

**GEN. EDITOR : DR. A. R. DESAI**

**A JUSTIFICATION OF RESERVATION  
FOR OBCs  
(A CRITIQUE OF SHOURIE & ORS.)**

**MIHIR DESAI**

**C.G. SHAH MEMORIAL TRUST PUBLICATION (20)**

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**A JUSTIFICATION OF RESERVATIONS  
FOR OBCs**

by

**MIHIR DESAI**

Gen. EDITOR

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IN

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## A JUSTIFICATION OF RESERVATIONS FOR OBCs

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## INTRODUCTION

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### "A JUSTIFICATION OF RESERVATIONS FOR OBCs"

Is the 20th publication under the auspices of C.G. Shah Memorial Trust (New) Series.

The idea of publishing this small book arose as a result of the fact that the subject dealt with here has provoked violent reactions of diverse nature. It has evoked almost unspeakable, vulgar abusive and hate-hissing set of fulminations from so-called sober distinguished journalists, lawyers, academics and all those who are characterized as respectable, upper caste, upper class professionals considered balanced citizens of the country. In northern India including the capital of the Union - Delhi, it generated movements which led to closures of Schools and Colleges, burning of buses, cars and trains, bandhs and even frenzied attempts at self immolation by some students.

It is amazing that the anti-reservation, anti-Mandal crusade and the material suffers from some grave limitations, with regard to assessing the phenomenon in an authentic all sided manner.

For instance :

1. Reading the material generated as a critique, one wonders whether the critics have read the Mandal Commission Report and content of the resolution for implimentation announced by the then Prime Minister of India V. P. Singh.
2. One does not find presentation of exact information about the numerical strength in the public and

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private Sector occupied by upper and intermediate castes, which would provide a clear picture of real situation in these sectors in the country.

3. Similarly the literature generated by the critiques, does not give exact and accurate data about positions and offices in secondary and Higher Educational institutions to establish authentically as to what is the situation with regard to this crucial sector.
4. Numerous sources both official and others have revealed that after four and half decades of Independence, overwhelming majority of seats of power, positions in the services and professions are monopolized by the members of the upper and intermediate affluent castes and classes who constitute not more than 10 to 15% of the total population. The critiques do not find it unjust and iniquitous, nor do they find it anguishing enough to launch movements and agitations to rectify this grave injustice to eighty five percent of Indian people comprised of SC, ST, OBC & women.
5. The critiques admit that situation in the country with regard to corruption, nepotism, criminalization, inefficiency has reached alarming proportions. However they do not explain why this is so in spite of the fact that overwhelming majority of positions are controlled and manned by so called merit based efficient affluent upper classes and castes ?
6. One of the crucial arguments of the critiques against "Mandalism" as it is sometimes described is that it will in one stroke perpetuate casteism

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and undo the efforts of four decades to modernise India. One eminent writer has pointed out the hypocrisy underlying this argument in following words, "Was it just an oversight that for forty years successive governments have not only registered caste organizations as public trusts but also generously provided them land and grants to run schools, colleges, hospitals, ashrams, orphanages, which in the name of charity have strengthened the strangle hold of the casteists over their communities. Have our crusaders forgotten how in the citadel of academic excellence, Bombay University scholarships have been instituted on the basis of caste and that too for the benefit of uppercastes? Further take every single election organized in 'Modern India'. Have the votes been mobilized by Congress Party or for that matter the Janata Dal.. On the basis of their manifestos, or have the votes been cynically mobilized on the basis of castes and religion? Have not our crusaders in press before every election displayed their Modern Sociology by analysing in detail the caste strategies of rival parties? How the Congress used KHAM (Kshtriya-Harijan-Adivasi-Muslim) in Gujarat or how Janata Dal used AJGAR and then MAJGAR to gate votes. Then why this feigned hurt dear crusader, that India was marching towards modernity before Mandal wrecked it all?" (from the Editorial "Only hypocrites will disown Mandal" Voice of people Awakening Vol. 3, No.9 Sept-Oct 1990).

7. The critics and crusaders against recent announcement of implementation of Mandal commission maintain a shrewd silence if asked as to why they have not launched similar

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movements to ensure minimum wages, shelter, medical facilities, adequate educational facilities and employment to enable the overwhelming majority of population consisting of S/Cs, S/Ts and OBCs to enable them to compete on equal terms with the small minority of upper castes.

