

Reforming Criteria for Discrimination in Form of Reservation in Contemporary India for Natural and Social Justice: A Pragmatic Approach Facilitated by Indian Judicial Vista

Dr. Vinaya Bhosale¹,

¹(Department of Law, New Law College, BharatiVidyapeeth[Deemed to be University], Pune, India)

Abstract: Post-independence reservation policy in India is based on the values of compensation for past injuries, protection of vulnerable, proportional equality, distributive social justice and social welfare. Even after sixty-eight years of incessant implementation, 'classless and casteless' Indian society has not been realised; on the contrary there are ever-increasing demands of various castes through active and aggressive casteism for inclusion in Other Backward Classes category for getting reserved quotas in educational institutes and governmental jobs. It implies that the current reservation scheme is not being successful in eradication of social and educational inequality making its review and restructure imperative. Indian judiciary through sagacious interpretations from time to time channels Indian democracy towards more apposite reservation policy. This Article attempts to rekindle the thought-process that criterion of 'backwardness' has to be re-defined on 'scale of neediness' for being eligible for constitutional policy of protective discrimination; substantiating it's assessments with landmark judicial pronouncements.

Keywords: Positive Discrimination, Reservation Policy, Criteria, Backwardness, Scale of Neediness

Date of Submission: 30-12-2018

Date of acceptance: 15-01-2019

I. INTRODUCTION

To achieve the aim of casteless society, positive discrimination in form of reservation based upon the policy of social justice¹ to depressed classes in India was thought over, adopted and implemented by the Constitution of India, 1950; that reservation policy is being implemented for sixty-eight years in Indian polity. The existing reservation policy in India has again and again come up in the light due to the demands of the supposedly upper castes in India such as *Marathas* from Maharashtra, *Jats* from Northern India especially from Haryana and *Patidar* alias *Patels* across Gujrat etc. to be granted the status of 'Other Backward Class' category along with its benefits. Recently *Dhangars* from Maharashtra State though already being in Normadic Tribes category have started state-wide agitations to be shifted to Scheduled Tribes category.

The available statistics and ever-increasing demands for reservation show that the current reservation policy in India is not meeting the requisite force essential for eradication of social and educational inequality in India, and the various other castes and classes of the Indian polity are visualising the advancement of their respective castes and classes with the help of protective discrimination.

The ever-increasing demands for special reservations or quota in governmental jobs and educational institutions of various castes and communities, if to be accepted, how the remaining hold of castesim² in modern India will be on decreasing side; or "the really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance"³ are some of the major issues which needs an in-depth and re-overhauling study in the relevant disciplines, subject matter and area. The imperative need persists to re-define the concept of 'backwardness' in contemporary India, and to re-construct uniformly the state's list of 'Backward Classes', the criterion to be reformed to make it more applicable to the present-day Indian society.

Systematic, disciplined and a just-functioning of the society is one of the major aims of law. Recognition, acceptance and implementation of human rights and social justice in theoretical and practical composition of all subjects of a state result into fair and balanced functioning of the society. Law ensures and implements the acceptance of human rights and social justice in the society which it purports to govern. The

¹'Social justice' implies equality of opportunity to access justice, health, wealth, wellbeing, and education.

²"A secular socialist society, can never countenance identification of backward classes on the basis of caste which would only perpetuate and accentuate caste differences and generate antagonism and antipathy between castes." *Per* P.P. Rao appearing for the Supreme Court Bar Association *cited in* Indra Sawhney etc. v. Union of India and Others, AIR 1993 SC 477, ¶ 62.

³M.R. Balaji and Others v. State of Mysore, AIR 1963 SC 649.

implementation of obsolete law results into violation of social and natural⁴ justice. The legislature should be the fearless advocate of contemporaneous social justice for the progressive democracy as well as the facilitator of the development of all citizens of the state. Issues such as 'vote banks', 'hurting sentiments of certain segments of society', 'facing wrath of beneficiaries of the current reservation policy' etc. should not be given weightage, when whole Indian civilization is progressing towards synchronous natural and social justice.

II. SHAPING UP OF RESERVATION POLICY IN NEWLY-INDEPENDENT INDIA

Theoretically, reservation policy in India was never a caste-based reservation; though indirectly it is caste-based, it is discussed and especially labeled as class-based reservation policy. For locating and determining the classes in newly independent India the structure of then-existing religions, castes, classes, groups and communities was thoroughly researched and evaluated, and judging upon the social, educational and to some extent economic 'forwardness and backwardness' criteria the existing reservation strategy in India got shaped up.

Backwardness was tested on the parameters of social position of the caste in caste hierarchy, environmental conditions under which the class or community lives, percentage of literacy and generally basic educational awareness, gaining and advancements among the particular communities and castes, existing economic conditions of various castes and groups. Various classes of Indian society were tested before giving them the status of backward classes on the scale of 'traditional occupation or profession', "the estimated population of the community, and the distribution of the various communities throughout the state or their concentration in certain areas", and also the class or castes' representation in government services as well in industrial domain.

Considering their higher social status in Indian society various castes and communities were granted the 'open category' status in education and occupational jobs, and were not given any benefits which comes under the 'reserved category' status which the Scheduled Castes, Scheduled Tribes and Other Backward Classes enjoy. Overall, one can generally say that 'social and educational forwardness' of some castes and communities were the prime factors considered in typifying them into superior position in existence and practical life, and hence denial of them to enjoy the benefits of 'reservation' in India.

III. QUESTIONABLE FULFILMENTS OF AIMS AND OBJECTIVES OF RESERVATION POLICY

After enjoying sixty-eight years of social, secular and democratic structure of the Constitution and polity in India if one can apply the 'reality check criteria'⁵ to factually existing social, educational and economic conditions of the various supposedly upper classes, and supposedly weak and lower classes in Indian population neutral and rational mind of an intellectual would tend to demand the serious and penetrating contemplation of the existing reservation policy in India which is dividing the country into active and aggressive casteism,⁶ and open and vocal communalism, the exact antithesis of the rationale behind and objective of the original reservation policy thought essential and progressive by Dr. Babasaheb Ambedkar, Mahatma Gandhi and other eminent sociologists and intellectual politicians in the era of newly independent India.

It seems that the test done in the era of newly independent India, the classification of socially backward classes based on test of 'backwardness' among castes has become inconsistent with the time and changing social, political, technological and economic environment of India.

- Is the criteria applied in 1950 while granting special favours to Scheduled Castes, Scheduled Tribes and Backward Classes justified to be continued even after sixty-eight years?
- Has Dr. Ambedkar's dream of a casteless society been achieved even after sixty-eight years of special categorization and reservations?

