Commission found that the percentage of the population of OBC's which includes both Hindus and Non- Hindus is around 52% of the total population. However only 27% of reservation was recommended owing to the legal constraint as it was held in the case of *Balaji v State of Mysore*²¹ that the total quantum of reservation should not exceeds 50%. The already existing reservation for Scheduled Castes and Scheduled Tribes is in tune with their proportion to total population i.e. 15% for Scheduled Castes and 7.2% for Scheduled Tribes and in total it amounts to 22.5% and this should be taken into consideration while counting the total reservation. The following was the overall scheme of reservation for Other Backward Classes recommended by the Mandal Commission:-

1. Candidates of OBC category recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27%.
2. Reservation should also be made applicable to promotion quota at all levels.
3. Reserved quota remaining unfilled should be carried forward for a period of three years deserved thereafter.
4. Age limit relaxation in direct recruitment should be extended to the candidates of OBC's on the same lines as provided to the candidates of SC's and ST's.
5. A roster system for each category of posts should be adopted by the concerned

²⁰ Government of India, *Report of Second Backward Classes Commission* 57(1980).

²¹ AIR 1963 SC 649.

authorities in the same manner as presently done in the case of SC's and ST's.

The recommendations of the Commission are applicable to all the recruitments to public sector undertaking both under the center and state governments and also in nationalized banks. Apart from this all the private sector undertakings which are receiving any form of financial assistance from the government have to follow this scheme of reservation. All the universities and aided colleges will be covered by this scheme of reservation²². Basically the Mandal Commission had found out by the way of inquires that the representation of the Backward Classes in the Central Services in different categories is less than what the Scheduled Castes and Scheduled Tribes are getting, although the representation of the backward classes in the population of the country was more than double to that of the SC's and ST's therefore the Commission came to the conclusion that the Backward Classes are not getting enough representation in the jobs. The Mandal Commission had identified 3943 castes covering 52% of the total population of India as Other Backward Classes. This report was tabled in the Parliament in 1982 for a debate and all the political parties supported it because if they had opposed it than it would have hit hard on their vote banks. After this the Government of India had created a Backward Classes cell which was assigned to prepare the replies to the questions put forth in the Parliament during the discussions on the report²³. During the period from 1980-1989 the Prime Ministers of India namely Mrs Indra Gandhi and Rajive Gandhi had attempted to build a national consensus on the implementation of the report, but this issue was a forgotten one until the Janta Dal leader and then Prime

22 Supta note 7 at 70.

23 S.N Singh, *Reservation Policy for Backward Classes* 107(1996).

Minister Mr. V.P Singh brought this issue into limelight by issuing an executive order to reserve 27% posts in central services for OBC's and this order of the Government led to strong anti-reservation agitations. Post the implementation of the recommendations of Mandal commission writs were filed in the Supreme Court and the order of the Government was stayed till the final decision could be made. And finally in the case titled as *Indra Sawhney V Union of India*²⁴, the Supreme Court with its majority judgment found the August 13th order of 1990 as constitutional and subsequently the Mandal Commission report was executed with effect from September 8th 1993.

State Commissions on Reservation

Whereas the implementation of the reservation for 'Other Backward Classes' at the state level was concerned there was no uniform policy. Few states such as Gujarat, Karnataka and Andhra Pradesh etc set up their own Commissions in their respective states and enlisted eligible candidates under OBC's and started giving reservation in their state services²⁵. The Mandal Commission movement started in nineties but even before that too efforts were made by the than administrative bodies to assess the condition of backward classes in society. Even before the commencement of the Constitution of India certain provisions was there for the upliftment of backward and deprived classes.

(A) **Karnataka**- In the year 1916 there was preponderance of Brahamin community in public services. The Maharaja of Mysore ordered that necessary steps be taken to ensure that every community in the state be given equal opportunity to be represented in the services of state.

24 *Supra* note 6.

25 *Supra* note 10 at 107.

1. **Sir Leslie Miller Committee, 1918-** The government of Mysore in the year August 1918 appointed the Committee under the chairmanship of Sir Leslie. C Miller to investigate and report on the problem. The questions that were put forth to the committee were the following: (i) changes needed in the present rules of appointments to the government jobs; (ii) requirements of special facilities in higher and professional education among the candidates of backward classes; (iii) any other special measures which are needed to increase the representation of backward classes in services without compromising with efficiency of administration²⁶. The Committee submitted its report in July 1919. The state government accepted its recommendations that the term 'Backward Communities' should include all communities in the state other than Anglo Indians. This situation continued till reorganization of states in November 1956²⁷.
2. **Nagan Gowda Committee, 1961-** Large areas of Hyderabad, Bombay, Coorg and Madras territory were added to Mysore state as a result of the reorganization of states in the year 1956 to form an integrated Karnataka State. Due to this there remained no uniformity, same caste was treated as backward in one state, Scheduled Caste in second and non-backward in third. Therefore a new order was issued in July, according to this order all castes and communities except the Brahmins were to be treated as backward, but this order was quashed by Mysore High Court. Thereafter the State Government under the chairmanship of Nagan Gowda appointed a Committee, this Committee submitted its report in the year 1961. This