Why their sensitivity does not burst into crusading zeal when it comes to fighting against forces which perpetuate and aggravate the conditions of the poor. Why they become hysterical and launch massive propaganda campaign and encourage directly or indirectly the movements, only when some minor concessions are promised or sometimes granted in some fields to oppressed and exploited belonging to S/C, S/T, OBC or women ?

These limitations observed in the campaign launched against Mandal Commission Report and an announcement to implement it by Ex Prime Minister V.P. Singh are grave and have very sinister significance. Systematic, all round exhaustive analysis is essential to counter this anti-poor crusade by the Anti-Reservationists.

Amidst the din & bustle of hate oozing, opportunist, mostly ill informed and biased anti-Mandal Report propaganda campaign, it was heartening to read a few balanced articles, attempting to analyse the historical back drop, and careful analysis of the Mandal Commission Report.

During the course of my endeavours to comprehend the implications of the Mandal Commission Report, the meaning of recent announcement of its implementation and the fury among a section unleashed as a consequence of this announcement, I came across



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a document, which provided a detailed systematic assessment of Mandal Commission Report. This document also carefully examines the positions taken by "Anti-Mandal" critiques. The document consisting of 15 chapters is to my knowledge, one of the very few studies which deserves wider publicity to conduct a detailed dispassionate and meaningful discussion on this stormy subject.

In tune with the objective of C.G. Shah Memorial Trust I thought publication of this document was of great significance. Hence it was decided to publish it as 20th Book in the C.G. Shah Memorial Trust publication series.

I am confident, that like other publications on vital themes in the series, this book will evoke warm response and provide discussions to deepen our understanding of this controversial theme.

(A. R. DESAI)

PREFACE

I must confess that Arun Shourie is the inspiring force behind this document. Despite having constantly kept in touch with Mandal Commission and the issue of reservations, were it not for the venomous articles written by Shourie in Indian Express I would not have set down my thoughts on paper. The amount of misinformation and suppression around Mandal Report has been so extensive that for quite some time and to a large extent even now any opportunity for rational and balanced debate has been completely shut out. Mr. Shourie, as the lead conductor of this frenzied anti Mandal orchestra has been spitting incessant obscenities at the lower castes, as if all the ills of Indian society are rooted in reservations. His outcry is such that one would not be surprised if he put the blame for the second world war on Mandal.

The present document was written as a contribution towards starting a healthy debate on the issue of reservations. It initially came out as a cyclostyled paper. An abridged version has been published in the October, 1990 issue of "From the Lawyers Collective" and from reports received it seems some translations are also on the way. Partly of course the response is due to lack of any other comprehensive pro-reservation argument on Mandal. Of course, there have been a number of excellent short articles like K. Balgopal's Articles 'This Anti-Mandal Mania' in EPW (6.10.40), Kancha Ilaiah's article 'Reservations : Experience as Framework of Debate,' (EPW.13.10.90);K.C. Chalam's article in the same issue of EPW, 'Only Hypocrates will Disown Mandal' (Editorial in the voice of People Awakening - September/October - 1990) as also the

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articles written in analogous situation by Prof. Ghanshyam Shah of Surat. All have helped me articulate my arguments.

Unfortunately, I have also been swept away by the bitterly polemical style adopted by Shourie and others and my write up suffers from the same limitation. When I decided to have this printed, initially I thought of changing the style but the style is so much integrated into the arguments that I decided to retain it in its original form and leave it to the readers to come to their own conclusion.

Before I end I must thank C. G. Shah publication and its Editor and Trustees for encouraging me and immediately agreeing to bring out this booklet. I also thank Achin for helping me to edit the booklet and pointing out my usual grammatical aberrations and Sandhya who with her critical precision ensured that I come down from intellectual hairsplitting to ground level reality.

**MIHIR DESAI**

## A JUSTIFICATION OF RESERVATIONS FOR OBCs

### I. INTRODUCTION

Acceptance of Mandal Commission Report has resulted in condemnation verging on hysteria.

"Half the entire Structure is to be manned (Sic) by persons who are by definition, not qualified for the job" is the torment of Shourie. (Journalist)

"Meritocracy will be substituted by mediocracy" is the hullabaloo of Seerwai. (Constitutionallawyer)

"Security of the state is under threat" is the pompous justification of patriotic Palkhiwala. (Lawyer and Businessman.)