⁴The concept of 'natural justice' connotes justice which is perceived as being a 'common-sense' or 'logic'; e.g., human rights are expressions of principles of natural justice which "attempt to bring justice to human beings inherently or logically".

⁵Among several criteria which were considered relevant in determination of being 'backward class' immediately after the independence of India are not applicable in the contemporary Indian society due to following factors such as:

- notable awareness and spread of education,
- extensive increase in educational aids, facilities and institutions,
- wide spread of means of communication and transport,
- technological and cyber revolution,
- rise in per capita income,
- significant loosening of hold of casteism,
- substantial growth in employment opportunities,
- considerable adaption of principles of gender and social equality which is reflecting in many spheres of life of Indian society, etc.

⁶During the Constituent Assembly Debates, 1947 veteran parliamentarian Damodar Swarup Seth forecasted which turned out correct in reality as: "It is not easy to define precisely the term 'backward'; nor is it easy to find a suitable criterion for testing the backwardness of a community or class . . . it will give rise to casteism and favouritism which should have nothing to do in a secular state."

- Is contemporary Indian society been freed by the holds of castesim in true sense?
 - Has the aim and effort of Constitution-makers been accomplished to realize true social justice among every strata of the Indian society by the method of reservation?
 - Isn't there present a serious need to revisit and re-evaluate the concepts of 'social justice' and 'backward classes', and relevance and practicability of current reservation policy in contemporary India?
- Attempting candid answers to these enquiries is the aim of this Article.

IV. LISTING UP THE DYNAMICS WHICH COMPEL INTROSPECTION AND REVIEW OF CURRENT RESERVATION SCHEME

Following are some of the factors which induce a contemplative mind to introspect and review the current reservation scheme in India:

A. Spread of education and communication. – Because of spread of primary and secondary education, tele-communication and cyber-communication network in present-times majority of Indians are aware of their human rights as well as social and political rights.

B. Barriers. – Social, intellectual and communication gaps between two Indians created, nourished and flourished because of the divisional structure of a caste or community through religious, social and educational barriers have to a larger extent lessened, healed or erased in natural course of democratically attributed political life of India.

C. Access to education. – Right to education is recognized actively as a universal human right, and because of vigorous political and social propaganda throughout last sixty-eight years, it is now an implicit fact that any Indian can opt for education irrespective of caste, creed, class, sex, gender, community or religion.

D. Lack of will and hard-work. – Scheduled Castes, Scheduled Tribes and officially recognized Other Backward Classes in India are now largely conscious and aware of their reservation quotas in educational institutes and governmental jobs; but the problem usually lies in their lack of strong desire and appropriate actions/hard work to achieve the betterment-educational as well as economical.

E. Perceptual set-up. – The popular thought-process that social and economic progress of a person belonging to a Scheduled Caste or a Scheduled Tribe or Other Backward Classes is possible only through by getting a government job is “comparatively less productive”⁷ than the person who is exposed at all avenues and given all types of opportunities to check and develop his/her inherent skills and faculties.

F. Fallacious perception of strength. – Reservations fosters a “false sense of strength”⁸ and negative faith as “only channel to success in life”; any possibility to remove the reservation creates fear of insecurity and helplessness in minds of the current beneficiaries of reservation which results into mass protests and castes' riots in India.

G. Haves and have-nots. – Due to access to education, and advanced information and communication technology two classes have emerged predominantly: “economically haves” and “economically have-nots” which principally is a deciding and separating factor between two human beings in the materialist world of 21st century.

H. Being have-nots still 'unprotected'. – After 'sex' generally 'caste' is the second criterion to identify a person in India.⁹ The politically created, constitutionally approved and labeled as 'upper classes' within the masses of

⁷K. Sravana Kumar, *Origin, Growth and Recent Trends Reservation Policy in India*, 6 (10) INTERNATIONAL JOURNAL OF RESEARCH IN SOCIAL SCIENCES (Oct. 2016), <http://www.ijmra.us>.

⁸[Pandit Jawaharlal] Nehru had apprehension regarding reservation. He observed: There is a great danger, whether you deal with an individual or group or community, of giving certain [external] props [reservations] to that community which give it a false sense of strength which does not belong to it, and when they are removed, suddenly make the community weak. . . . So these external props, . . . that is reservation of seats and the rest-may possibly be helpful occasionally in the case of backward groups, but they produce a false sense of strength, and ultimately, therefore, they are not so nearly as important as real educational, cultural and economic advance which gives them inner strength to face any difficulty or any opponent.

See Sravana Kumar, *id.*

⁹According to Hutton, the motif of taboo on food and drink was perhaps the keystone of the whole caste system. . . . It is a fact that significant role played in the genesis of caste by the complex of beliefs in mana, taboo, and magic, which surrounds the primitive philosophy of soul-stuff or life-matter, which surrounds the primitive philosophy of soul-stuff or life-matter, has not been adequately

India are in it a vast number of individuals who are below poverty¹⁰ line/level¹¹ – which is decided by the Government of India, and can be sectioned as ‘economically have-nots’. In contemporary India born in an ‘upper class’ but factually belong to an ‘economically have-nots’ section, that Indian is left outside the purview of special protection and providence by law through reservation in educational institutes and governmental jobs which another Indian citizen born in a ‘lower class’ but belong to the ‘economically haves’ section enjoys due to his politically blessed and constitutionally protected ‘reserved category caste’.¹²

Time has come to actively amend one’s mental set up that being born in or belonging to an upper caste in present-day India does not mean that person or that family is doing well in materialistic and ultimately social aspect of life.

