



Reservation and Social Justice

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Foreword

A provision for reservations was incorporated in the Constitution as a temporary measure. The intention was to provide a sense of *samrasta* in the society which had got fragmented with the decay of the caste system.

But today reservations are an issue that generates protests, violence, arson, looting and even leads to some deaths. Right from the reign of Shri V. P. Singh who blasted the Mandal Commission bomb on the nation and the recent agitations for inclusion of certain castes in scheduled castes/tribes category, the demands have seen a blood bath. That is a matter of great concern for the nation.

In the booklet, "Reservations and Social Justice" the writer Ruddar Datt has dwelt at length on the concept of reservations and how far has it succeeded in ushering social justice. We are publishing it so that the readers can have an in-depth understanding of the issues involved.

The views expressed in the booklet are entirely those of the author.

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The announcement by HRD Minister Mr. Arjun Singh that the Ministry proposes to introduce reservations for 'Other Backward Classes' (OBCs), the controversy about reservations was revived. Various groups of people and institutions reacted according to their own interests. While the supporters of reservations from OBC ranks welcomed it as a historic decision which intended to correct a historic injustice to the OBCs by the higher castes, the students and faculty in medical institutions, engineering colleges and business schools considered it as an onslaught on their freedom and put forth the argument of dilution of merit and a serious setback to their efforts to promote quality education to compete at the international level.

Before going into the arguments, it will be of interest to have a look at the factual scenario in this regard.

1. DATA SHEET ABOUT OBC, ST, SC AND OTHER CLASSES

The Mandal Commission (1980) basing its analysis on the proportion of population in different caste categories used figures of 1931 census and thus arrived at a figure of 52% as the size of the OBC in total population. The then government found that the data base of the Commission was faulty and thus shelved the report.

The data base of the Mandal Commission has been challenged by independent analysts as well. Mr. R. Vaidyanathan in his article "Reservations: Let down by weak data" in *Business Line* dated May 18, 2006 mentions: "the assumption made by Mandal Commission based on 1931 census and other parameters that more than 50 percent of population belong to OBC (Other Backward Caste) may not have been correct. But on that assumption the figure of 27 percent of reservation for OBC was arrived at. The National Sample Survey 2003 Round suggests that the non-Muslim OBC number may be around 32 percent and not 50 percent. Muslim OBCs are around 4 percent."

If we insert the Mandal OBC population in 2001 figures, the picture emerges as under:

Table 1: Census of India 2001

	Total Population
SC	16.2
ST	8.2
OBC	52.0*
Muslims	13.4
Christians	2.3
Sub-total	92.1
Others	7.9
Total	100.0

Note: for OBC, the Mandal Commission figure has been inserted

Using 52 percent OBC figure in 2001 census data reveals that SC, ST, OBC, Muslims and Christians account for 92.1 percent of the total population. Besides this, Sikhs, Buddhists, Jains constitute 3.1 percent (1.9 percent + 0.8 percent + 0.4 percent). This implies that 'others' implying higher castes are less than 5 percent which is a gross under-estimate. Obviously, Mandal Commission figure of 52 percent for OBC is unreliable as it is an over-estimate.

The National Family Health Statistics (NFHS) Survey of 1998 suggests that the population of OBCs (non-Muslims) is around 30 percent which is close to NSS figure.

Since NSS 55th Round for 1999-2000 has provided more recent data and this is considered as more reliable, it would not be useful to parrotlike repeat the 52 percent figure for OBC which the political class in India is doing even to this day. The NSS further reveals that OBC population in rural areas is 37.4 percent and in urban areas 31.4 percent and the overall figure is 35.7 percent for the country as a whole. It also suggests that others (mainly upper castes) are 30.7 percent in rural areas and 50.2 percent in urban areas and the overall figure is 36.2 percent for the country as a whole.

Table 2: Percent Distribution of persons in NSS 55th Round by Social Group

	Rural	Urban	Total	All India
	(1)	(2)	(3)	
ST	10.6	3.9	8.7	
SC	21.3	14.6	19.4	
OBC	37.4	31.4	35.7	
Other	30.7	50.2	36.2	
Total	100.0	100.0	100.0	

Note: Figures in Column 3 have been derived by applying a weightage of 72.2 percent for rural population and 27.8 percent for urban population as per Census 2001

Source: NSS Report No. 469: (1999-2000)

NSS DATA ON THE PROPORTION OF SCs/STs, OBCs AND OTHERS

Critics have questioned the 52% figure of OBC population as arrived at by the Mandal Commission based on data collected by 1931 Census. There is a strong element of exaggeration in Mandal Commission. More recently, NSS 55th Round for 1999-00 and NSS 61st Round for 2004-05 have estimated the proportion of SCs/STs, OBCs and General category among Hindus and Muslims. Since the data provides proportion of OBCs within the Hindu community and Muslim community, an effort has been made by using the Census Data on religions to determine the share of OBC population by using the proportions provided by the NSS Rounds. This provides us a broad estimate of the percentage population in various socio-religious categories.

The exercise reveals that at the All-India level in 1999-00, percentage of OBCs among Hindus was 30.8% of the total population. If we add 4.2% of the Muslim OBC population, then the total OBC population is 35% of the total population.

But for 2004-05, OBC population among Hindus is reckoned at 34.6% of total population. If we add 5.5% of the Muslim OBC population, then the total OBC population would be 40.1% of total population. (Refer table 3)

Table 4 provides the break-up in rural and urban areas. For 1999-00, in urban areas the OBC population (Hindus plus Muslims) was 24.9+5.6= 30.5% of total urban population. However, the figure of OBC population in 2004-05 was 27.9+7.0=34.9% of total urban population.

Similarly, for rural areas, in 1999-00, Hindu OBCs accounted for 32.8% of total rural population. If we add 3.7% Muslim OBCs, the total OBC population in rural areas is (32.8+3.7) = 36.5% of total rural population (Refer table 4). For 2004-05, the total OBC population is 36.9% among Hindus and 4.9% among Muslims. Adding together, the total OBC population in rural areas is (36.9+4.9) = 41.8% of total rural population.

A close perusal of the data given in table 3 and 4 reveals that whereas the SC/ST population during 1999-00 and 2004-05,

remains unaltered at 25.2%, the OBC population at the All-India level increases from 35% in 1999-00 to 40.1% in 2004-05 – 5% increase.

Similarly, SC/ST population in urban areas for 1999-00 as well as 2004-05 was 15.5%, but the OBC population increased from 30.5% in 1999-00 to 34.9% in 2004-05, 4.4% increase.

Table 3: Distribution of Population according to Socio-Religions Categories – All-India

	Proportion of Population in Religious group as per NSS*		Percentage of Total population using 2001 Census percentages		Total Population Distribution using Census 2001 figures (million)	
	1999-00 (1)	2004-05 (2)	1999-00† (3)	2004-05† (4)	1999-00 (5)	2004-05 (6)
Hindus						
(a) SC/STs	31.3	31.2	25.2	25.2	259.0	259.0
(b) OBCs	38.3	43.0	20.8	34.6	316.0	355.8
(c) General	30.4	25.8	24.5	20.7	251.8	212.8
A- Sub-total	100.0	100.0	80.5	80.5	827.6	827.6
Muslims						
(d) OBCs**	31.7	40.7	4.2	5.5	43.2	56.7
(e) General	68.3	59.3	9.2	7.9	94.6	81.5
B- Sub-total	100.0	100.0	13.4	13.4	138.2	138.2
C Others			6.1	6.1	62.8	62.8
Total Population (A+B+C)			100.0	100.0	1028.6	1028.6

* for 1999-00, the proportion of SC/STs, OBCs and General Category are based on 55th Round of NSS and for 2004-05, are based on 61st Round of NSS as given in the Report on *Social, Economic and Educational Status of Muslim community in India (2006)*

** Muslim SC/STs are included in OBCs since they form a very small percentage.

† Figures in columns 3 and 4 have been worked out by applying the NSS proportion within a socio-religious group to the population distribution by religions as given in Census 2001.

Table 4: Distribution of Population According to Socio-Religious Categories

	Proportion of Population in Religious group as per NSS (%)		Percentage of Total population using 2001 Census percentages		Total Population Distribution using Census 2001 figures (millions)
	1999-00	2004-05	1999-00	2004-05	
U R B A N					
Hindus					
(a) SC/STs	20.6	20.5	15.6	15.5	
(b) OBCs	33.0	36.9	24.9	27.9	
(c) General	46.5	42.6	35.1	32.2	
A- Sub-total	100.0	100.0	75.6	75.6	216.3
Muslims					
(d) OBCs	32.6	40.2	5.6	7.0	
(e) General	67.4	59.8	11.7	10.3	
B- Sub-total	100.0	100.0	17.3	17.3	49.5
C Others			7.1	7.1	20.3
Total Population			100.0	100.0	286.1
R U R A L					
Hindus					
(a) SC/STs	34.6	34.5	28.5	28.4	
(b) OBCs	39.9	44.9	32.8	36.9	
(c) General	25.5	20.6	21.0	17.0	
A- Sub-total	100.0	100.0	82.3	82.3	611.1
Muslims					
(d) OBCs	31.2	40.9	3.7	4.9	
(e) General	68.8	59.1	8.3	7.1	
B- Sub-total	100.0	100.0	12.0	12.0	89.1
C Others			5.7	5.2	42.3
Total Population (A+B+C)			100.0	100.0	742.5

Likewise, SC/ST population in rural areas for 1999-00 as well as 2004-05 was 28.4%, but the OBC population increased from 36.5% in 1999-00 to 41.8% in 2004-05, 5.3% increase.