Despite caste criteria being barred by the Supreme Court, the Mandal Commission persists in using the caste criteria they say. But has caste criteria really been barred by the courts ? And in any case does Mandal merely adopt caste criteria ? The caste system is being institutionalised is the other argument of these upper caste torch bearers. But is it Mandal who institutionalised caste or caste institutionalisation that gave rise to Mandal ? The Supreme Court says that reservation can never exceed 50% ! Well it must be the Supreme Court of some other country because our Supreme Court has never said so ! Fundamental right to equality is being violated ! But is not denial of reservation greater violation of the equality clause ?

Since a systematic campaign of enormous proportions has been launched against the Mandal Report it is

necessary to consider each of the arguments in detail. In essence they all boil down to a single assertion - scrap all reservations for the oppressed. This basic prejudice is sought to be couched in various legal socio economic and public interest arguments.

The major contentions are :

- (i) The National Front Government's intentions were suspect;
- (ii) Reservations are against the constitutionally guaranteed right of equality;
- (iii) They will drive away merit from the public services;
- (iv) They will lead to institutionalisation of caste system;
- (v) and the last and the most grudgingly put argument is that if at all a small percentage of reservation has to be provided the basis should be purely economic.

The problem with both Palkhiwala and Shourie is that they want people to believe in their rubbish not on the basis of facts but on the basis of concoctions, foul invectives and scurrilous attacks. How much better it would have been if these 'apostles of merit' had spent some time studying the roots and functioning of the caste system in India. How much better it would have been if their sermons were based on concrete analysis of the functioning of the reservation system in various States. How much more rigorous it would have been if they had taken note of Mark Twain's

words: "First have your facts clear. Then you can distort them as you like."

## II. THE NF GOVERNMENT AND MANDAL REPORT

Obviously, the National Front Government was not inspired by philanthropic motives in accepting the Mandal Commission Report. The following factors appear to explain it arriving at this controversial decision :

- (a) Populist vote catching as the OBCs constitute the majority of Indian population;
- (b) A move which would effectively divide the peasant base and even political base of Devi Lal and his allies;
- (c) The necessity to shift the focus from the Ram Janmabhoomi issue;
- (d) The realisation that it was one issue on which none of the allies of the NF would be able to openly oppose the Government, especially if presented with a fait accompli.

The absolute lack of commitment on the part of the N.F. Government towards the genuine grievances of the OBCs is quite evident from its shifts in position in the period after announcing the implementation and before the government's fall. Initially, it was announced that the Mandal Commission Report would be implemented in full without any dilution. Shortly

after it was declared that there would be no reservation for educational seats. Further dilution occurred when the former Government declared that the State Governments were free to accept or reject Mandal recommendations. Lastly, even in respect of Central Government Services, if the State where they are located has its own OBC list different from that of Mandal's, then the State list would prevail. In short, from the chaotic statements issued by the Government it seems the OBC reservation of 27% would only be in respect of Central Government Services and Public Sector Undertakings. The dilution was clearly a result of Machiavellian manoeuvring and purely sectarian political assessment of its pros and cons. The positions taken by other parties are also opportunistic. Most of the parties (including BJP) grudgingly accepted the report, with one caveat. They protested against the non-consensual manner in which the announcement was made. This objection is justified but only partly since in their Party Manifestos they had all agreed to implement Mandal Report.

No party having even a semblance of touch with political reality would have opposed the Mandal Report if for no other than purely for vote catching reasons. But the highly opportunistic stand of all these parties has been clearly exposed by their conduct.

Why did Cong.(I) which supposedly now supports the reservation policy as recommended by Mandal not take any steps towards implementing the report during the 9 post Mandal years when it was in power ?

Why did BJP which formally supports the recommendations not take any action against its members agitating against Mandal recommendations ? And

why did it not even reprimand ABVP - its student wing for openly opposing Mandal recommendations ?

Why has CPM, which gives lip sympathy to Mandal recommendations not taken any steps to have reservation for OBCs in West Bengal when even Cong (I) ruled states have provided for such reservations ? Since the acceptance of Mandal recommendation flows from ulterior motives should we then oppose the Report ?