I. Reserved category status: Hypothetical tool for happiness.– ‘Have-nots’ in upper castes or classes in India is the section of people who is economically weaker; the persons who are earning less money than what is needed to fulfil basic needs of living or to survive; or who are not having or not capable of having means of livelihood.¹³ Ultimately observing benefits of the ‘reservation’ enjoyed by the reserved category classes in India the ‘have-nots’ in upper castes strongly feel that reservation is a way or method to come out of the lower conditions of their lives; to do progress; and to live and enjoy their lives more satisfactory; therefore their castes also deserve to be added in the reserved category.¹⁴

J. Aggressive casteism.– This unjustified reality makes a critical mind to realize, think and arrive at a cynical conclusion which gives birth to aggressive, rebellious and ‘pro-caste’ or ‘pro-communal’ social movements.¹⁵ The recent example of such movement for inclusion in Other Backward Classes can be cited as: Ongoing *Maratha Movement* for *Aarakshan* since 2016-2017, the coalesced and lead without any specific leader/s which is a unique characteristic, and spontaneously accepted by the majority of *MarathaSamaj* from Maharashtra State in India. Till 2017 it was conducted through peaceful marches, stirs, protests and mass *morchas* within various districts of Maharashtra State. Feeling no positive response from the Government of Maharashtra State, now this movement has taken aggressive, forceful and violent form in nature of suicides, violence¹⁶ and destruction of public property which was seen during the calls for *Maharashtra Band* and *Maratha Morchas* which took place in July and August 2018. Responding to the state-wide assertive agitations the Government of Maharashtra promised to grant quota to *Maratha Samaj* till November 2018.¹⁷

Sensing the success of this *MarathaAarakshan* Movement, the *DhangarSamaj* which is presently classified in Normadic Tribe category in Maharashtra has also started such type of violent and aggressive movement for inclusion in Scheduled Tribe category.¹⁸

appreciated. . . . Besides belief in mana, taboo etc., . . . several other factors which have contributed to the emergence and development of caste system, such as geographical isolation of the Indian peninsula, clash of races and fusion of cultures, deliberate economic and administrative policies, trade guilds and trade secrets, magic associated with crafts and functions, etc. . . . Institutions analogous to caste do exist in other countries. But . . . , the caste system in India must be regarded as unique in the world; for, it is indeed difficult to imagine that all the factors mentioned above could have together operated in any other region.

R.N. Dandekar, *Annals of the Bhandarkar Oriental Research Institute*, Vol. 32, No. 1/4 (1951), pp. 296, 297 (reviewing J.H. HUTTON, *CASTE IN INDIA* (Oxford University Press 2nd ed. 1951)), <http://www.jstor.org/stable/41784612>.

¹⁰Poverty’ is a relative concept and varies from country to country depending upon “the amount of money needed for a person to meet the minimum standard or his basic needs of living” in that particular country. See <https://www.indian economy.net/splclassroom/what-is-poverty-line-how-poverty-line-is-constructed-in-india/> (last visited October 11, 2018).

¹¹‘Poverty line’ is “a level of personal or family income below which one is classified as poor according to governmental standards”. *Per* MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/poverty%20line>.

¹²“It is found in the case of a given caste that a few members have progressed far enough so as to compare favourably with the forward classes in social, economic and educational fields; an upper income ceiling can perhaps be prescribed to ensure that the benefit of reservation reaches the really deserving.” *Per* ChinnappaRaddy, J. in *Vasanth Kumar v. State*.

¹³“[T]he only basis upon which backward classes should be identified is the economic one and that a time has come to discard all other bases.” *Per* Desai, J., *id.*

¹⁴The haves and the have-nots have to co-exist. If the creamy layer has to be excluded the economically backward classes have to be included. That would be social balancing and that would be giving true meaning of the objectives of the Constitution. Social empowerment cannot be and is certainly not a measure for only socially and educationally backward classes. It also has to be for the socially and economically backward classes.

Ashoka Kumar Thakur v. Union of India and Ors., Writ Petition (civil) 265 of 2006, ¶ 85.

¹⁵*Supra* note 2.

¹⁶*Maratha Reservation Stir: Protests Turn Violent in Pune*, *ECONOMICS TIMES* (July 30, 2018), <https://economictimes.indiatimes.com/news/politics-and-nation/maratha-reservation-stir-protests-turn-violent-inpune/videshow/65203862.cms>.

¹⁷THE TIMES OF INDIA (August 5, 2018), <https://timesofindia.indiatimes.com/city/Mumbai/all-constitutional-obligations-for-maratha-reservation-to-be-completed-by-nov-fad-navis/articleshow/65283404.cms>.

¹⁸ZEE 24 TASS (July 30, 2018), <http://zeenews.india.com/marathi/Maharashtra/dhangar-samaj-aggressive-for-reservation-meetings-will-organize-in-pune/440107>.

K. Insecurity of the 'Left-outs'. – These new demands reflect dissatisfaction and insecurity among the currently non-reserved classes or communities or 'left-outs' in India of not being protected or provided enough by the state though being in backward condition of living.¹⁹

L. Changed parameters of social backwardness. – The concept of 'social backwardness' has changed its dimensions drastically since 1950,²⁰ and there is an urgent need to check and reconstruct its modern-day parameters. During the period of independence the large population in India were living in rural and isolated regions; they were living in unimaginable and below-than-basic living conditions. In present-day India, rural places are connected to the world due to advanced tele/cyber-communication technology and digitalization. The meaning of a 'socially backward' prevalent in 1950 is no more relevant; present-day backwardness is largely related to 'economic'²¹ and 'educational' regression of a person, a family or a community. Consequently economic and educational progressiveness or regression decides social standing of a person, a family or a community in contemporary India.

M. Consolidation of caste identity– The ever-increasing demands of various castes and communities for granting status of 'backwardness' for availing reservations or quota in governmental jobs and educational institutions if to be fulfilled, then the remaining hold of castesim in modern India will not be on decreasing side. The reservation policy is not achieving the goal of Constitution-draftsmen that in due course of time these Scheduled Castes, Scheduled Tribes and existing Backward Classes perpetually would merge into the main streams of Indian society and India would be casteless;²² equality would be achieved in true sense. The current reservation policy in India is keeping alive the barriers of classes, groups, castes, sub-castes, communities, religion intact in practice as well in minds of the Indian people as it is favouring the specified castes, classes or tribes. In exact opposite to its original intention and aim the reservation policy in India,²³ it has consolidated concretely the 'caste identity' and the young generation of such castes wants to keep that identity intact and alive for the benefits which reservation policy is granting.

N. Re-enforcing inferiority and separatism–The perpetual reservation system in Indian polity would re-enforce die-hard inferiority amongst the reserved categories that should, rather develop themselves on the basis of self-reliance and self-help by developing self-confidence, but not on the eternal charity of somebody else. The perpetual special protection instead of removing the disabilities of the people, keeping alive the social aloofness, the spirit of separatism and communalism.

¹⁹“[C]are would be taken not to provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency.” See Balaji v. State.