The question arises: SC/ST population does not indicate any change in its percentage share of 1999-00 as well as 2004-05, but OBC population (Hindus and Muslims combined) increases from about 35% in 1999-00 to 40% in 2004-05. Why is it that OBC population indicates a 5% increase during the 5-year period? Since SC/STs are the poorest and the least educated socio-religious groups, the growth rate of population would be higher for SC/STs as compared with OBCs. Obviously, population growth rates do not explain the growth in the percentage share of OBCs. The probable explanation lies in the inclusion of more castes in the OBC category.

Despite all this, the OBC population according to NSS estimates works out to be 35% in 1999-00 and 40.1% in 2004-05. Obviously, it is much lower than the Mandal Commission estimate of 52%.

2. THE DEBATE ABOUT OBC RESERVATIONS

Those who oppose reservations for OBCs argue that the Scheduled Castes faced special disadvantages arising out of 'untouchability'. Similarly, the Scheduled Tribes, who were living mostly in forest areas were physically separated from mainstream Hindu Society, suffered from undisputed extreme poverty. The OBC faced no such discrimination and thus the 'caste argument' advanced in favour of OBC reservations is fallacious. If the logic of this assertion is accepted, then the OBCs can claim reservations on the basis of economic criteria at par with the poor and underprivileged classes among other castes, Muslims and other minorities. It is also a fact the upper OBCs have become economically powerful in many states and thus they do not qualify on the basis of economic criteria. But among them, the MBCs (Most Backward Classes) deserve the benefit of reservations. Mr. Chandra Bhan Prasad, Dalit Intellectual and Commentator in his article 'Quota for OBCs in Higher Education' (*Economic Times*, April 12, 2006) states: "L R Naik, the only Dalit member of the Mandal Commission, had refused to sign the Mandal Commission recommendations. Naik held that the OBCs are made up of two larger occupational blocks – the intermediate backward classes or the Most Backward Castes (MBCs) who have been deprived and excluded by the system. He argued for splitting the Mandal quota into two, in order to safeguard the interests of the MBCs, who have been deprived and excluded by

the system." B.P.Mandal, a Yadav zamindar himself rejected Naik's suggestions. Consequently, Mandal Report became the mouthpiece of the dominant upper OBCs.

By August 1991, the Mandal Report became the rallying point of all upper backward castes who occupied powerful positions among the ruling classes. Mr. V. P. Singh did use the Mandal Report, yet he did not bother to pay any heed to Naik's suggestion, but became the messiah of the OBCs, a symbol for the downtrodden castes, though in fact he was blackmailed by the upper OBCs. The sum and substance of this historical development is that caste politics became votebank politics.

It may be mentioned that on August 8, 2006, the Supreme Court set aside an order of the Jharkhand High Court that upheld a state government notification amalgamating upper backward classes and most backward classes for the purpose of reservation. To quote:

"The amalgamation of two classes of people for reservation would be unreasonable as two different classes are treated similarly, which is in violation of Article 14 of the Constitution of India, which is to treat similar similarly and to treat different differently," a Bench of Justices A. R. Lakshmanan and Lokeshwar Panta said. The Supreme Court pointed out that "there is no constitutional bar to a state categorizing the backward classes as backward and more backward."

The Supreme Court Judgment is a vindication of the view held by Mr. L R Naik, the Dalit Member of the Mandal Commission.

Class versus Caste and the Change in the attitude of Political parties

As mentioned earlier, after centuries of oppression which the SC and ST students suffered, it was logical that reservations should be used as an instrument to improve the lot of this category of students, but to equate OBCs with SCs and STs is unreasonable. This spirit guided the affairs of the Indian State for over four decades after independence. Jawaharlal Nehru, the first Prime Minister of India wrote in a letter to Chief Ministers dated 27th June 1961: "I dislike any kind of reservations... if we go in for reservations on communal or caste basis we (will) swamp the bright and able people and remain second-rate or third rate... this way lies not only folly but disaster."

It is really regrettable that under the sheer political pressure of upper OBCs who have become powerful votebanks, the political parties, the Congress and the CPM have changed their attitudes.

Whereas earlier they conducted their social analysis in terms of classes, they are now replacing class with caste.

The Congress Party which spearheaded the freedom movement and whose leaders used to proclaim that they will usher in free India a classless and casteless society have shifted their stand. In the Manifesto of the Congress Party, there was mention of reservations for OBCs and Muslims. In fact, the Congress Government in Andhra Pradesh enacted a law to provide 5% reservations in jobs to Muslims which was struck down by the Court as 'unconstitutional'. But the Congress is forging ahead its OBC agenda in case of reservations in institutions of higher education. In a very angry comment Mr. Chandra Bhan Prasad mentions: "The UPA government by proposing to announce quotas for OBCs in educational institutions, a quarter century after the Mandal Commission came into being, has now buried the very notion of social justice. The Mandal Commission recommendations are, in essence, meant for the MBCs, but the UPA government has betrayed them... Instead of fighting the upper OBCs onslaught on democracy, the government has decided to facilitate their onslaught on democracy. ... In the process, the Congress has abandoned Dalits, Adivasis and MBCs, who are the real social proletariat of the nation."

The left parties have also allowed themselves to be steamrollered by the high pressure of upper OBCs. They have abandoned their Marxian class analysis and succumbed to caste as the main determinant of social justice. Prof. Niraja Gopal Jayal of the Centre for the Study of Law and Governance writes: "Even the Left parties, which recognized caste inequality only after prolonged internal debate, seem to have capitulated to the idea that there is only one form of inequality in India, and that is caste. Sadly, the secular project of addressing material inequalities appears not to be owned by any political party today." (*Economic Times*, May 2, 2006).

It is really strange that the BJP while endorsing 27 percent reservations for OBCs has put forward the case of the "poor and the deprived" even among the upper castes. This passes one's comprehension that the position which the left parties should have taken on reservations, is being taken by the BJP to use the criterion of class in place of caste.

Professor Dipankar Gupta of JNU in a very strong indictment of Mandal Commission approach mentions: "The Big lie is that backward castes have been persecuted and marginalized through history by the upper castes and treated akin to untouchables. The Mandal Commission has leveraged this lie to its advantage to benefit

precisely those castes that are economically and socially among the prosperous in rural India." (*Hindustan Times*, Milking Backwardness, August 28, 2006). Rather the upper backward castes like Yadavs and Kurmis, Jats, Thevars, The Goundas, The Okkaligas and the Gujars are notorious for exploiting the most backward castes and were considered as the worst perpetrators of caste atrocities in rural India. These castes were economically well-off. But the Mandal Commission Report totally ignored economic criteria and emphasized only social criteria. Thus, the Mandal Commission purposefully tried to advance the interests of the band of castes which were economically and socially more advanced.

Another argument put forth against reservations is the quantity versus quality argument. The Knowledge Commission appointed by the UPA government under the chairmanship of Sam Pitroda rejected Arjun Singh's quota proposal for OBCs in higher educational institutions. He mentioned that we are not against reservations *per se*, but it should not be at the cost of merit. The Commission rejected the HRD minister's proposal voting 6:2 against it. A better way to achieve social justice would be to expand the capacity right from the primary school to higher educational and professional institutions.

125 professors of IIT - Kanpur in their memorandum to the President of India stated that there is a need to reconsider the move to force OBC reservations on all Institutions of higher and professional education. The professors maintained: "It is clear for all to see that other factors like poverty, region and gender have greater adverse impact on the chances of a person becoming an engineer or a doctor."

Similarly, the strike by the doctors at All-India Institute of Medical Sciences (AIIMS) was another stiff opposition to OBC quotas. The Supreme Court intervened and asked the government to furnish details of the data on the basis of which the decision of 27 percent reservations has been taken.

3. CREAMY LAYER ISSUE

Another issue is that of the creamy layer. *Creamy layer refers to people belonging to Other Backward Castes (OBCs) who are financially well-off.* More recently, the upper OBCs who form the creamy layer are pressurizing the Government to abandon the idea of exclusion of persons or groups who would be affected by the implementation of the 27 percent reservations for OBCs. While the CPM leaders

made statements that the creamy layer should not get the benefit of reservation, but ironically, at the UPA-Left Co-ordination Committee deciding on the reservations, CPM never raised the issue. Though UPA-Left have swept the creamy layer issue below the carpet, but the Judgment of the Supreme Court on the issue in 1992 would force the government to implement it.

The Supreme Court while hearing a petition challenging former PM V. P. Singh's implementation of the recommendations of the Mandal Commission suggested 27 percent job reservations for OBCs in 1992, observed that while it upheld the quota, it directed that socially advanced persons/sections from among the OBCs be excluded. The Government was, therefore, forced to appoint a panel to evolve the criteria for identification of the creamy layer among the OBCs. The Government accepted the recommendations of the panel in 1993.