Of course not. The decision to support or oppose a piece of legislation or policy decision cannot be based purely on an assessment of the motives of those who announce the policy. Preventive detention laws have to be opposed no matter what the motives of those who make them. An anti-abortion bill cannot be supported just because it flows from a pious Christian motive of protecting "unborn babies". A progressive labour legislation cannot be opposed simply because the motive behind its enactment is to misguide the workers. If right to work is made into a fundamental right by any Government (obviously as a vote catching device) it would be down right foolish to oppose it.

The correct approach would be to put the law in its perspective, point out its limitations and if it is beneficial or progressive to demand its effective implementation. It would be imbecilic to oppose the Mandal report only on the ground that the former V. P. Singh government was not inspired by pious motives.



### III. MANDAL REPORT

Before we go into the various arguments for and against the Mandal Report let us briefly look at its salient features. The Mandal Commission was set up in 1978 by the then Janata Government with the task of determining the socially and educationally backward classes and for suggesting methods to ameliorate their lot.

Prior to this, in 1953 the Kalelkar Commission had been set up by the Central Government with an identical task. The Kalelkar Commission submitted its report in 1955 identifying 2399 castes as backward. The Central Government never implemented this report and so till Mandal's report was accepted in 1990, there was no accepted Central list of OBCs. The Central Government had however allowed State Governments to have their own lists and provide reservations to OBCs. Consequently a number of States including Gujarat, Maharashtra, Karnataka, Tamil Nadu, M.P. etc. have their own lists and have provided reservations in State Government services and educational institutions for OBCs. For instance, in Gujarat and Maharashtra the reservation for OBCs is presently 10%. It is important to keep in mind that if the Mandal Report is implemented, the reservation in State Government services will not be over and above the State Government reservation. For instance in Maharashtra it will not be 10% + 27%. It will be 10% + 17% aggregating 27% in all.

The Mandal Commission report is divided into 7 volumes. These volumes broadly deal with the following topics:

Vol I            Main Report and Recommendations.

- Vol II            Composition and Terms of Reference of the First Backward Classes Commission (Kalelkar Commission).
- Vol III            A detailed study prepared by the Indian Law Institute dealing with the Constituent Assembly debates regarding Reservations and analyses of about 50 court judgments concerning reservations in promotions, carry forward and categorisation of OBCs. The Indian Law Institute concludes that though caste cannot be the sole criteria it can be linked with other criteria to decide the backwardness of groups. Inclusion of backward classes through their caste name is also allowed.
- Vol IV            This volume consists of a comparative study done by Tata Institute of Social Sciences, Bombay regarding reactions in four states - U.P., T.N., Karnataka and Bihar to reservation for OBCs.
- Vol V             This volume comprises of socio educational survey tables accompanied by a commentary.
- Vol VI            This is the volume which contains the actual Statewise list of other Backward Classes as determined by the Mandal Commission.
- Vol VII            This volume contains the Minutes of Dissent of Shri Naik alongwith the annexures. Much noise has been made about his dissent suggesting that he is against reservations for OBCs. What he actually

says however is that OBCs should be divided into two categories - Depressed Backward Castes and Intermediate Backward Castes. For depressed backward castes he recommends 15% reservations and for intermediate backward castes, 12% aggregating to an identical total of 27% reservations for OBCs.

After considering various Supreme Court decisions and the Indian Law Institute's recommendations, the Mandal Commission noted that though caste was a good indicator of backwardness and had to be relied upon as one of the criteria it could not be the sole criterion for determining backwardness. To decide the indices for backwardness a dozen castes well known for their social and educational backwardness were chosen, various indicators tried out and finally 11 indicators were selected for determining backwardness. These were :

**(A) Social**

- (i) Caste/classes considered socially backward by others;
- (ii) Caste/classes which mainly depend on manual labour for their livelihood.
- (iii) Caste/classes where at least 25% females and 10% males above the State average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so in urban areas;

(iv) Castes/classes whose participation of females in work is at least 25% above the State average;

**(B) Educational :**

(v) Castes/classes where the number of children in the age group of 5-15 years who never attended school is at least 25% above the State average;

(vi) Castes/classes where the rate of relevant dropout rate in the age group of 5-15 years is at least 25% above the State average;

(vii) Castes/classes amongst whom the percentage of matriculates is at least 25% below the State average;

**(C) Economic ;**

(viii) Castes/classes where the average value of family assets is at least 25% below the State average;

(ix) Castes/classes where the number of families living in Kuchha houses is at least 25% above the State average;

(x) Caste/classes where the source of drinking water is beyond 1/2 a kilometer for more than 50% of the household;

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

Each of the above indicators was given a weightage. Social indicators were each given weightage of 3 points, educational indicators were each given weightage of 2 points and economic indicators were each given weightage of 1 point, totalling 22 points. Any Caste group whose total weightage was more than 11 points was classified as socially and economically backward, for that State.