²⁰Reservations in India began prior to independence in the State of Tamil Nadu in 1931 and then spread very gradually to many other states. The Constitution of India, through its Articles 15.4 and 16.4, states the intention to uplift the Scheduled Castes, the Scheduled Tribes and the backward classes. In response, the reservations were addressed at the national level for the first time in the year 1953, with the recommendations of the first Backward Class Commission (January 29, 1953-March 30, 1955) appointed under Article 340 of the Constitution. The Commission focused on (i) the low social position in the traditional Hindu caste structure; (ii) the lack of general educational advancement among the major sections of the depressed castes or communities; (iii) inadequate or no representation in Government service; and (iv) inadequate representation in the fields of trade, commerce and industry. Among the other things, the Commission recommended 70% reservations for the backward classes in technical and professional institutions. The recommendations were not implemented.

VINEY KIRPAL & MEENAKSHI GUPTA, EQUALITY THROUGH RESERVATIONS 30 (Rawat Publications 1999). See also Mandal Commission Report, 1980.

²¹Poverty is the prime cause of all backwardness. It generates social and educational backwardness. But wealth or economic affluence cuts across all. A wealthy man irrespective of caste or community needs no crutches. Not in 1990 when money more than social status and education have become the index. Therefore, even if a group is not educated or even socially backward but otherwise rich and affluent then it cannot be considered backward. . . . Including such groups [in backward category] would be doing injustice to others.

Per Dr. T.K. Thommen, J. in *Indra Sawhney v. Union*, ¶ 671.

²²Reservation must one day become unnecessary and a relic of an unfortunate past. Every such action must be a transient self-liquidating programme. That is the hope and dream cherished by the Constitution-makers and that is the end to which the state has to address itself in making special provisions for the chosen classes of people for special constitutional protection, so that persons will be regarded as persons, and discrimination of the type we address today will be an ugly feature of history that is instructive but that is behind us.

Per Justice T. Marshall in *Regents of the University of California v. Allan Bakke*, 438 US 265, 57 L Ed. 2d 750 cited in *Indra Sawhney v. Union*, ¶ 403.

²³“It is proposed to continue this assistance . . . for some time and by a process of gradual reduction to prepare them for a stage when they can be prepared to come to the general level of the other communities and to share the financial burdens, obligations and difficulties.” Per Vallabhbai J. Patel (Bombay: General), V CONSTITUENT ASSEMBLY DEBATES (August 27, 1947), <http://parliamentofindia.nic.in/ls/debates/vol5p8a.htm>.

O. Social cancer. –In politics of vote-banks, caste is a mass symbol of identity and unity.²⁴ Reservation has become a political and social cancer in India.²⁵ It is “injustice to social justice”²⁶. ‘Vote politics’ implies ‘collective/mass votes’ of a particular community. Promise of granting ‘reserved category status’ to a particular caste or community has become one of the routes to attract voters collectively and to win in assembly elections in India.

Current backward classes represent a strong vote bank due to their solid unity. A smallest hint of removing their reserved status turns into a furious outcry, violent ruckus and thoughtless destruction of lives and public property.²⁷ The ruling political party which takes the decision of restructuring or removing reservation policy is surly going to face the wrath of beneficiaries of the current reservation policy, and probably will be dethroned in next national general assembly election. Due to this no politician dares to voice need of overhauling, restructuring or removing the current policy. Hence the years are just adding up against the wish of original draftsmen of the policy about the duration of reservation to be needed in India.

Dr. Ambedkar himself was against giving unjust and indefinite reservation to anyone as it was antithesis of the original concept of reservation; it was implied that application of the reservation scheme was principally the administrative duty; and as original stipulated time-span of reservation was ten years from its commencement, it was the duty of legislature for its periodic reduction. It is unnatural to continue such policy for many more decades or who knows for many more centuries to come, without rechecking its result, effectiveness and relevance in modern-times.

It is an easy way out for the state that, instead of facing the political and social wrath from particular classes of society in case of the state overhauling the reservation policy to meet contemptuous social justice, simply adding up a class or community e.g., Marathas, Jats or Patels who are successfully and persistently demanding for to be in special category, and that the state breathing in relief that the societal protests, demands, commotions or *morchas* are stopped and a new vote bank is achieved by the ruling political party whose government has granted the new special status to those communities.²⁸

P. Merit and efficiency?—The ever-present question still remains unanswered: ‘Whether reservation affects merit and efficiency; and if it does then is it beneficial for a country wherein merit is suppressed,²⁹ budded cut and die in the need of wrong considerations of a reservation policy?’³⁰

²⁴The abolition of the caste system seems, however an ideal which is not likely to be realized except in the dim and distant future; and to those who hope for the weakening of its hold upon the people it is disappointing to find that candidates for election to the legislature of one province solicit the votes of their caste men simply on the strength of caste fellowship without regard to other considerations, that a solid caste vote has determined the result of some elections, and that there has been a tendency in the legislature itself for groups to be formed on caste lines.

Dr. S. Radhakrishnan (United Provinces: general)*cited in* SHAKUNTALA DEVI, CASTE SYSTEM IN INDIA 257 (Pointer Publishers 1999).

²⁵In *IndraSawhney No.1* . . . this Court had laid considerable stress on having a Commission to identify and determine the criteria for determining the socially and educationally backward classes. Very little appears to have been done. It is surprising, it was contended, that there has been not even a single case of exclusion but on the other hand more than 250 new castes/sub-castes have been added. This shows that there is really no serious attempt to identify the other backward classes. On the other hand, there has been over-jealous anxiety to include more number of people so that they can get the benefits of reservations/quotas and this has been termed as ‘vote bank politics’.

See Ashoka Kumar Thakur v. Union, ¶ 9.

²⁶MukundSarda, *Withdrawal from Prosecution in Criminal Cases*, VI (2) BHARATI LAW REVIEW (2017).

²⁷Such types of destructive instances happened throughout India when the Mandal Commission Report which was submitted in 1980 was decided to be implemented in 1990 by then Prime Minister of India V.P. Singh.

²⁸We are dealing with complex social, constitutional and legal questions upon which there has been a sharp division of opinion in the Society, which could have been settled more satisfactorily through political processes. There are other reasons, of course—that cause governments to leave decisions to be made by Courts. They are of expedient political character. The community may be so divided on a particular issue that a government feels that the safe course for it to pursue is to leave the issue to be resolved by the Courts, thereby diminishing the risk it will alienate significant sections of the Community.

See IndraSawhney v. Union, ¶ 26A.

“Sri Venugopal cites the example of Tamil Nadu where, according to him, before every general election a few communities are added to the list of backward classes, only with a view to winning them over to the ruling party.” *See id.* ¶ 54.

²⁹The national interest and the demand of universal excellence may even override the interests of the weaker sections. In this context, Krishna Iyer, J. aptly observed: “To sympathise mawkishly with the weaker sections by selecting sub-standard candidates, is to punish society as a whole by denying the prospect of excellence, say, in hospital service. Even the poorest, when stricken by critical illness, needs the attention of super-skilled specialists’ not humdrum second rates”.