Criteria Laid Down For the Creamy Layer

Broadly, children of people holding high posts in government, armed forces, judiciary, public sector undertakings, banks, insurance organizations and universities are part of the creamy layer. Officers holding equivalent comparable posts in the private sector too fall under this bracket. The monetary criterion: Gross annual income of Rs. 2.50 lakh or possession of wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

The Government has released the list of persons /sections covered under Creamy Layer on July 19, 2006. This comprises of the following:

1. Children of the President, Vice-president and Judges of the Supreme Court and High Courts fall under the "Creamy Layer" among OBCs under the criteria fixed for exclusion from reservations in Civil posts and services.
2. Children of the members of the UPSC and State public Service Commission, Chief Election Commissioner, Comptroller and Auditor General of India and persons holding constitutional positions of this nature also fall under the creamy layer category.
3. Under the criteria, persons with gross annual income of Rs. 2.5 Lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years are also excluded.
4. The creamy layer covers Group A/ Class 1 officers of the

All India Central and State Services.

The Supreme Court in its judgment on October 19, 2006 has said that the purpose of the affirmative action is to transcend the caste system and not to perpetuate it.

"Reservation is necessary for transcending caste and not for perpetuating it. Reservation has to be used in a limited sense otherwise it will perpetuate casteism in the country."

The 5-Judge bench headed by Chief Justice Y K Sabharwal said it was important "to find a stable equilibrium between justice to the backwards, equity for the forwards and efficiency for the entire system."

For the first time, the Supreme Court introduced the concept of creamy layer in the quota for Scheduled Castes and Scheduled Tribes to keep the better-offs among them out of the purview of reservations. While upholding the quota system in promotions, the Supreme Court ruled: "Backwardness has to be based on objective factors whereas inadequacy has to be factually examined. The fact that considerable number of members of backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Governments to review the question of continuing reservations for the said class."

The Supreme Court further observed: "if the extent of reservations goes beyond cut-off point, then it results in reverse discrimination." It ordered a 50 percent ceiling on quota saying "a numerical bench mark is the surest immunity against charges of discrimination."

In a consultation held with State Governments in October 2006, the States demanded the exclusion of the creamy layer of OBC from the purview of reservations. Instead, they wanted priority to be given to those OBC members who were both economically and socially backward. The creamy layer would be considered only if there was any vacancy in the reservation quota.

4. 93rd Amendent to the Constitution and Reservations

Following certain judgments of the Supreme Court that stated that the policy of reservations can only be limited to state-run educational institutions, the Parliament discussed the issue in all its aspects. There was unanimity round the view that reservations be extended to aided as well as unaided privately-run educational

institutions. This led to the passage of the 93rd Amendment to the Constitution in January 2006, by insertion of a new Clause in Article 15(5). The amendment stated:

All educational institutions – private and government – will implement the reservation policy as enacted by Parliament except those considered minority institutions as defined by Article 30 of the Constitution.

It may be noted that during 2005-06, the total intake in private unaided professional institutions (excluding medical colleges) was 5,14,356. If reservations of 50 percent seats is ensured for SCs, STs and OBCs, this will ensure over 2.0 lakh seats for the deprived sections. Private medical colleges account for a little over 20,000 students. Nearly 10,000 seats will be earmarked for the deprived sections.

5. The Arguments in Favour of Reservations

Mr. Udit Raj, Chairman, All-India Confederation of SC/ST Organizations put forth the following arguments in favour of reservations:

In quite a large number of professional institutions, there is a quota for Non-Resident Indians (NRIs) and also quite a big share for 'payment seats' which go by auction by way of payment of capitation fees. Obviously, merit is not the basis of admission so far as NRI and Capitation Fee quota is concerned. This is nothing but reservation for the rich. To that extent, the merit argument appears to be fallacious. Merit should not, therefore, become an issue when the deprived sections (SC, ST & OBC) are provided access to these institutions. This is downright rational.

Secondly, reservation is not a phenomenon exclusive to our country. The American MNC, IBM, voluntarily introduced reservations for Blacks in 1930. Similarly, there are reservations for depressed and weaker sections in Brazil, South Africa, Japan, Netherlands and Ireland. There is 50 percent reservation for Blacks and women in the medical faculty of Harvard University.

Thirdly, Tamil Nadu had as much as 69 percent reservations. The state has also fared better than many other states in Health and Human Development Index.

Fourthly, the meritorious, though trained in India seek jobs in foreign countries. Nearly 70 percent AIIMS doctors seek appointments abroad. Over 80 percent of the engineers graduating from Roorkee are exported. SC/ ST /OBCs, if admitted in larger number, will help the process of economic and social development

in India.

Lastly, merit, as it is being presently understood, does not include honesty, hard work and patriotism. The doctors who come out of medical colleges after paying capitation fees in their life as professionals treat the medical profession as a milch cow to recover payments made to meet the cost of medical education and thus, establish nursing homes to serve the rich and affluent sections. The 'service motive' is completely overpowered by the spirit of self-aggrandizement. This is also true of engineering and management professionals.

Moreover, most of the products of public schools who are admitted to professional colleges on the basis of marks secured incur 50 to 100 times expenditure on their education in public schools besides tuitions in their areas of deficiency as compared to their underprivileged counterparts in corporation/ Government schools.

Udit Raj concludes: "Reservation is only a concession given to socially and educationally backward people so that they may integrate with the mainstream. We have no objection if the poor among the upper caste people too, are given the benefit of reservation. But the problem is that here, there is the danger of the rich among them taking advantage of this policy."

It is really strange that Udit Raj does not talk about the creamy layer benefiting under the label of 'socially and educationally backward' people. Secondly, OBCs are not a homogeneous category and thus a decision has to be taken to exclude upper OBCs and extend the benefit to MBCs.

6. Issue of Minority Institutions

93rd Constitutional Amendment has incorporated a provision to exempt minority institutions as defined by Article 30 of the Constitution. The questions arises: Is this exemption justified or is it pandering to votebank politics of the UPA-Left Co-ordination Committee? Mr. Ravi Shankar Prasad, BJP spokesperson charged the UPA Government: "This is the worst form of minority appeasement by the Manmohan Singh Government. The hard fact remains that majority of the educational institutions in south India are run by the minorities. The quota regime, however, will not extend to them.... The UPA government has traded everything for votes."

Though this sharp criticism has come from the BJP, but this has an important bearing on the policy of reservations. It defies logic as

to why minority institutions should be exempted from participating in the noble effort for uplifting SC/ST/OBCs. Moreover, there is a catch-22 situation. There is a demand by the Muslim community that since they account for 9.1 % of the total backward population, they should be provided the benefit of reservations, but if their own institutions are exempted for the purpose, with what logic Muslim community would be able to demand the benefit of reservations from institutions run by the majority community! The Government should, therefore, reconsider the issue.

In the consultations held with state governments in October 2006, Left-ruled Kerala, joining forces with the BJP-ruled states, demanded the inclusion of minority institutions in the proposed bill.

7. Real Issues Related to Reservations

1. Reservations for SCs/ STs have been in existence right from the beginning of the Constitution, since they pertain to a special category which suffered for centuries the humiliation perpetrated on them by the upper castes and there is no voice of dissidence on this issue. The comparison with the Blacks is also synonymous of the discrimination on the basis of the colour of the skin which was totally unjustified in USA and other countries.
2. There is a fit case for reservation for the OBCs so that they become the beneficiaries of the growth process, but they should be split into upper OBCs and Most Backward Castes (MBCs). The MBCs really deserve the benefit of Mandal Commission recommendations.
3. The creamy layer in all cases (SCs, STs and OBCs) should by law be excluded from the benefit of reservations.
4. There should be strict adherence to a time-frame by which reservations should be withdrawn for all sections of the society. The 'temporary reservations' continue to be extended and they become 'permanent' in nature. This has got to be avoided. Even Dr. Ambedkar when he was asked why he has provided only a period of 10 years for reservations for SCs and STs is reported to have stated: I do not want my community to walk on crutches for ever.
6. There is a need to balance quantity, quality and equity. To achieve this, the country will have to strengthen primary, middle and secondary level institutions and target at

narrowing the differences between the drop-out rates of the upper middle and affluent classes and the SC/ ST /OBC categories.

7. There is a need to provide an extensive system of scholarships and educational loans so that any poor (OBC or non-OBC or Minority community) student who on the basis of merit is able to secure admission in a professional or higher education institution, is not handicapped for want of funds.
8. Reservations should be used as a means in the short period to end reservations in the long period and there is a need to set the goal for the purpose. "It is true" to quote Udit Raj, "that reservation is not a permanent solution to the vexed problem of our society. As and when equal and compulsory education is introduced in the country, Dalits and OBCs will not stake their claim to reservation."

8. Mandal Report Recommendations that Politicians Overlooked

VP Singh earlier and now the UPA government, in their pre-occupation with reservations, completely overlooked other far-reaching and basic recommendations of the Mandal Commission.

Mandal Commission debated at length caste, merit and reservations in all their aspects. It recommended structural changes in our social system that would make reservations for OBCs work properly. But our myopic politicians only picked up those parts of the Mandal Commission Report that suited their party agenda. The Report made some path-breaking recommendations:

Firstly, Mandal Commission clearly stated that reservations would have only a palliative effect unless backwardness is tackled at the roots. So educational reforms come first and be given highest priority.

Secondly, the Report emphasized two-pronged approach towards education of OBCs. First, it recommended adult education programmes of OBC parents, so that they can motivate their children to acquire education. Second, the setting up of residential schools for OBC children. There are places where they would have an environment to study. The Government should pay for their boarding, lodging and tuition fees. The students would also be given vocational training.