For non-Hindu OBCs the following criteria were used:

- (i) All untouchables converted into any non-Hindu Religion; and
- (ii) Such occupational communities which are known by the name of their traditional occupations and whose counterparts have been included in the list of Hindu OBCs. (Examples : Dhobis, Telis, Dheemoa, Nai, Gujer, Kumbar, Darji, Badhaini etc.)

The Following method was used for obtaining data:

- (a) A detailed questionnaire was prepared for the general public and advertised extensively in English and vernacular newspapers all over the country.
- (b) A number of MPs were called for giving evidence. 97 MPs personally gave evidence.
- (c) The Commission toured the States and Union territories and many villages, met the elected representatives, social and caste organisations and received representations from the public;
- (d) Research planning teams, expert committee and Technical Advisory Committee were set up, and

in consultation with these groups, the sample size, questionnaire etc. were decided. A Survey of 405 of the 406 Districts in the country was conducted.

On the basis of this survey and indicators 3743 castes were declared as backward. The total population of Hindu and non-Hindu backward castes added upto 52% of the country's population.

The following Hindu forward castes and communities were excluded -

	<u>Percentage</u>
Brahmins (including Bhumihars)	5.52
Rajputs	3.90
Marathas	2.21
Jats	1.00
Vaishyas-Bania etc.	1.88
Kayasthas	1.07
Other Forward Hindu Castes/Groups	2.00
	-----
	17.58
	=====

A similar percentage of non-Hindu forwards were also excluded.

The Commission made various recommendations the most salient amongst which are :

(a) Reservation :

(i) 27% Reservation to OBCs;

(ii) Candidates selected on merit in open competition should not be adjusted against

their reservation quota;

- (iii) Reservation should be made available for promotional quota at all levels;
- (iv) Unfilled reserved quota to be carried forward for 3 years and de.reserved thereafter;
- (v) A roster system to be adopted;
- (vi) Reservation to be applicable in public sector undertakings under Central control and to nationalised banks;
- (vii) Reservation also applicable to private sector undertakings who have received financial assistance from the Government in one form or the other;
- (viii) Reservation applicable to all the universities and affiliated colleges;

**(b) Educational Concessions :**

- (i) Intensive time bound programme for adult education;
- (ii) Special schools with free boarding and lodging;
- (iii) **Financial Assistance :**
- (i) Separate network of financial and technical institutions to foster business and industrial enterprises among OBCs;

- (ii) Suitable finance for setting up small scale industries.

**(c) Structural Charges :**

- (i) Radical land reforms and transformation of the existing production relations especially in the agricultural sector.
- (ii) A part of surplus land available due to ceiling laws to be given to OBCs.

Finally, the entire scheme is recommended to be reviewed after 20 years.

When the NF Government said that it was implementing Mandal Report it obviously meant a portion of the suggestions. Reservations are just one aspect of Mandal recommendations. Even here, the NF Government's declaration of implementation only pertained to a small feature of the overall reservation scheme as framed by Mandal. Even the actual resolution of 13th August, 1990 has been whittled down by the subsequent announcements of the Government permitting State Governments to accept or reject the recommendations, declaring that at least for the time being they will not be implemented in States which do not have their own OBC lists, that even for States which have their own OBC lists reservations will apply only to those castes which are already covered by the State lists, etc. Since some of these declarations are just press releases yet to be backed up by formal resolutions it is very difficult to assess as to what will ultimately be implemented. But from the present announcements (including those made by Janata Dal (S) ) it seems that at least in the beginning the jobs reserved at



an all India level for OBCs will be about 8000 p.a. and ultimately if every thing else goes smoothly, this figure will reach 45,000 p.a. (in a more than 10 million job market in India).