See Ashoka Kumar Thakur v. Union, ¶ 135.

³⁰The state exists to serve its people. There are some services where expertise and skill are of the essence. For example, a hospital run by the state serves the ailing members of the public who need medical aid. Medical services directly affect and deal with the health and life of the populace. Profession expertise, born of knowledge and experience, of a high degree of technical knowledge and operation skill is required of pilots and aviation engineers. The lives of citizens depend on such persons. There are other similar fields of governmental activity where professional, technological, scientific or other special skill is called for. In such services or posts under the Union or State, we think where can be no room for reservation of posts; merit alone must be the sole and decisive consideration for appointments.

Per A.P. Sen, J. in *Vasanth Kumar v. State*.

Q. Validity of backwardness and Article 16 (4)—An urgent need is felt to re-examine ‘reservation policy of India in 21st century’ by constitutional perspective. Article 16 (4) of the Constitution of India which speaks of class protection and not of individual protection needs to be amended after serious debates and discussions, and balanced and unbiased decisions.³¹“Importance of word ‘is’ in Article 16(4) should not be lost of. Backwardness and inadequacy should exist on the date the reservation is made.³² 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.”³³

R. Indian reservation policy and the global scenario.—Finally, an in-depth study is required to check out ‘Why does India the only country on the global map which still preach for and practice official reservation policy on such a large scale?’ The need is felt to study foreign case laws and governmental policies in the countries like United States of America about racism and minorities as “to notice how another democracy is grappling with a problem similar in certain respects to the problem facing this country [India]”³⁴.

V. RESTRUCTURING THE PATH THROUGH RESERVATION TOWARDS APPOSITE SOCIAL JUSTICE

It is beyond an absolute doubt that the identified Scheduled Castes, Scheduled Tribes and Other Backward Classes have suffered centuries of discrimination and disadvantage, leading to their backwardness.³⁵ Several programs of affirmative action³⁶ and compensatory positive discrimination³⁷ for them have been evolved since India achieved its independence. Following are some of the measures need to be taken to coxswain Indian polity towards achieving natural and social justice appropriate to present-times:

A. Authentic survey. – It is imperative to take actual and truthful stock of ‘success and failures’ of the reservation scheme and its implementation since its existence. India has a serious requirement of an all-exhaustive authentic survey conducted by a specially appointed Commission into current and factual position of social, educational and economical backwardness of the present-day citizens of India irrespective of caste, class or community.

Considering the present corrupt Indian bureaucracy one can wonder that, ‘Whether does India need an independent international agency to conduct the gravely needed ‘authentic survey’ of the present-day conditions

³¹[T]he political executive, owing to the degeneration of the electoral process, normally acts out of political and electoral compulsions, for which reason it may not act fairly and independently. If, on the other hand, the provision is to be made by the legislative wing of the state, it will not only provide an opportunity for debate and discussion in the Legislature where several shades of opinion are represented but a balanced and unbiased decision free from the allurements of electoral gains is more likely to emerge from such a deliberating body.

Per B.P. Jeevan Reddy, J. *in* Indra Sawhney v. Union, ¶ 54.

³²Reservation is a remedial action specially addressed to the ill effects stemming from historical discrimination. To ignore this vital distinction between affirmative action short of reservation and reservation by a pre-determined quota as a remedy for past inequities is to ignore the special characteristic of the constitutional grant of power specially addressed to the constitutionally recognised backwardness.

See Ashoka Kumar Thakur v. Union, ¶ 65 *citing* Indra Sawhney v. Union, ¶ 294.

³³*Per* Dr. T.K. Thommen, J. *in* Indra Sawhney v. Union, ¶ 659.

³⁴*See id.* ¶ 403 *while citing* University of California v. Allan Bakke [1978] 57 L.Ed. 2d 750 [Powell, J. opined in *Bakke* that Article 16(1) permits only preferences but not reservations.]; Fullilove v. Phillip M. Klutznick [1980] 65 Lawyers Ed. 2d 90; Metro Broadcasting, Inc. v. Federal Communications Commission, rendered on June 27, 1990; Brown to Board of Education v. Swann (28 L.Ed. 2d 586) [“If race be the basis of discrimination, race can equally form the basis of remedial action.”].

We have examined the decisions of U.S. Supreme Court at some length only with a view to notice how another democracy is grappling with a problem similar in certain respects to the problem facing this country. The minorities (including blacks) in United States are just about 16 to 18% of the total population, whereas the backward classes (including the Scheduled Castes and Scheduled Tribes) in this country-by whichever yardstick they are measured-do certainly constitute a majority of the population. The minorities there comprise 5 to 7 groups-Blacks, Spanish-speaking people, Indians, PuertoRicano, Aleuts and so on-whereas the castes and communities comprising backward classes in this country run into thousands. Now coming to Constitutional provisions, Section 1 of the Fourteenth Amendment (insofar as it guarantees equal protection of the laws) corresponds to Article 14 [U.S. Constitution, which permits reasonable classification which may involve reservation of seats or vacancies in favour of a class]; but they do not have provisions corresponding to Article 16(4) or 15(4) [Indian Constitution]. Title VI of the Civil Rights Act enacted in 1964 roughly corresponds to Clause (2) of Articles 15 and 16.

See id. ¶ 52.

³⁵According to Sivaramaya, Indian policy is based on four principles: Compensation (for past injuries), Protection (of the weak under Article 46 of the Constitution), Proportional Equality and Social Justice (incorporation distributive justice and social welfare).”*See* Sravana Kumar, *supra* note 16.

³⁶“The first ever special programs for the welfare and upliftment of the depressed and deprived classes of Indian society were initiated by the Madras Government in 1885 when it formulated the Grant-in-aid Code. The Code was meant to regulate financial assistance to educational institutions providing special facilities for students from the depressed classes.”*See* KIRPAL & GUPTA, *supra* note 29, at 30.

³⁷“In 1928, for the first time, the backward classes and depressed aboriginal tribes were identified for special facilities for education and reservation.”*Id.*

of Scheduled Castes, Scheduled Tribes and Other Backward Classes so there will be less political influence in the process and its outcome?’