Thirdly, to check the fall in educational standards as a result of admission of less meritorious students into higher quality institutions, the Report warned: “The concerned authorities should appreciate that their job is not finished once candidates on the reserved quotas have been admitted to various institutions. In fact, the real task starts only after that. Unless follow-up action is taken to give special coaching assistance to these students, not only will these young people feel frustrated and humiliated but the country will also be loaded with ill-equipped and sub-standard engineers, doctors and other professionals.”

Fourthly, the Government should set up financial institutions to provide loans on easier terms to OBCs, and help them to set up small businesses.

Lastly, all state governments should be directed to implement progressive land reforms to effect structural changes along the production chain in the rural areas.

Mandal was conscious of the “heartburns” that would be caused between OBCs and non-OBCs whenever reservations are introduced. A chorus of alarm will be raised by the ruling elite and thus, his purpose was to reduce the area of conflict. It is distressing that Mandal Commission Report was not studied in its entirety, but only selective portions were used by politicians and for over two decades and a half. All important structural reforms did not form an essential part of the national agenda.

9. Experience of Reservation in INDIA

Reservations in educational institutions have been in force in India for over five decades for SCs and STs. It would be useful to understand whether we have achieved the avowed goal of promoting social upliftment.

Data provided in Table 5 reveals that enrolment of Scheduled Castes went up tardily from 15.1 percent in 1980 to only 18.0 percent in 2000 – a very small increase of about 3 percent in 20 years. Similarly, enrolment of scheduled tribes which was barely 6.4 percent in 1980 improved to only 9.4 percent in 2000 – a very small rise of 3 percent in 20 years. All this shows that mere reservations would not be able to improve the lot of SCs and STs in the absence of supporting measures mentioned in the Mandal Commission Report. This is also corroborated by high drop-out rates prevailing to the extent of about 78 percent up to secondary stage in case of SCs and 85 percent in case of STs. With these high drop-out rates, a very small proportion

of SC and ST students are available for enrolment in higher education. This underlines the need for taking effective policy measures at the school stage – primary, middle and secondary – so that there is a higher turnout of SC and ST competitors at the higher secondary level.

Table 5: Percentage of Total enrolment at the Primary Stage. 1980 - 2000

	1980	2000
SCs	15.1	18.0
STs	6.4	9.4

Drop-out Rates at Various Stages (%)

	Primary	Middle	Secondary
SCs	49.4	67.8	77.7
STs	62.5	82.2	85.0

Source: Government of India, Ministry of HRD, *Selected Educational Statistics*

Tamil Nadu has the longer experience of reservations. With 69 percent of the admissions and jobs reserved, it can be described as the most intensive reservations drive to improve the lot of SCs, STs and OBCs. Reviewing the Tamil Nadu experience Mr. P V Indiresan, former Director, IIT Madras writes: “The Tamil Nadu experience can be described both as a success and as a failure. It is a success because backward castes have wrested leadership – both in the academic and administrative spheres – apart from acquiring total command of the political space. Not only have the backward castes taken command, they have also made Tamil Nadu one of the most successful states.”

“Reservations in Tamil Nadu can also be described as a failure on two counts; even after three quarters of a century, the backward castes are unwilling to compete openly. There are third, or even fourth generation beneficiaries of reservations who are unable to get over their dependence on the handicaps reservation provides for them. It appears, reservation is a crutch, not a remedy.”

The real test of reservations and its success lies in the fact that after a time-frame (say of 20 to 30 years), the oppressed and backward classes do not need reservations for their protection any longer. But the experience of reservation in India for nearly six decades reveals that ‘temporary’ has become ‘permanent’ and there

appears to be no chance of their abolition even during the next 20 or 30 years, given the kind of votebank politics in the era of coalition governments.

Although the Government under Article 15(4) stipulates 22.5 percent reservation for SC & STs (15% for SC and 7.5 % for ST), the ground reality is that there is gross under- utilization of these quotas fixed by the Government.

The National Commission on Scheduled Castes and Scheduled Tribes in their sixth report for the period 1999-00 and 2000-01 revealed that in Graduate, Post-graduate and Research level taken together, only 8.2 percent seats were filled for SCs and a merely 2 percent for STs.

Table 6: Seats filled in Higher Education in India

Courses	Total Seats	Filled by SC (%)	Filled by ST (%)
Graduate	68,09,100	8.37	3.00
Post-graduate	7,58,000	8.00	1.40
Research	68,369	2.77	1.00
Total	76,35,469	8.18	2.00

Source: National Commission for Scheduled Castes and Scheduled Tribes,

Sixth Report, 1999-2000 and 2000-01.

Figures given in Table 6 reveal that the situation deteriorates as we move from graduates to post-graduates and research. The share of STs in the seats filled in Research is barely 1.0 percent and that of SCs only 2.8 percent. Obviously, the quota remains unfilled for a variety of reasons.

The situation in IITs and Business Schools is no better. In 1992, a study by two IIT-B professors revealed that only 10.5 percent of the total seats available in 2001 were filled by SC/ST students as against the quota of 22.5 percent – that is, less than half the prescribed quota.

Although voices are being raised to allow job reservations in the private sector, the performance of the Government and Public Sector Enterprises to fill up vacancies from SC/ST/OBC categories is not satisfactory. In 2005, the combined representation of SC/ST/OBC in 211 PSEs was 43.9 percent as against the mandatory quota

of 49.5 percent. Even these figures are exaggerated because the departments fill more seats in class D services to hike the average.

In 2002, reserved posts for SC/ST indicated a short fall of 7.44 percent in Group A services and 4.24 percent in Group B services.

The upshot of this analysis is that low enrolment rates and high drop-out rates among SC/STs in basic education lead to unequal access in higher education. This failure gets further reflected in failure to recruit SC/STs in employment.

The lackadaisical manner in which the quota seats are filled and quite a large number are left unfilled is due to lack of follow-up action, absence of regular monitoring by some statutory authority. If the government itself cannot fulfil its constitutional obligation, how can it expect the private sector to enforce reservations in jobs faithfully? Although the idea of job reservation in private sector was moved, but the Government has yet to take a decision in the matter because the Industry Associations (FICCI, CII and ASSOCHAM) are strongly opposed to it and have brought out a policy of affirmative action, including voluntary effort to fill vacancies from SC/SC/OBC categories.

10. EMPOWERMENT THROUGH ENTREPRENEURSHIP

According to the Economic Census (1998) conducted by the CSO covering 30.35 million enterprises revealed that 50.2 percent of rural and 37.2 percent of urban enterprises were owned by SC/ST/OBCs.

Table 7: Enterprises Owned by Social Group (percent)

	Rural	Urban	Combined
SC	9.0	5.8	7.7
ST	5.2	2.3	4.0
OBC	36.0	29.1	33.1
Total of above	50.2	37.2	44.8

Source: CSO, Economic Census (1998) Table 2(b).

These enterprises include manufacturing, construction, trade, hotels, restaurants, transport, finance and business and other services. The survey also reveals that out of 30.25 million enterprises, 24.39 million are self-financing. This implies that the size of their operations remains very limited. The situation is specially

depressing in the case of SCs/STs, more especially in the urban areas compared to the rural areas. However, OBCs share a big proportion both in the rural and urban areas. This appears to be due to upper caste OBCs who wield more economic and social power in the society. But the social status of SC/ST/OBCs can be further enhanced if credit delivery system, specially directed towards lower castes is extended in the society. This can become a major instrument of empowerment. Prof R. Vaidyanathan of IIM, Bangalore stated in this regard: "The dramatic change in the status of Nadar community of Tamil Nadu in the last five decades indicates the power of business and entrepreneurship. The corporate sector and government can play a major role by encouraging weaker sections to become suppliers, vendors, dealers, distributors, outsourcing agents and so on."

11. NINTH SCHEDULE – USE AND MISUSE

The Supreme Court in a very historic Judgment on January 11, 2007 upheld in a petition by Chennai's Senior Advocate KM Vijayan regarding the fact whether any law placed under the Ninth Schedule could be reviewed by the Supreme Court, the impugned law was "Tamil Nadu Backward classes, scheduled castes and scheduled tribes (Reservation of Seats in Educational Institutions and appointment or posts) which prescribed 69 percent reservation for OBC, SC/STs, that was much higher than the sealing prescribed by the Supreme Court at 50%. A nine judge bench headed by chief justice Y K Sabharwal said: "Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendment shall be a matter of adjudication by examining the nature and extent of infraction of a "fundamental right." Any law placed in the Ninth Schedule after April 24, 1973 will be open to judicial review by the Supreme Court. It was on this day that the Supreme Court propounded the basic structure doctrine in the Keshavananda Bharti's case mentioned: Laws already upheld in the Supreme Court cannot be challenged.

The Court, however, upheld the validity of Article 31-B of the Constitution, which empowers the parliament to place laws in the Ninth Schedule. But it said that even if an act is included in the Ninth Schedule, its provisions would be open to attack " on the ground that they destroy the basic structure of the constitution, if the fundamental rights are taken away or abrogated pertaining to the basic structure."

The Supreme Court for the first time held: That Article 15 and 16

of the Constitution on reservations in educational institutions and governmental jobs respectively were part of the basic structure.