Committee classified the backward classes on the basis of social position of particular caste in a society, educational backwardness of the community and the representation the community had in public services. The Nagan Gowda Committee treated the whole of the Lingayat community as forward as they have representation in the services and education level were above the state average. Muslims were included as a whole for the purpose of Article 15(4) only in the backward list. The landmark case of **Balaji V State of Mysore**²⁸ challenged the report of Nagan Gowda Committee report that sole caste should be the basis of classification of backward classes. In its Judgment the Apex Court said that the backwardness has to be social as well as educational not either social or educational and it must be comparable with Scheduled Castes and Scheduled Tribes. After the order of Supreme Court the Karnataka Government issued the order listing six occupations that contribute to social backwardness; (a) family whose income is below 1200 per annum, (b) cultivator, (c) artisan, (d) petty businessman, (e) inferior government service, (f) occupation involving manual labour. In the relation to the report of Nagan Gowda Committee another case is of **R Chitralekha V State of Mysore**²⁹, the question raised in this case was whether the terms caste and class were synonymous. The Apex Court ruled that while Caste is important factor in determining social backwardness but caste and class are not synonymous terms.

Another Commission that was constituted in 1972 by the Government of Karnataka was **L.G Havanur Commission** in the year 1975. The Commission presented its voluminous report

26 Government of Mysore, *Report of the Backward Classes Committee* 4(1961).

27 *Id* at 32.

28 *Supra* note 21.

29 AIR 1964 SC 1823.

in 1975, listing the backward classes. These were divided into three categories, backward communities, backward castes and backward tribes and recommended a partial reservation for each of these groups. The categorization of the backward classes was done on the educational level. But this report was challenged in the case of *K.C Vasanth Kumar V State of Karnataka*³⁰; in this case the court ruled that poverty and caste should be the criteria in order to determine backward classes³¹. In the course of hearing of this case in November 1982, the Government of Karnataka gave an undertaking to appoint another Commission so **Vankataswamy Commission** was appointed in the year 1984. This Commission went into the problem in-depth and conducted extensive survey of secondary school leaving certificates students for identifying educational backwardness. It identified 33% of the state population as OBC's and derecognising many castes suggested 27% of reservation³². Next Commission was **Justice O Chinnappa Reddy Commission**, 1990, the report of this commission has pointed out that social and educational backwardness is a consequences of economic impoverishment, caste degradation and educational unawareness³³. Yet in identifying the backward classes the commission used the caste as primary factor. In the year 2002, **Prof Ravivarma Kumar Commission** was appointed. It made recommendations on the basis of each caste's petition and documentation presented before it in relation to each caste. The commission recommended that there should be abolition of reservation in promotions, which was recommended by previous backward classes

30 AIR 1985 S.C 1496.

31 *Supra* note 23 at 147.

32 Government of Karnataka, *Report of Second Backward Classes Commission* 33(1986).

33 Virendra Baxi, "Some Reflections on Chinappa Reddy Report", *Mainstream* 29 (1990).

commissions. However the report recommended that there may be a reservation of up to 50% in direct recruitments at all the levels in all posts and carders in government services.

(A) **Andhra Pradesh**- Before the formation of Andhra Pradesh the Other Backward Classes were getting some sort of reservation in the state of Madras. The Andhra Pradesh Government in the year 1963 passed the executive order declaring 139 castes as backward and reserved for them 25% of the seats in the educational institutions. But this order of the government was struck down by the high Court because it was solely based on caste. After that the cabinet was constituted to draw the list of backward classes in the year 1964. The following criteria was adopted for determining the backward classes: (i) poverty, (ii) low standard of education. (iii) low standard of living, (iv) place of habitation, (v) inferiority of occupation, (vi) low status of the caste. On the basis of these criteria the state drew up the list of 112 backward communities and recommended 20 percent of the total seats reserved for them. The Government accepted the recommendation, but the Andhra Pradesh High Court struck down the reservation policy in 1966³⁴. Thereafter the state of Andhra Pradesh appointed a **Manohar Prasad Commission** in the year 1968. The Commission submitted its report in June 1970 and recommended caste-cum occupation test for identifying backward classes in the state. It further recommended the reservation of 30% of the vacancies in the government services and educational institutions for the candidates belonging to backward classes³⁵. The fifth Vidhan Sabha

34 *Supra* note 23 at 111.