The implementation of Mandal report is in a sense an admission on the part of the Government that in the past 40 years it has not been able to solve any basic problems of the people. If 43 years after independence the Government is acknowledging that about 75% of the population (52% OBC, 22% SC/ST) is educationally and socially (as also economically) backward requiring not just preferential treatment but positive discrimination, it speaks volumes for the way in which the country's affairs have been conducted by various Governments, as also the administration, since 1947.

#### IV. THE NEED FOR RESERVATIONS

"They need aid, they need facility, they need launching, they need propulsion. Their needs are their demands. The demands are matters of right and not philanthropy. They ask for parity and not charity."

(Supreme Court in K.T. Thomas's case AIR 1976 SC).

Let us first try to see whether reservations are at all justified.

Reservations are looked upon as the antithesis to equality. The argument is that in a modern, post-feudal society it is the duty of the State to guarantee equal treatment and equal opportunity to all. The law cannot make preferences, it cannot choose one in favour of the others. All should be treated as

equal. "The King can do no wrong" is no more a valid proposition. Article 14 of the Constitution, the fundamental right of equality, categorically states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". This 'profoundity' prohibits Brahmins from having more rights than landless labourers. The earlier inequality is supposedly done away with and all are now equal before law, each individual is recognised as a distinct and independent human being equal to all others.

Lo and behold ! These reservationists are asking us to violate this basic human right of equality ! They are demanding that some be preferred at the expense of others ! They are trying to reenact the Orwellian drama of some people being more equal than others ! From now on there will be two Indias-the fertile land of reservations and the desert of merit ! Inequality is being institutionalised ! Human rights are being snatched away !

But is it really so ? What does equality mean ? Equal treatment of equals or equal treatment of unequals ? Tax exemption is granted to export houses but not to the non-export houses. Is this violation of equality ? Many concessions are given to industries setting up units in backward areas which are denied to industries set up in urban areas. Is this violation of equality ?

Are the landlords and poor peasants really equal ? Is there genuine equality between men and women ? Equality always means equality amongst equals - not amongst unequals. As Chief Justice Ray in K.T. Thomas's case (AIR 1976 SC 490) said :

"Equality of opportunity for unequals can only mean aggravation of inequality".

Equality has never either in law or in practice ever meant a ban on discrimination. As Professor Cox has put it: "do we achieve equality by putting each individual on the same starting line today or by giving minority applicants head starts designed to overcome the possible consequence of past discrimination and injustice against the group with which the applicant is identified?" - Minority is not meant in the numerical sense but in the status sense. Laissez Faire even in its hazy days never meant a free-for-all. It is only supposed to mean that those who are equally situated should be equally treated. Since landlords and tenants are unequals, they have been treated unequally, giving tenants benefits and rights which are denied to the landlords. The same is the situation vis-a-vis men and women, owners and employees, tribals and non-tribals. So why decry if forward castes and backward castes are treated unequally? The Indian Constitution has permitted this by providing that the State shall not be barred from making special provisions including reservations for OBCs, and the Supreme Court has affirmed this in the following words :-

"Now the concept of equality under the Constitution is a dynamic concept. It takes within its sweep every process of equalisation and protective discrimination. In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality clause sterile and perpetuate existing inequalities.

Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore there is inequality in fact, legal equality always tends to accentuate it. It is therefore necessary to take into account defacto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality.

The State must therefore resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education and social environment, equal in specified areas."

There are three ways in which ordinarily, states take measures for alleviating those who are unequal.

(i) Preferential treatment

If for a job or a seat there is competition, than other things being equal the disadvantaged person will be preferred over the other. For instance, in such a scenario there would be no relaxation of marks or reservation of seats for OBCs. But if an OBC and a non-OBC candidate obtain identical marks, the OBC candidate will be given preference. Here so-called "merit" is not sacrificed.

(ii) Affirmative Action

Positive actions are taken for helping disadvantaged groups. These actions include financial assistance, scholarships, etc. here the action in favour of one group does not directly affect the other group.

**(iii) Positive or Protective or Reverse Discrimination :**

Even if other things are not equal, the disadvantaged group is granted benefits at the expense of the other group. One aspect of positive discrimination is reservation of seats and jobs.

Normally it is only when the first two options are not sufficient that the third option i.e. positive discrimination is resorted to. Preferential treatment will be of no use to the OBCs. For it to be effective, there should be a sufficient number of OBCs who are able to achieve qualifications, marks and jobs equivalent to the forward castes. The present reality is not at all conducive to such an approach.