Nature of Laws in the Ninth Schedule

It would be relevant to examine the nature of laws which have been included in the Ninth Schedule. In all, there are presently 284 laws in the Ninth Schedule. Out of them, over 240 laws pertain to land reform, ceiling on agricultural holdings and tenancy acts passed by various state governments. Since most of these laws were passed before April 23, 1973, the Supreme Court judgment does not permit that they are open for judicial scrutiny.

The other acts in the Ninth Schedule relate to Insurance Act, Railway Companies (Emergency Provisions) Act, 1951, Industries Development and Regulation Act, 1957, Monopolies and Restrictive Trade Practice Act 1969, Foreign Exchange Regulation Act (1973), Sick Textiles Undertakings (Nationalization) Act (1974), The Essential Commodities Act (1955), Private Forests (Act), Coking Coal Mines (Nationalization) Act (1972), Tamil Nadu Backward classes, scheduled castes and scheduled tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the services under the State) Act, 1993 etc.

Initially, when under the leadership of Prime Minister Jawaharlal Nehru, Article 31-B was adopted, it was guided by the noble intention of implementation of land reform. Even then, Nehru made it clear that intention is not to usurp the powers of the judiciary, but only to curb vested interests which forestall land reform legislation on the plea of justiciable compensation. Extensive litigation was resorted by the landlords and zamindars to nullify the legislative effort towards redistribution of land ownership.

Even later, the Government placed certain other Acts such as MRTP Act, Coal Mines Nationalization Act, Sick Textiles Undertaking (Nationalization) Act in the Ninth Schedule, but the Supreme Court did not confront the powers of the legislature.

Opposition to SC Judgement

The recent decision of the Supreme Court asserting its right to examine laws under the Ninth Schedule has been vehemently opposed by several political leaders. The most vociferous was the DMK who felt that the verdict was shocking and pleaded for re-writing the Constitution to establish the supremacy of the legislature over the judiciary. DMK ally PMK also joined in raising its voice against the Supreme Court verdict. Lok Jan Shakti leader Ram Vilas Paswan, however, was ambivalent when he said: " If it is a matter that tempers with the basic structure of the Constitution, then it

must not be put in the Ninth Schedule. But the 69% quota fixed by Tamil Nadu must not be subject to review since the Constitution does not draw up a limit on reservations." Paswan pleaded that the Judgement should be reviewed by 13-member bench of the SC. The CPI also voiced its dissent in the following manner: "the 9th schedule is a safeguard for pushing forward the cause of social justice and economic reforms according to the needs of the time and society. This is a matter which only the legislature, which represents the people's will, can decide." President of the JD (U) Mr. Sharad Pawar stated his stand very categorically and forcefully: "With this judgement the Apex Court has struck down a Constitutional provision made by the makers of our Constitution. This is a policy issue and the Supreme Court is not empowered to decide on it. The responsibility to run the government lies with the executive. The Judiciary has no business running the government." (*Hindustan Times*, February 4, 2007)

Support for Supreme Court Verdict

However, the Supreme Court verdict got support from the main opposition party the BJP and legal experts. For instance, BJP spokesperson Ravi Shankar Prasad said: "This is a welcome judgement. It will act as a sober restraint on the government, Parliament and the polity in placing laws that are unconstitutional under the Ninth Schedule." Former Law Minister and BJP General Secretary Arun Jaitley said: "The verdict would serve to function as an important safeguard to Indian democracy."

The Congress party did not feel the necessity of challenging this judgment and asking for a review by a 13-member bench of SC as suggested by its ally Ram Vilas Paswan. It also played cool to the outburst of Karunanidhi to have an other constituent assembly to rewrite the Constitution. Law Minister H.R. Bhardwaj clarified: "The judgement will have no adverse impact on the functioning of the Executive. I think that the judgement only means that if some thing happens against the basic features of the Constitution or the Fundamental Rights, then the Supreme Court can strike it down." In a similar vein, Mr Abhishek M. Singhvi, Congress spokesperson and eminent lawyer said: "The judgment reflected the expanded frontiers of judicial review and reiterated the established wisdom that the basic structure of the Indian Constitution is supreme." Likewise, Senior Congress leader and former additional Solicitor General Devendra Dwivedi welcomed the verdict saying, the Ninth Schedule could not function as a "parliamentary locker."

The basic question is: Is the Judiciary overactive to establish its supremacy over the Executive or the Legislature, or is the purpose of the judgement to restrain the executive and the legislature to pass laws irrespective of the tenets of social justice propelled by group interests? To understand the issue, it would be appropriate to examine the actions of the various actors in the political drama on the issue of reservations. Firstly, PV Narashima Rao government placed the Tamil Nadu Act granting 69 percent reservations to OBCs and SC/STs in the Ninth Schedule knowing full well that this Act violates the limit of 50% reservations decided by the Supreme Court and already accepted by the Central Government. This was an act of impropriety of the Executive pandering to a political lobby which wanted to provide 50% reservations only to the OBCs and 19% to SC/STs.

Secondly, as far back as 1993, the Supreme Court had adjudicated that creamy layer should not be provided the benefit of reservations. It defined the criteria for determining the creamy layer. Prime Minister Manmohan Singh is on record that creamy layer should not be included in reservation. But the RJD Chief Lalu Prasad Yadav, Mr Karunanidhi of DMK, Mr Ramdoss of PMK and Mr. Paswan of LJP forced the Congress-led UPA government to include the creamy layer while extending the benefit of reservations in admission to institutions of higher education. The so-called defenders of social justice for the poor and dalits, approved a framework which would in practice jettison out the MBCs and enable the upper OBCs to grab the major portion of reservations for their kith and kin. The question is: Social justice for whom?

Thirdly, what is special about Tamil Nadu that despite the fact that several generations of OBCs have come up and improved their lot and are occupying seats of power and privilege, now a stage has come when the benefit of reservations should be allowed to percolate to MBCs. At present, out of 50% reservations provided to OBCs alone in Tamil Nadu, 30% go to upper OBCs and 20% to MBCs. The tenets of justice and fairplay would require 30% for MBCs and only 20% of OBCs and the creamy layer out of basket of reservations. The Karpooori Thakur government of Bihar made the distinction between upper OBCs and MBCs and granted a bigger share of reservations to MBCs. Rather than following the real social justice model based on poverty and deprivation, Tamil Nadu uses reservation as an instrument of votebank politics in its favour.

Fourthly, the legislature in Andhra Pradesh, passed a law

granting 5% reservations to Muslims. Since this was violative of the Constitution as religion could not be the basis of reservation, the law was struck down by the Court.

Legislature versus Supreme Court Supremacy

It is futile to debate the question of supremacy of the Legislature over the judiciary. The Supreme Court has not questioned the Supremacy of the Legislature to frame laws in consonance with the aspirations of the people. It has upheld the right of the Legislature to frame laws under Article 16 of the Constitution pertaining to reservations. The basic issue is that the Legislature should abide by the tenets of social justice as provided in the basic structure of the Constitution. In a democratic society, laws framed by the legislature are challenged in the Court. The Supreme Court interprets the laws on the touchstone of the provisions of the Constitution. The Supreme Court and the Legislature instead of confronting each other should work in harmony. If the Supreme Court has fixed the upper limit of Reservation at 50%, it is based on certain basic considerations of reconciling merit and social justice. Similarly, the principle of excluding the creamy layer is based on sound grounds of social justice. The very fact that the major political party, the Congress in the UPA government does not intend to challenge the Supreme Court verdict on the Ninth Schedule, and major opposition party – the BJP considers that the verdict is a ‘sober restraint’ on the government that will strengthen Indian democracy, this only underlines the fact that the Government respects the Supreme Court and the Supreme Court respects the jurisdiction of the Government.

12. UPA GOVERNMENT'S DILEMMA AND POLICY MEASURES

UPA Government has made up its mind to introduce 27 percent reservations for OBCs in higher education institutions, in government-run and aided as well as unaided and run by the private sector. However, there is a dilemma faced by the Government. As a consequence of the initiative taken by HRD Minister Arjun Singh, it has to implement 27 percent quota for OBCs. Simultaneously, it does not want to reduce the General Category seats available to upper castes at present so that the upper caste students can also acquire higher and professional education. In other words, it wants to reconcile the two objectives of merit and equity. It, therefore, devised the strategy for increasing seats in all higher education and professional institutions by 54 percent and simultaneously provide

a quota for OBCs to the extent of 27 percent. The clearest expression to this was provided in the Independence Message speech given by Prime Minister Manmohan Singh on 15th August 2006.

The Prime Minister stated in a very forthright manner: “As we expand educational opportunities, we must ensure that these opportunities are accessible to all marginalized and weaker sections of our society. Our government is committed to providing reservations in educational institutions for students from the socially backward sections of our society.”

“We will do so, while expanding opportunities for all youth. This is our solemn commitment. In this manner, we will recognize and reward merit and hardwork while working for an inclusive society.” (As reported by *Economic Times*, August 16, 2006).

The Prime Minister’s statement needs to be studied carefully, because it has been very carefully worded so as to meet the concerns of both OBCs and upper castes.