35 C.L Anand, *Equality Justice and Reserve Discrimination In India*, 204(1987).

of Andhra Pradesh appointed **Veerapa Committee** in 1975 to recommend welfare measures for the backward classes. This Committee submitted its report in 1977 and recommend 27% of reservation along with following measures³⁶:-

- award of the scholarships from Class I instead of VI standard as which was the practice;
- an increase in the amount of scholarship;
- a lowering of the minimum marks for students belonging to OBC's for admissions from 40% to 35%.

Third Backward Classes Commission, constituted in February 1982 it was known as **Murlidhar Rao Commission**, this Commission in its report in the September 1982 provided 44% reservation of seats and posts for 52% state population of OBC's. The commission included 10 more castes and sub-castes in the list of OBC's and the total went up to 102³⁷.

(A) **Bihar**- Bihar was the another state which was providing the benefits of scholarships to OBC's since 1951. **Mungerilal Commission** was the first Backward Classes Commission constituted by Bihar Government in the year 1971. The Commission recommended many welfare measures for the advancement and benefit of backward classes. This Commission recommended that there should be 24 % of the reservation in educational institutions and 26% of reservation be provided in the government and semi-government sector. The Janata Party Government in the year 1978 implemented the recommendations of the Mungerilal Commission.

(B) **Gujarat**- The first commission that was appointed by the Gujarat government was the **Bakshi Commission** in the year 1972. This commission listed 82 caste and communities as socially and educationally backward and recommended the following measures for their advancement³⁸:

- 10% of reservation of seats in medical, engineering and other professional institutions;
- reservation of 10% of the class III and class IV posts in all government services;
- reservation of 5% in all class I and class II vacancies in government services, local bodies and public undertakings;
- reservation of 10% of seats in training cum production centers
- award of scholarship and other educational facilities be provided to the candidates belonging to OBC's.

In the year 1981 **Rane Commission** was appointed , it was opined by the Commission that social backwardness should be determined without any reference to caste³⁹. The Commission took occupation in place of caste for identifying backward classes. The Rane Commission recommended reservation of seats/posts in educational institutions and in government services for the socially and educationally backward classes in proportion to their population, as well as relaxation in upper age limit in their case for entry into service. The population of the backward classes as identified by the commission was 35.16% of the total population of the state. The

36 Paras Diwan &Peeyushi Diwan, *Human Rights and the Law: Universal and India* 719(1996).

37 Murlidhar Rao, *Report of Backward Class Commission* 2(1982).

38 Sabyasachi Bhattacharya, *Education and Disprivileged: Nineteenth and Twentieth Century* 256(2002).

39 Nalin Mehta, *Gujarat Beyond Gandhi: Identity, Society and Conflicts* 23(1980).

Commission however recommended reservation of only 28% in the public services of state⁴⁰.

(A) Haryana- The Government of Haryana published the list of backward classes in the year 1969 and it announced 10% reservation in government services and 12% in professional educational institutions. In 1990, anti-Mandal agitation was very strong in all parts of Haryana. The dominant caste of Haryana i.e. Jats were demanding inclusion of Jats in the list of OBC's⁴¹. **Gurman Singh Commission** was the first Backward Classes Commission constituted by the Government of Haryana in the year 1991. The Commission submitted its report in the year 1991 itself and it included most of the dominant castes in the list of Other Backward Classes, the commission recommended that 27% posts should be reserved for OBC's.

(B) Punjab- The Punjab Government is among the first north states to go for the policy of job reservation for the backward classes in the year 1934. Punjab Government reserved 8.5% seats for Scheduled Castes. In the year 1964 this reservation quota was increased to 12.5% making it proportionate to the population of Scheduled Castes⁴². Government of Punjab appointed a Backward Classes Commission in the year 1951 to identify the other Backward Classes. It identified 2% of population as backward classes and recommended the 2% reservation for Scheduled Castes. This reservation policy was re-evaluated in 1965 by the **Brish Bah**

Committee. This commission submitted its report in the year 1968 with the following recommendations⁴³:

- This list of Backward Classes should be rationalized so that classes or castes which were no longer backward might be excluded,
- The reservation of 2% of the seats in educational institutions should be raised to 5%

The committee was in favours of extending the reservation percentage in jobs but the Government of Punjab raised the reservation up to 5% both in government jobs and in educational institutions for sixty-three backward classes irrespective of their religion. In the year 1975, Punjab Legislative Assembly appointed a **Harcharan Singh Commission** for the welfare of Scheduled Castes, Scheduled Tribes and Other Backward Classes. This Commission recommended 15% reservation for them in the government services and educational institutions. The government however found it difficult to accept this recommendation as it had already provided for reservation up to 25% for SC's and up to 20% for retired army personals, therefore the government continued with its policy of reserving 5% of the seats in educational institutions and 5% of reservation in initial appointment in government service⁴⁴. In addition it also provided 2% of reservation in promotions up to class I. It further decided to maintain a roster of all vacancies meant for Scheduled Castes and Scheduled Tribes and the Other Backward Classes in the form of running account year by year for each category of posts. In the year 1993 reservation for OBC's was increased to 23%.