In modern-day India because of lack of authenticated data about present and real conditions of the scheduled and reserved categories, socially and educationally forward people from such classes are enjoying the fruits of protective discrimination.³⁸ The latest authentic survey would enable the Commission to recommend modified reservation scheme to yield optimum results within newly marked period of time.³⁹

B. In-depth study of contemporary Scheduled Tribes.—An exclusive and exhaustive survey and in-depth study of the present social, economic and educational conditions, especially of all Scheduled Tribes in India is gravely and urgently needed.⁴⁰ One of the aspects the survey should include is, ‘How and to what extent the reservation proved beneficial to Scheduled Tribes on social, educational and economic frontiers?’ The actual statistics will help us to understand the rate of success of reservation policy for Scheduled Tribes in India.

C. Exclusion of creamy layer from reservation benefits.—On Sept. 26, 2018 in *Jarnail Singh & Others v. Lachhmi Narain Gupta & Others*⁴¹ the five-judge Constitutional Bench⁴² of the Supreme Court of India presided by Dipak Misra, C.J. ruled that the principle of exclusion of creamy layer from getting benefits of reservation, about which the parameters were decided in *Indra Sawhney v. Union*⁴³, can be applied to Scheduled Castes and Scheduled Tribes too “on the touchstone of equality among the same group or sub-group” as “the whole object of reservation is to see that backward classes of citizens move forward so that they may march hand-in-hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate them, leaving the rest of the class as backward as they always were”.⁴⁴ Removal of creamy layer from Scheduled Castes and Scheduled Tribes categories gives more quota seats for needy in those categories.⁴⁵ “The ‘creamy layer’ in any class-including Scheduled Castes, Scheduled Tribes and Other Backward Classes-usurps and laps up benefits of reservation meant for the truly backward members of the category and should be excluded from the reservation benefits.”⁴⁶

D. Application of scale of neediness.—The nation has given enough weight, time, and opportunities for these castes, sub-castes, communities etc. to uplift them and merged into the main stream of national life by taking benefits of facilities and opportunities granted by special provisions of reservation in educational institutes and governmental jobs. The time has come that every Indian should be weighted on the ‘scale of neediness’ only.

³⁸ “[T]he really needy would be swamped by the multitude and hardly receive any special attention or adequate assistance.” See Balaji v. State.

³⁹ “There has to be periodic review of the classes who can be covered by the Statute. The periodicity should be five years. To strike constitutional balance there is need for making provision for suitable percentage for socially and economically backward classes in the 27% fixed.” See Ashoka Kumar Thakur v. Union, ¶ 138.

⁴⁰ “Poverty and uncertainty of the employment after education aid wastage as the average tribal shows reluctance to send his children to school: ‘Why bother when we know that we cannot educate them beyond a point or despite educating them they will not get jobs? It’s better if they learn a trade fast and earn money so that at least some money keeps coming in’.

Adivasis’ Live in Cuffe Parade Too, BOMBAY TIMES (April 2, 1997) cited in KIRPAL & GUPTA, *supra* note 29, at 29. This is very logical impression as the ratio between ‘education’ and ‘availability of relative employment’ is grossly mismatched and uneven in India.

The [Parliamentary Standing] Committee [in para 36] notes that there is a major limitation on data about the social economic and educational profile of our population in general and about OBCs in particular. The last caste-based census in India was done in 1931. Accordingly there are no periodic data available on the demographic spread of OBCs and their access to amenities. Even the Mandal Commission, 1979 had used the 1931 Census data. Whatever limited data are available, pertain to surveys conducted by NSSO from 1998-99 onwards, which are only ‘sample surveys’.

See Ashoka Kumar Thakur v. Union, ¶ 70.

⁴¹ Special Leave Petition (Civil) No. 30621 of 2011 [Special Leave Petition (Civil) No. 22985 of 2018] decided on September 26, 2018, <http://www.scc online.com>.

⁴² The Constitutional Bench was constituted of Dipak Misra, C.J., Kurian Joseph, R.F. Nariman (who delivered the judgment), Sanjay Kishan Kaul and Indu Malhotra, JJ.

⁴³ *Supra* note 2.

⁴⁴ See *Jarnail Singh v. Lachhmi Narain Gupta*, ¶ 29.

⁴⁵ If forward classes are mechanically included in the list of backward classes or if the creamy layer among backward classes are not excluded, then the benefits of reservation will not reach the really backward among the backward classes. Most of the benefits will then be knocked away by the forward castes and the creamy layer. That will leave the truly backward, backward forever.

See Ashoka Kumar Thakur v. Union, ¶ 10.

⁴⁶ “By inclusion of the creamy layer or in other words non-inclusion thereof a fresh lease of life to those who should have been left out is given. Their continuance would mean keeping weakest amongst the weak always weak and leaving the fortunate ones to enjoy the benefits. If the ultimate aim is a casteless and classless society in line with the dream of the Constitution framers, that has to be chewed out. As Father of the Nation had once said if the caste system as we know is an anachronism, then it must go. There is a feeling and it cannot be said without reason that reservation hits at the root of this belief and instead of its obliteration there is perceivable perpetuation. It is true that obliteration cannot be done immediately or within a short span of time but that is no answer to the lack of seriousness in seeking obliteration.

See Ashoka Kumar Thakur v. Union, ¶ 64.

E. Replacement of class criterion—One can sense a pressing demand of time to search for a new criterion⁴⁷ to replace ‘caste’ as a representative of backward, weak and deprived ‘class’⁴⁸, as “the caste system is the greatest hindrance in the way of our progress towards an egalitarian society, and the recognition of the specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of castes.”⁴⁹

F. Demarcation of ‘really backwards’—In the present circumstances, there is an overwhelming need of formation of new positive and practical tests and criteria to demarcate the really backward people in contemporary India who, in actual reality and not a ‘virtual and on-papers reality’, are entitled for special assistance and reliefs.⁵⁰

G. Poverty as major indicator of backwardness—Poverty is one of the strongest grounds for backwardness. *India’s Poverty Profile*⁵¹ published by The World Bank in 2016 shows that out of 5, 1 Indian is poor, indicating approximately 270,000,000 Indians are poor. It reflects that 80% of India’s poor live in rural areas and what most striking facts of *the Profile* are poverty is highest among Schedule Tribes among which 43% are poor; 29% of Schedule Castes; 21% of Other Backward Castes; and 12% are poor in others. *The Profile* indicates that among the total population of India only 28% constitutes of Scheduled Castes and Scheduled Tribes; however 43% of the Schedule Castes and Scheduled Tribes are among poor strata in spite of the consistent preferential policies executed for them.