For instance, the use of the phrase “all marginalized and weaker sections of our society” covers besides OBCs, the poor among the upper castes, Muslims and other minorities. In fact, it also leaves enough scope for excluding the ‘creamy layer’ from all sections of our society. Besides this, Prime Minister is firmly of the view that to develop an inclusive society, we have to expand seats in educational institutions so that merit and social justice can be effectively reconciled. Dr. Manmohan Singh, therefore, does not provide a backseat to merit but the guidelines in his speech are a balancing act with quota and merit.

Supreme Court Judgment (2006) and the Creamy Layer Issue

The judgment of the Supreme Court on 19th October 2006, while upholding the quota system in promotions for SCs and STs has ruled that the exclusion of persons belonging to these castes who are a part of the creamy layer. The Supreme Court verdict cited a Judgment of a Constitution Bench in 1993 in the Indira Sawhney case, counts the concept of creamy layer in reservations as one of the Constitutional requirements without which the structure of equality in opportunity in public employment will collapse. Since the basic concept of equality of opportunity is enshrined in Article 16(1) and (2) of the Constitution, the inclusion of creamy layer in the Central Educational Institutions (Reservations in Admission) Bill, 2006 will violate Article 16(1) and (2). The concept of the creamy layer was introduced by the Supreme Court to strike a balance between accepting caste as a determinant of backwardness and the

principle of secularism that was a basic feature of the Constitution. Obviously, Reservation in Admission Bill (2006) now has to incorporate the concept of creamy layer for OBCs as well. The Government will have to reckon the concept of the creamy layer among all reserved groups so that the Bill can stand the test of judicial scrutiny.

But who forms the creamy layer? Children of backward sections of society who hold high posts in government, armed forces, judiciary, public sector banks, insurance organizations and universities are part of the creamy layer. Officers holding equivalent or comparable posts in the private sector too fall in the category of creamy layer. This list includes professionals such as doctors, lawyers, chartered accountants and income tax consultants.

The Supreme Court in its Judgment of October 19, 2006 has also emphasized: "If the extent of reservations goes beyond a cut-off point (50% laid down by the SC), then it results in reverse discrimination. Therefore, a numerical bench-mark is the surest immunity against charges of discrimination."

This has resulted in protests from Lok Janshakti Party (LJP), JD(U) and DMK who now demand that the Government should bring a constitutional amendment and place the Reservation in Admission Bill in the Ninth Schedule of the Constitution so that it is outside the purview of the Supreme Court. JD(U) President, Sharad Yadav has also demanded the formation of a protective cordon around all such laws. Tamil Nadu, Chief Minister M. Karunanidhi has attacked the Supreme Court judgment by asserting that the Supreme Court judgment has "pulled down the ladder for scheduled castes and backward classes." According to Karunanidhi, the ruling that 50 percent reservation limit cannot be breached and creamy layer cannot be obliterated "runs against the spirit of the Constitution. The Constitution contemplates reservations for only socially and backward classes, not for economically backward classes."

Since the Supreme Court has already set up a Bench to decide about the nature of laws which can be placed under the Ninth Schedule, the ruling Congress party does not deem it desirable to have a confrontation with the judiciary.

The BJP insists that the minority institutions should not be exempt from the law on reservations, It does not favour a confrontation with the judiciary. It appears that both the Congress and the BJP may ultimately decide to work within the bounds of the Constitution. It may be noted that the Supreme Court said while

extending the policy of reservations, Article 335 has to be read with Article 46 which provides that the State should promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the SCs & STs and protect them from social injustice.

The position taken by the Supreme Court in its judgment is eminently sensible. If the principal purpose is to help SCs, STs and other weaker sections, then both social and economic criteria become relevant. The Centre for Management Development, Thiruvanthapuram, conducted a study which showed if the creamy layer is excluded, it helped the poor students from the weaker sections to get admission. This study has been quoted by the Oversight Committee headed by Moily. But unfortunately, Moily could not get a unanimous recommendations from the Committee on the issue and, thus, argued that the creamy layer issue be left to the Government for a final decision.

13. FLEXIBILITY IN IMPLEMENTATION OF RESERVATIONS

Table 8 provides information regarding SCs, STs, OBC and other social groups. The NSS Report (1999-00) has given data on rural and urban basis. Since for reservations, state has been taken as the unit of administration, an effort has been made to present State/UT-wise data. The data reveals startling differences among states on the percentage distribution of OBCs. The figures varies from 72% in Pondicherry, 66 percent in Tamil Nadu, 53% in Kerala, about 50% in Bihar which are much above the All-India figure of 34.4%. On the other extreme are West Bengal 5.8%, Assam 15%, Jammu and Kashmir 8%, Himachal Pradesh 10.1. Similarly, tribal states have very high percentage of STs: Nagaland 90%, Mizoram 96%, Lakshdweep 98%, Meghalaya 87%.

The basic issue which needs to be raised is: Should states be given flexibility in determining the relative percentage within ST, ST and OBC categories or should all of them be forced to adopt a uniform policy? However, two riders be attached: (a) the concept of exclusion of creamy layer will be applied in all categories, SC, ST, OBC and others. Secondly states which have a share in SC, ST and OBC population higher than the limit prescribed in reservations i.e. 7.5%, 15% and 27% shall adhere to the minimum guaranteed level while determining the relative share of the three categories within the over-all ceiling of 50% reservations prescribed by the Supreme Court. Such a course, it is our view, would bring about greater

rationality in the relative shares of the various categories for reservation.

Table 8: Percent Distribution of Households and Persons in NSS 55th Round by Social Group

Total= Rural + Urban

State/UT (1)	ST (2)	SC (3)	OBC (4)	OTHER (5)
Pondicherry	1.7	18.9	72.0	7.4
Tamil Nadu	1.3	21.6	66.1	11.0
Kerala	1.5	8.6	53.2	36.7
Bihar	6.8	16.5	49.6	27.1
Andhra Pradesh	5.3	18.5	43.5	32.7
Uttar Pradesh	1.2	20.1	39.0	39.7
Manipur	25.3	3.4	38.6	32.7
Madhya Pradesh	19.5	14.9	37.3	28.3
Karnataka	7.4	16.1	35.4	41.1
All-India	7.3	17.9	34.4	40.4
Sikkim	26.6	9.8	30.5	33.1
Delhi	2.9	13.6	30.4	53.1
Orissa	18.8	18.2	29.0	34.0
Gujarat	12.6	12.6	27.7	47.1
Haryana	1.3	21.3	24.8	52.6
Maharashtra	10.7	13.6	23.9	51.8
Tripura	7.2	22.3	20.1	50.4
Daman & Diu	24.7	6.5	19.0	49.8
Chandigarh	0.7	20.3	15.9	63.1
Assam	10.6	12.4	15.3	61.7
Punjab	1.2	37.4	13.8	47.6
Himachal Pradesh	2.6	19.5	10.1	67.8
Jammu & Kashmir	0.6	10.7	8.1	80.6
Dadra & Nagar Haveli	51.6	3.1	6.9	38.4
West Bengal	3.7	24.2	5.8	66.3
Goa	1.3	2.5	4.2	92.0
A & N Islands	13.2	3.9	2.5	80.4
Nagaland	89.7	3.0	2.5	4.8
Arunachal Pradesh	59.6	2.5	2.5	35.4
Mizoram	96.0	0.9	0.9	2.2
Lakshdweep	97.6	0.0	0.8	1.6
Meghalaya	86.6	1.5	0.8	11.1

Note: States have been arranged in the descending order on the basis of Column (4).

Source: Derived from NSS Report No. 473, Literacy and Levels of Education in India, 1999-2000.

14. MODALITIES OF IMPLEMENTATION

The moot question is: How can the nation increase 54 percent seats in higher educational institutions? This requires enlargement of not only physical infrastructure in the form of additional rooms and laboratories, but also human infrastructure in the form of additional teachers and other supporting staff. A rough estimate made by the Moily Committee indicated an investment of the order of Rs 18,200 crores, though it appears to be a gross underestimate, keeping in mind the high cost of education per student at the graduate, post-graduate and research levels. These costs are even higher for IIT and IIM, Engineering and Medical institutions. Apprehensions were expressed by the professors and directors of IITs and IIMs that it would not be possible to increase 54 percent seats in one year. Dr. Deepak Pental, Vice-Chancellor, Delhi University, openly expressed that it would not be possible for Delhi University to expand seats by 54 percent in the short span of one year.

On the other hand, PMK, DMK and even JD(U) - a constituent of NDA were putting pressure on the government to implement quota in one go. DMK Chief K. Karunanidhi went to the extent of writing a strong letter to the Prime Minister that a staggered approach will not be acceptable to his party.

To assuage the strong feelings of alliance partners, the Government appointed an *Oversight Committee* with Mr. Veerappa Moily, former Karnataka Chief Minister as its Chairman with the twin task of working out the modalities for bringing the OBCs under a wider quota net in higher educational institutions, while providing a cushion for upper castes.

The committee, in its report, came out in favour of a staggered implementation of the quota regime in existing IITs, IIMs, other engineering and medical institutes, medical colleges, agricultural and Central Universities.

There is a strong feeling in many quarters that instead of rushing in the quota policy for OBCs, it would be better to have staggered implementation, thus providing time and resources to higher educational institution to do preparatory work and put the necessary infrastructure in place so that a smooth transition becomes possible.