40 Krishna K Tummala, *Public Administration in India* 256(2002).

41 Shyama Nand Singh, *Reservation Policy for Backward classes* 118(1996).

42 Government of Punjab, *Fourth Committee on Welfare of Scheduled Castes, Scheduled Tribes and Backward Classes* 125 (1975).

43 Ananth V. Krishna, *India Since Independence: Making sense of Indian Politics* 213(2011).

44 *Supra* note 27 at 139.

Many other states also appointed the Commissions for analyzing the conditions of backward classes. Himachal Pradesh Government published the list of backward classes on the basis of economic backwardness and social status. The determining factor was the annual income; (i) all the residents of the state whose annual income was less than 6,000 were to be considered as backward classes irrespective of the caste to which they belong; (ii) persons belonging to certain communities are backward if their annual family income is not more than 6,000⁴⁵. Like other state Governments Uttar Pradesh Government also appointed a Commission in the year 1975 known as Chhedi Lal Sethi Commission, it recommended 15% of reservation for Other Backward Classes. The Commission used poverty, illiteracy, housing, occupation, caste, social inequality and representation in government services as yardsticks for measuring backwardness⁴⁶. Prior to the implementation of Mandal Commission's recommendations some Indian states like Assam and Union Territories considered educational backwardness as the most important aspect of backwardness and reserved some seats for educationally backward in educational institutions, there was no such reservation in government services. Some Indian states had not prepared the list of backward classes till 1993; these states do not regard backward classes as calling for state action in respect of their socio-economic conditions. Only after the implementation of the recommendations of Mandal report reservation to the tune of 27% was provided for the Other Backward Classes.

Conclusion

45 Shyam Nand Singh, "Reservation for Other Backward Classes: A National Perspective", *Political Science Review* 83(1989).

46 Nalini Kanta Dutta, *An X-ray on Reservation Provisions* 241(1991).

The recommendations of various Commissions and Committees constituted by various Union and State Governments reflect out many important points. There has been common realization that society cannot advance by backwardness of any section of society. Economically, socially and morally the upliftment of backward classes irrespective of castes is the demand of existing social and economic situation. It is most unfortunate that till now no uniform criteria have been evolved which may be acceptable to the whole society. There were differences of opinions between the reports of different Commissions. Mandal Commission finalized the extent of reservation for OBC's. At least in the case of OBC's reservation should now be given to them after exclusion of advanced sections among them. There must be policy for the exclusion of advanced classes and inclusion of most backward classes if found suitable. The term "creamy layer" was first used during the 1992 Supreme Court judgment i.e. **Indira Sawhney v. Union of India**⁴⁷ on the Mandal Commission recommendations asking for 27% reservations for other backward classes (OBCs) in central government jobs. While the Supreme Court meant that the more privileged among the backward classes do not dominate the reserved categories. The Central Government had appointed a committee under the chairmanship of **Ram Nandan Prasad**⁴⁸. This committee was formed on 23 february 1993 and it submitted its report on March 10, 1993. This committee recommended that persons holding constitutional posts, class I officers of central and state services, families of class II officers, if both the parents are

47 *Supra* note 6.

48 Ministry of Social Justice & Empowerment, "National Commission for Backward Classes to Review The Income Criteria For Excluding Creamy Layer From Amongst OBC's" Available at <http://pib.nic.in/archive/releases98/lyr2003/roct2003/08102003/r081020035.html> visited on 22 November 2016.

in job category, all non-government professionals will be included in the preview on the basis of income tax, wealth tax assessment etc. The issue of excluding the creamy layer among SCs and STs has not arisen much for consideration. That issue was already settled in 1992 by a larger bench of nine judges⁴⁹ and also in 2004 by a co-ordinate bench of five judges *E.V. Chinnaiah v. State of*

49 *Supra* note 6 at 69.

*Andhra Pradesh and Others*⁵⁰ by holding that the concept of creamy layer had no application to SCs and STs. The October 19, 2006 judgment in the *M. Nagaraj v. Union of India*⁵¹ case by five judges could not and, in fact, does not derogate from these earlier pronouncements.

50 AIR 2005 SC 162.

51 (2006) 8 SCC 212.