H. Economy as a criterion of backwardness.—In modern-day India a person’s financial achievement and status which is facilitated by education has become the deciding factor to determine indirectly his/her socially backward or socially forward status rather than his/her caste. Hence, a reserved category status which makes one’s path comparatively easy to attain education and appointment in a governmental job is considered as a mean to achieve education and financial progress which ultimately results into happiness and wellbeing of the one and his/her family.⁵² It will prove useful if eleven ‘criteria’ or ‘indicators’ of backwardness grouped under the general categories, i.e., Social, Educational and Economic⁵³, outlined by the Second Backward Classes Commission, 1979⁵⁴ are applied freshly at the present times to all the castes and classes existing in India today.

I. A family as a unit for reservation—Reservation policy in India should be based upon individual merit, on consideration of individual deficiencies and need, bearing, no doubt in mind the social background, but essentially on the merits of the individual case. A man is to be assisted because he is poor; because his birth and upbringing have not given him the opportunity to make progress, socially, politically and educationally.

⁴⁷“... [B]ackwardness may be social and educational and may also be economic. The authority appointed to identify backward classes must first settle the criteria or the indicators for determining backward classes and then it must apply the said criteria to each and every group in the country.” See *IndraSawhney v. Union*, ¶ 61.

⁴⁸Kaka Kalelkar, the Chairman of the first Backward Classes Commission, 1953 opined that: “[I]f we eschew the principle of caste, it would be possible to help the extremely poor and deserving from all communities.”

⁴⁹*Per P.B. Gajendragadkari, J. in Balaji v. State.*

⁵⁰The [Parliamentary Standing] Committee [in para 37] found that there exists no accepted mechanism/criteria to group the people into different categories. As a result, existing list of backward castes/communities are termed in some cases, as inaccurate. Besides, any regular process of review is also not in place. Such a review implies both ‘inclusion’ and ‘exclusion’. The Committee, therefore, emphasizes the need for taking urgent measures/steps for identifying and removing all such lacunae and problems by putting in place scientific and objective mechanism/benchmarks for this purpose.

See *Ashoka Kumar Thakur v. Union*, ¶ 70.

⁵¹The World Bank, *India’s Poverty Profile* (May 27, 2016), <http://www.worldbank.org/en/news/infographic/2016/05/27/india-s-poverty-profile>.

⁵²The predominant and only factor for making special provisions under Article 15(4) or for reservation of posts and appointments under Article 16(4) should be poverty, and caste or a sub-caste or a group should be used only for purposes of identification of persons comparable to Scheduled Castes or Scheduled Tribes, till such members of backward classes attain a state of enlightenment and there is eradication of poverty amongst them and they become equal partners in a new social order in our national life.

Per A.P. Sen, J. in Vasanth Kumar v. State.

INDIA CONST. art. 15, cl. 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.”

INDIA CONST. art. 16, cl. 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.”

⁵³“Economic, in addition to Social and Educational Indicators, were considered important as they directly flowed from social and educational backwardness.” See *IndraSawhney v. Union*, ¶ 11.24.

⁵⁴It is popularly known as the Mandal Commission after the name of its Chairman Bindheshwari Prasad Mandal.

The time and necessity is overdue for construction of a uniform policy (“a formula must be evolved which would strike a reasonable balance between the several relevant considerations”⁵⁵) with “a rational, broad and scientific approach which is consistent with, and true to, the noble ideal of a secular welfare democratic state set up, by the Constitution of this country”⁵⁶, wherein a family, not any group, class, caste or community, will be the unit to be tested and categorized for deciding eligibility for the status of backwardness and special protection.⁵⁷

By investigating into the present socio-economic-educational conditions [emphasis on means/income/finance of a family; family should be taken as a unit; an upper income ceiling should be fixed and reviewed periodically] and needs of the whole Indian society, and not any particular caste, class or community, in the contemporary context, it is an imperative demand of the time that the indicators or criteria of ‘backwardness’ ‘backward class’ and ‘Other Backward Classes’ have to be re-defined and tested against ‘various cut-off points’ for being eligible for constitutional policy of protective discrimination.

J. Economic backwardness also as an index of social backwardness—As in materialistic 21st century, in practice, only the financial status of a family—whether it comes from a higher caste, a Scheduled Caste, a Scheduled Tribe, a backward class or from any of the religious communities existing in India—accords the social status to that particular family. In *State of Kerala & Anr. v. N.M. Thomas & Ors.*,⁵⁸ the Supreme Court of India was of the opinion that “caste is the primary index of social backwardness”; then in present times insufficient or meagre finances i.e., ‘economic backwardness’ can be considered as the index of ‘social backwardness’ as good financial income of a person gives him or her better chances of acquiring education and thus leads him or her to better job opportunities and ultimately a good chance of better life.

Therefore, it is eminently needed to form new parameters of tests to determine ‘economical backwardness’ by linking finances of a family with *Aadhar* card, pan card, ration card, income tax filing, upper ceiling limit, spending capacity ratio, poverty line index, co-relation with the census, income certificates of farmers, etc. Economic status of a family should be an overall measuring unit or the determining criteria for granting the distinct status of ‘backwardness’ (annual income of the family is below a prescribed minimum).⁵⁹

The remaining strata of Indian society, not being economically backward, will be achieving its goals and dreams with their better resources. Each and every citizen of Indian is and will be forever granted and allowed by the sacred constitutional principles to follow his/hers beliefs in religion, caste, sub-caste, group, tribe or sect etc. in his/her private life.

However, the Government of India, officially, will recognize him/her as an individual, weak or strong to pursue and achieve his/hers goal of life and help that citizen as per his/her needs. That is the true duty of the state. If there are no favours and no special provisions attached to castes, tribes or communities etc., and each and every one is scaled as per the ‘unit of need’ (scale of neediness), then soon the recognition of these existing secessionist age-old factors in India will be taking much a back seat in public life.

K. Utilitarian education policy—Stress has to be given on effective implementation of primary and secondary education⁶⁰ so that proper foundation for higher education can be effectively laid. There is a persistent requirement of the rapidly growing India that the state should establish more colleges, vocational institutes, polytechnics, and universities more in rural areas “to meet the demand of higher education” especially in the area of medicine and other professional disciplines wherein the admissions are very tough and competitive to

⁵⁵ “[I]t has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations.” See *Balaji v. State*.

⁵⁶ *Per P.B. Gajendragadkari, J. in id.*

⁵⁷ “[S]urvey to identify backward classes should be from individual to individual; it cannot be caste-wise.” *Per Smt. Shyamala Pappuas obererved in Indra Sawhney v. Union*, ¶ 62.

⁵⁸ AIR 1976 SC 490.

⁵⁹ “Social backwardness is on the ultimate analysis the result of poverty, to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat.” See *Balaji v. State*.