15. ALTERNATIVE INCLUSIVE MODELS

Social thinkers believe that equality of opportunity is more important for the entire population rather than laying exclusive emphasis on caste as a factor of social disadvantage. There are multiple disadvantages faced by various groups. It is, therefore, necessary that we incorporate in the inclusive model the various dimensions of disadvantages. They are:

1. Gender disadvantage
2. Class disadvantage (based on economic criteria)
3. Rural versus urban disadvantage
4. Source of schooling (a government/ municipal corporation run school, an aided institution or an unaided English medium public school)
5. Caste as a factor and within a caste, there can be different layers e.g. upper OBCs and Most Backward OBCs, Hindu and Sikh upper castes and Hindu and Sikh OBCs, etc.

Four Models have been suggested to incorporate multiple disadvantages and merit so that both quality and equity can be accommodated. The models do not ensure a block or quota and thus solidify caste identities, but follows a holistic approach in combining merit with social justice.

JNU MODEL

Jawaharlal Nehru University (JNU) provides 10 deprivation points on the basis of caste, gender and region. These deprivation points are added to the merit score in the following manner:

- 5 points for OBCs (10 points for OBC women)
- 5 points for most backward region (three for less backward region)
- 5 points for other groups (Kashmiri migrants and dependants of armed forces personnel killed in action)

To the merit score of the candidate out of 100 marks, the deprivation points allotted to a candidate are added to arrive at the final score of rating for admission list. However, it may be noted that SC and ST students are provided 22.5 percent reservations as per stipulation by government.

PURUSHOTTAM AGRAWAL'S MODEL

Purushottam Agrawal of JNU feels that only giving a maximum of 10 deprivation points does not do full justice to the various deprivations. He has, therefore, suggested a modified version of the

JNU model, allotting 30 points on the basis of deprivation/ disadvantages.

Marks for entrance test/ interview and academic performance will account for 70 points. The remaining 30 points will be under the following heads:

Caste/Tribe: (5 points) All SC/ST candidates get 5 points; MBCs 4 points and OBCs 2 points

Gender (5 points) for women irrespective of scores on any other index

Economic Status (6 points) No points for yearly family income above Rs 2,50,000; 3 points for income from Rs 1,00,001 to Rs 2,50,000; and 5 points for income up to Rs 1,00,000 and 6 points for the beneficiaries of poverty alleviation schemes/ employment provision schemes of Central/ State govts.

Regions: (5 points) No points for candidates from metros and large cities; 3 points for non-metros; 3 points for all towns, and also cities in conflict regions; and 5 points for those from villages and tribal areas.

Schooling: (5 points) No points for students from public, boarding and premier schools; 2 points to students from Central govt. schools; 3 points for students from vernacular schools and 5 points for students from village/panchayat or municipal schools.

(No backward region points for candidates studying in a public, boarding or premier school)

First generation learner: (4 points) No points for a candidate whose both parents are graduates; 1 point if one parent is graduate and the other is matriculate; 3 points if one parent is non-matriculate and 4 points and if both parents are non-matriculate.

Example: An SC/ST candidate from Delhi public school with graduate parents and annual family income above Rs 2,50,000, gets 5 caste points but his sister gets 10. A BPL MBC from panchayat school in a backward region with illiterate parents gets 23 points. A forward caste candidate with same background gets 20 points.

DESHPANDE AND YADAV MODEL

Satish Deshpande and Yogendra Yadav of the Centre for the Study of Developing Societies (CSDS) have developed another inclusive model. It is claimed that such an approach promotes affirmative action without "appeasement" and tends to cut across caste and religious identities.

Combine 'merit points' with 'disadvantage points'. Convert marks in the qualifying/entrance exam to a maximum of 80 points.

The remaining 20 points (maximum) would be 'disadvantage points.'

Disadvantage points (maximum 12 points) can have sub-components based on social groups, gender, schooling and family background. The backward castes can be divided into 'upper' and 'lower' OBCs' (or MBC) depending on the regions they come from.

Example: 10 points for a male MBCs from most backward region, 6 points for a male OBC from less backward region and 2 points for a male OBC from a developed region. (Women in each category get +2 points)

Schooling points (maximum 5 points) 5 points for Class XII from a rural govt. school; 3 points for a corporation run school in metro; 2 points for small town private (non-English medium) school and no points for English medium private school in metros or for residential public schools.

Family background points (maximum 3 points) 3 points if none of the parents is in organized sector jobs or runs tax paying business, 2 points if one of them is a clerk or equivalent and 1 point if both of them are in low salaried jobs. No points if any one of the parents is a professional, officer or Income tax payer.

The points for schooling and family background would apply to all non-SC/ST categories, including forward caste students from poorer families. There is no need for a separate OBC quota. The disadvantage points also take care of the 'creamy layer.'

The three models presented above assign different weights to different disadvantages. The problem with the JNU model is that it assigns only 10 points for various deprivations and combines them to arrive at the final score by adding them to merit score, and thus it predominantly protects merit.

Purushottam Agrawal's model assigns 30 points and Deshpande & Yadav model assigns 20 points for deprivations - a middle course between JNU and Purushottam Agrawal's model.

SACAHR COMMITTEE MODEL

Sachar Committee on Social, Economic and Educational Status of the Muslim Community in India (2006) suggests the following criteria to facilitate admission of "Most Backward" among all socio-religious categories to colleges and universities:

- | | |
|---|-----|
| 1. Total Points | 100 |
| 2. Assessment of Backwardness to the maximum of | 40 |

Backwardness to be defined as the sum of the following (each with about one-third weight).

- | | |
|---|----|
| a. Household income (income criteria to be revised periodically) | 13 |
| b. Backward District | 13 |
| c. Backward class (assessed on the basis of a combination of family occupation and caste) | 14 |

The point to be noted is that Sachar Committee provides 40 percent weight to backwardness and excludes the creamy layer.

An assessment of the Sachar Committee Model reveals certain serious shortcomings. First, the formula is too broad and needs to be fine-tuned so that sub-categories within the criteria are also defined and assigned different weights. Secondly, it does not recognize gender as a serious disadvantage. Thirdly, it does not make a distinction between rural versus urban disadvantage. Lastly, it does not recognize the source of schooling (a government/ municipal corporation run school), an aided institution or an unaided English medium public school).

However, the merit of the model is that it assigns 40 points to backwardness and give substantial weight to backwardness to ensure equity.

OUR MODEL

The models given earlier provide disadvantage points ranging from 10% to 30%. We, however, believe that the weightage of even 30 points is not enough if the intention is to bring the most-backward classes to benefit from higher education without following the path of reservation. It would, therefore, be proper to provide 50 points weightage to disadvantage so as to enable the MBCs to make up the grade. The model suggests the following:

The basic purpose behind our approach is to completely do away with reservation and inculcate a spirit of enterprise and competition within all socio-economic groups. Simultaneously, to support the socially and economically backward, the points of backwardness be added to merit score to determine the place of a candidate in total score. This is an inclusive model for all socio-economic groups. Even the poor among the upper castes will earn some points on the basis of their economic backwardness and schooling. However, SC/STs, OBCs and MBCs will get disadvantage points on the basis of their social as well as economic backwardness. Girls from poor families would get additional 5 points while this benefit will not be available to girls belonging to the creamy layer category of family income levels above Rs 2.5 lakhs per annum.

Total Marks	150
Merit Points	100
Backwardness Weighted to the maximum of	50
Caste/Tribe (Maximum 10 points)	10
10 points for SC/STs, 7 points for MBCs and 4 points for OBCs.	
Gender (Maximum 5 points)	5

Irrespective of score on any other criterion for girls but no points for those in the creamy layer.

Economic status (Maximum 10 points)

1. No points family income above Rs 2.5 lakhs per annum
2. 5 points for incomes ranging from Rs 1 lakh to Rs 2.5 lakhs
3. 7 points for incomes ranging Rs 50,000 and Rs 1,00,000
4. 10 points for those below the poverty line.

Schooling (Maximum 10 points)

No points for students from unaided English Medium Public Schools; 5 points for students from vernacular schools; and, 7 points from village/ panchayat or municipal schools.

First Generation Learners (Maximum 10 points)

1. 10 points if both parents are below matric
2. 5 points if one parent is a matriculate and the other a graduate
3. No point if both the parents are graduates.

Region (Maximum 5 points)

1. No point for candidates from Metros and large cities
2. 3 points for non-Metros or all towns and cities in conflict regions

5 points for those from villages or tribal areas or slums.

The procedure to be followed is as under:

For rating candidates for admission, marks out of 100 be taken as marks on the basis of merit. To these are added the marks based on backwardness to determine the total score for ranking purposes.

Example:

	Marks out of 100 on the basis of examination (merit) (100)	Marks for Backwardness (50)	Total score for ranking
A	70	10	80 (4)
B	61	30	90 (1)
C	50	35	85 (3)
D	89	-	89 (2)

The basic issue pertains to the acceptability of the alternative inclusive models in place of reservations. For this purpose, firstly, at the academic level, there is need for acceptability so that some model after discussion is accepted for experimentation. Secondly, there is need for convincing the politicians and policy makers that this path of inclusive model is better than the path of reservation. In case, a break-through is achieved, then it would be possible to take further steps regarding implementation. This will mean developing a good machinery of implementation. Along with this, the awareness level of the people has to be increased so that the inclusive model is accepted by the society as a better longterm instrument, which while taking care of backwardness produces less heartburn or opposition from the better-off classes who were monopolizing higher education.

16. CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION BILL), 2006

After a long debate, the UPA Government, on the 25th August 2006 introduced the Central Educational Institutions (Reservation in Admission Bill), 2006 in the Lok Sabha.

The Bill provides for 27 percent reservation for OBCs, 15 percent for SCs and 7.5 percent for STs – a total of 49.5 percent – in Central higher education institutes like IITs, IIMs and AIIMS and all Central Universities.

Only those Central Institutions will be included in its purview which received Central Government grants directly or indirectly.

According to the Bill, “OBC means the class or classes of citizens who are socially and educationally backward, and are so determined by the Centre.”

The provisions of the bill will not apply to minority institutions established and administered under clause (1) of Article 30 of the Constitution.

Besides, the provisions of reservations will not apply to Central educational institutions in tribal areas and institutions of excellence.

The bill will also not apply to “any course or programme at higher levels of specialization, including at the post-doctoral level, within any branch of study or faculty, which the Central government may, in consultation with the appropriate authority, specify.”

Alongside, the Bill provides that every Central educational institution should, with the prior approval of the appropriate

authority, increase the number of seats in a branch of study or faculty over and above its annual permitted strength so that the number of seats, excluding the reserved seats available for the persons belonging to SCs, STs and OBCs, is not less than the number of such seats available for the academic session immediately preceding the date of the coming into force of this Act.

The Act will come into force from academic year 2007-08 and provides for a staggered implementation over a period of three years. 5 percent in the first year, 10 percent in the second year and 12 percent in the third year.

The implication of the Bill is that educational institutions shall have to increase the seats by 54 percent in order to keep the General Category seats at the level of the preceding year. The following example clarifies it:

Total seats in 2006-07	=	100
SC Seats	=	15
ST Seats	=	7.5
General Category Seats	=	77.5
Total seats in 2007-08	=	154
SC Seats @ 15%	=	23
ST Seats @ 7.5%	=	12
OBC Seats @ 27%	=	42
General Category Seats Remaining	=	77

Critique of the Bill

The original draft prepared for the consideration of the Cabinet included a clause for creamy layer, but strong opposition from DMK and PMK leaders, besides Lalu Prasad Yadav of RJD, Ram Vilas Paswan of Lok Janashakti and AR Antulay of the Congress forced the government to drop the following clause from the draft bill excluding the creamy layer:

“ but excluding such advanced members thereof, as may, from time to time, be notified by the Central Government in the official gazette, having regard to the factors such as the persons holding constitutional offices or particular services, practising professions, or having particular income level or particular holding of property so as to distinguish children of socially advanced members from children of other class or classes of citizens who are socially and educationally backward.”

It may be noted that Law Minister H R Bhardwaj argued in the cabinet meeting that unless creamy layer was exempted, the new

quota proposal would not stand the test scrutiny by the Supreme Court. The apex court had introduced the concept of creamy layer while upholding the job reservations 12 years ago and the Government had accepted the concept of exclusion of creamy layer in reservation of jobs. The UPA Government, however, did not pay adequate attention to the legal advice.

Left parties which had not raised the issue of creamy layer at the Congress- Left Co-ordination Committee earlier are now critical of the Government on two counts: CPM Politburo member Sitaram Yechury said they would insist on extending reservations to unaided institutions as well. The CPM will oppose the “creamy layer” among the OBCs as this must be weeded out and the affluent among the OBCs should not benefit from the proposed bill. Another issue which has been raised by the critics is the exemption of minority institutions from reservation. The BJP is already on record that it is illogical and smacks of “gross appeasement” of the minorities. Even Mr. V. Radha Krishanan of the CPM said “the exemption created a problem in Kerala where 95 percent of higher education institutions are run by minority communities.”

The Bill has been referred to the Standing Committee of the Parliament for further deliberations and will come up for the consideration of the Parliament.

The UPA Government may be feeling that they have resolved the reservation issue for OBCs, but the drama may unfold itself if some of leaders of MBCs challenge it in the Supreme Court. Moreover, opposition to exclusion of minority institutions is likely to be pushed further both by the BJP and CPM, though for different reasons. Shall the Left parties succeed in building sufficient pressure on UPA government to exclude the creamy layer? The final act will be seen only when the drama unfolds itself and the various actors play their part. In view of the Supreme Court Judgment dated October 19, 2006 the government has to introduce the creamy layer concept in the Bill.

17. BEYOND THE LIMITS OF RESERVATIONS

West Bengal Chief Minister Buddhudev Bhattacharya has suggested that country should look beyond reservations so as to enlarge the area of socio-economic reforms. Instead of promoting divisive tendencies by enforcing the process of reservation among the various social groups as also within the same social group by fixing quotas in jobs or seats in institutions of higher educations, it

would be far better to take a holistic view of socio-economic reforms so as to effectively tackle the problems of poverty and deprivation. In other words, it would be far better to pursue a policy of inclusive growth.

In fact, the political parties contemplate only short term goals, by either enhancing the interests of certain groups of the Indian society so as to develop blocks of vote banks, either within the dalits, or OBCs or upper caste Hindus or promoting interests of the minority community, especially the Muslims so as to wean away a big chunk of the minority votes in their favour. This short-sighted approach is only a continuation of the British policy of 'divide and rule' in independent India. This is the misfortune that has engulfed Indian politics after the exit of leaders of all-India stature like Jawaharlal Nehru, Sardar Vallabh Bhai Patel, Jagjivan Ram and Indira Gandhi and their replacement by leadership which is restricted to one or two states like Lalu Prasad Yadav, Mulayam Singh, Ram Villas Paswan, M. Karunanidhi, Jayalalitha, Chandrababu Naidu etc.

Mr. Buddhadev Bhattacharya's suggestion does not imply a criticism of the policy of reservations in jobs in the organized sector or seats in centres of higher education, but the need to realize that the scope of this policy is very limited. For instance, only 8 percent of the workforce is engaged in the organized sector (both public and private sector) and 92 percent is engaged in the unorganised sector which is outside the ambit of job reservations. Even out of the 8 percent in the organized sector, the share of the public sector is 5.5 percent and that of the private sector is hardly 2.5 percent. Similar is the case of participants in higher education. In 2000-01, the total enrolment in all educational institutions was of the order of 192.6 million, out of which only 8.4 million were in colleges/university i.e. 4.4 percent of total enrolment and 184.2 million (i.e. 95.6%) were in various stages in schools upto the higher secondary level (10+2). Obviously, reservations are aimed at this miniscule portion of the total student population which is able to reach higher education level. From this, it follows that our socio-economic policies should strengthen the unorganised sector so as to enable it to graduate into the organized sector. Similarly, there is a need to strengthen primary and secondary education so that dropout rates at various levels decline and more and more students enrolled at the primary level complete their education and we are enabled to redeem our pledge given in the Constitution for providing primary education to all in the 6-14 age group. This will expand the base further and force pressure on the state to strengthen the secondary and higher

education. The education pyramid which is a tapering variety has to be broadened. This way lies hope for all.

18. Summing Up

In conclusion, it may be stated that reservation based on caste divide societies and if our ultimate goal is to develop a casteless and classless society, then it would be more desirable to develop models of social justice which take into account gender, caste, class, schooling, region (Rural/Urban) and not limit reservations only on the basis of OBC or non-OBC basis. There may be political consensus on caste-based reservations due to the compulsions of vote-bank politics, but there is no social consensus. From the point of view of social justice treated in a wider sense, it would be necessary to develop a multi-dimensional model.

However, there is a caveat. All efforts at building superstructure without strengthening the base of school education will not succeed in the long run. It is, therefore, necessary to expand school education as well as to work out measures by which the drop-out rates are reduced among the disadvantaged classes. Merely administering 'pain killer' of reservations may alleviate the pain in the short term, but will not cure the malady unless the roots are strengthened. For this purpose, the country has to launch a social movement.

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Appendix

RESERVATIONS FOR ADMISSION IN HIGHER EDUCATION INSTITUTIONS

Those who have been included

IITs, IIMs, the 20 Central Universities (like JNU and DU), NITs and Central-government Managed professional institutions like the six Central medical colleges, including AIIMS, National Law School, and Indian Institute of Mass Communication

Those who have been excluded

1. Minority institutions
2. Homi Bhabha National Institute, Mumbai, and its constituent units
 - Bhabha Atomic Research Centre, Trombay
 - Indira Gandhi Centre for Atomic Research, Kalpakkam
 - Raja Ramanna Centre for Advanced Technology, Indore
 - Institute of Plasma Research, Gandhinagar
 - Variable Energy Cyclotron Centre, Kolkata
 - Saha Institute of Nuclear Physics, Kolkata
 - Institute of Physics, Bhubaneswar
 - Institute of Mathematical Sciences, Chennai
 - Harish-Chandra Research Institute, Allahabad
 - Tata Memorial Centre, Mumbai
3. Tata Institute of Fundamental Research, Mumbai
4. North-Eastern Institute of Health and Medical Science, Shillong
5. National Brain Research Centre, Manesar, Gurgaon
6. Jawaharlal Nehru Centre for Advanced Scientific Research, Bangalore
7. Physical Research Laboratory, Ahmedabad
8. Space Physics Laboratory, Thiruvananthapuram
9. Indian Institute of Remote Sensing, Dehradun