⁶⁰ “. . . [S]ocial opportunities exist for individual self-expansion, and it is only individuals now who can exclude themselves. If grinding poverty comes in the way of acquiring such socially valuable skills, then those blocks should be met by developmental interventions such as the anti-poverty programmes. But on no account should the removal of poverty be made synonymous with reservations. Reservations are only meant to create a measure of confidence and dignity among those who didn't dare dream of an alternative life. But that alone cannot create structural conditions that address the root causes of poverty. If quality education and the imparting of socially valuable skills are provided across the board through reservations, then that would take care of the complaint that affirmative action is largely about the equality of results.

See *Ashoka Kumar Thakur v. Union*, ¶ 60.

get in; so the deserving and meritorious students from the non-reserved categories will be able to pursue the education and training they dreamed and opt for.⁶¹

The identified economically backwards can be assisted with “various kinds of concessions and facilities such as educational and fee concessions, special coaching facilities, financial assistance, relaxation of upper age limit, ‘a longer period for passing a test or by awarding additional marks,’⁶² increase of number of attempts etc. for government services with a view to give them equal opportunity to compete and keep pace with the advanced sections of the people.”⁶³

[P]overty which is the ultimate result of inequities and which is the immediate cause and effect of backwardness has to be eradicated not merely by reservation as aforesaid, but by free medical aid, free elementary education, scholarships for higher education and other financial support, free housing, self-employment and settlement schemes, effective implementation of land reforms, strict and impartial operation of the law-enforcing machinery, industrialization, construction of roads, bridges, culverts, canals, markets, introduction of transport, free supply of water, electricity and other ameliorative measures particularly in areas densely populated by backward classes of citizens.⁶⁴

Slum dwellers, sidewalk inhabitants, beggars, persons living on footpaths suffering from disease like leprosy—the persons who are real life examples of backwardness—should be protected by affirmative action in/for their living and health conditions, and education and employment status by the state irrespective of their castes or religion.⁶⁵

L. Planning for social transformation. – As per the United Nations Committee for Development Planning “planning is not merely a diagnostic study or an expression of hope; it must be primarily an instrument of action”.⁶⁶ Removal of backwardness is one of the ways of social transformation. As planning is a major step for social transformation a serious governmental endeavor is required to find a cohesive solution interlinking poverty, backwardness, planning and social transformation.⁶⁷

M. Unanimous political perspective: Time has come for everyone especially politicians, and ruling party government to leave behind the self-centered thoughts of ‘vote banks’, and dream for a future of Indian society as really turning into casteless. The current reservation policy in India will not be changed in its basic perspective till all political parties are unanimously ready to accept reviewed criteria for reservation. Political parties will not change their current stand on reservation till the masses of India are ready to be intellectually modern and ready for the positive and cumulative progress of India instead of narrowed and self-centered thought-process.

⁶¹It is well-known that as a result of the awakening caused by political freedom, all classes of citizens are showing a growing desire to give their children higher university education and so, the Universities are called upon to face the challenge of this growing demand. While it is necessary that the demand for higher education which is thus increasing from year to year must be adequately met and properly channelized, we cannot overlook the fact that in meeting that demand standards of higher education in Universities must not be lowered. The large demand for education maybe met by starting larger number of educational institutions, vocational schools and polytechnics. But it would be against the national interest to exclude from the portals of our Universities qualified and competent students on the ground that all the seats in the Universities are reserved for weaker elements in society.

Per P.B. Gajendragadkari, J. *in* Balaji v. State.

“The demand for technicians, scientists, doctors, economists, engineers and experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by whole-sale reservation of seats in all technical, medical or engineering colleges or institutions of that kind.” *Id.*

⁶²See Ashoka Kumar Thakur v. Union, ¶ 65.

⁶³See IndraSawhney v. Union, ¶ 377.

⁶⁴See Ashoka Kumar Thakur v. Union, ¶ 65.

⁶⁵Such preferences or advantages are like temporary crutches for additional support to enable the members of the backward and other disadvantaged classes to march forward and compete with the rest of the people. These preferences are extended to them because of their inability otherwise to compete effectively in open selections on the basis of merits for appointment to posts in public services and the like or for selection to academic courses. Such preferences can be extended to all disadvantaged classes of citizens, whether or not they are victims of prior discrimination. What qualifies persons for preference is backwardness or disadvantage of any kind which the state has a responsibility to ameliorate. The blind and the deaf, the dumb and the maimed, and other handicapped persons qualify for preference. So do all other classes of citizens who are at a comparative disadvantage for whatever reason, and whether or not they are victims of prior discrimination. All these persons may be beneficiaries of preferences short of reservation. Any such preference, although discriminatory on its face, may be justified as a benign classification for affirmative action warranted by a compelling state interest.

Id.

⁶⁶United Nations, Committee for Development Planning, *Plan Implementation* (1967).

⁶⁷MADHURI SINHA, POVERTY, PLANNING AND SOCIAL TRANSFORMATION (Deep & Deep Publications 1993).

VI. CONCLUDING RATIONALE

The current reservation policy in India is keeping alive the barriers of classes, groups, castes, sub-castes, communities, religion intact in practice as well in minds of the Indian people as it is favoring the specified castes, classes or tribes. In materialistic 21st century, in practice, only financial status of a family-whether it comes from a higher caste, a Scheduled Caste, a Scheduled Tribe, a Backward Class or from any of the religious communities existing in India-accords the higher social status to that particular family. If we structure and implement a new reservation policy and special provisions based on economic backwardness and on the 'scale of neediness' of Indian citizens, India will be true egalitarian country in maximum twenty years. The Indian citizen will be judged and respected by his or hers educational and economic achievements. The economic backward people with the help of special reservations and aids in educational institutions and government jobs will be pulled towards better facilities and opportunities. The remaining strata of Indian society, not being economically backward, will be achieving its goals and dreams with their better resources.

To accomplish in reality, the aims and efforts of the Constitution makers, especially of Dr. Ambedkar, to realize true social justice by the method of reservation among every strata of the Indian society, there present a serious need to revisit and re-evaluate the concepts of social justice and backward classes, and relevance and practicability of current reservation policy in contemporary India.

Dr. VinayaBhosale. "Reforming Criteria for Discrimination in Form of Reservation in Contemporary India for Natural and Social Justice: A Pragmatic Approach Facilitated by Indian Judicial Vista. "IOSR Journal of Humanities and Social Science (IOSR-JHSS).vol. 24 no. 1, 2019, pp 01-12.