What Mandal suggests is a combination of the second and third options i.e. affirmative action and positive discrimination. He is right in feeling that mere affirmative action i.e. scholarships, financial assistance, etc. will not be sufficient. This can be adequate if the only difference between advantaged and disadvantaged groups is economic. But in the present case socio-cultural and educational aspects play a major role and so resort to positive discrimination. (i.e. reservation) is fully justified.

Protective discrimination or reverse discrimination or reservation is ultimately the method used by Governments with the declared object of converting formal equality into real equality. It is a method which is in use at least for the last 100 years all over the world. The entire labour legislation is based on the concept of protective discrimination. Employers claim that they bargain with employees as free individuals and so contract of employment which is "voluntary"

should be accepted as sacrosanct. The State says - nothing doing. Employers and employees are unequal and so employees have to be specially protected irrespective of what the contract of employment provides. As a result laws such as Minimum Wages Act, Bonus Act, etc. are passed. This is a global phenomena-positive discrimination is practised in U.S.A., U.K., U.S.S.R., Japan, Germany, China and in most other countries.

Every time some talk of reservation comes up, the 'fundamental right to equality' is thrown at our faces. This is to say the least, ridiculous. As Chief Justice Hegde in Perriakurupan's case, (1971-1-SSC 38) held: "Advantages secured through historical reasons should not be considered as fundamental rights".

In one sense what is normally called reservation is actually dereservation. De facto reservations to the extent of more than 95% of high ranking jobs and engineering and medical seats already exists for the upper class. What the so-called reservations for SCs, STs and OBC do is to serve the long term goal of dereserving this 95% in favour of society as a whole.

#### V. BUT IS RESERVATION THE ANSWER ?

Definitely it is not the ultimate solution. Reservations cannot create new jobs it can only decide how the existing jobs should be distributed. In a country with millions of unemployed the only long-term answer is creation of new jobs. Reservation does not try to solve the unemployment problem. It only tries to ensure that within the limited job market and that for seats in higher education who are historically,

socially and educationally backward get adequate representation. It tries to ensure that people are not denied jobs and educational facilities merely because they belong to groups which have traditionally been on the lower rungs of the social ladder. Reservation is a means to ensure that opportunities are equally available to all irrespective of their social, educational or economic status.

Two questions arise. Is reservation really effective even in its limited goals? If not, what is the point of supporting it? According to the Dept. of Personnel and Training, in 1985, 2099 jobs were dereserved while, in 1986 the figure was 1994. These figures are only for Central Government Services. These are posts which are dereserved. The figure for unfilled posts which are not dereserved is many times more.

Or let us look at the Maharashtra Government's latest figures regarding Reserved Posts for SCs and STs lying vacant because of not being filled.

<u>Class</u>	<u>SC</u>	<u>ST</u>	<u>Nomadic</u>	<u>Total</u>
I	376	397	154	923
II	673	1,438	356	2,467
III	8,496	14,633	4,501	27,630
IV	2,369	4,445	2,450	12,274

(Source : News item in the Independent dated 13-9-90 on the basis of figures available in General Administration Dept., Maharashtra Govt.).

Let us look at the teaching staff pattern in 41 Universities.

	<u>SC</u>	<u>ST</u>
Professors	0.6%	0.05%
Readers	1.04%	0.15%
Lecturers	3.16%	0.60%
Research Assts	10.53%	0.30%

(Source : Report of the Commission on Scheduled Castes and Scheduled Tribes, 1986-1987).

Or for instance let us look at the Table showing under utilisation of reserved OBC seats in Engineering and Medical faculties in Gujarat where reservation does exist for OBCs. Percentage of Utilization In

<u>Year</u>	<u>Engineering</u>	<u>Medical</u>
1978-79	3.5	6.4
1979-80	3.3	3.8
1980-81	4.8	3.0
1981-82	3.7	3.6
1982-83	4.3	4.1
1983-84	4.0	5.2
1984-85	4.0	3.8

(Source : Mahesh Dave, Backward Classes and Reservations - 1985)

Let us also look at the figures for utilization of reserved seats in Gujarat. The total reserved seats available are 30% and the total open seats are 70%.



<u>Reserved seats</u>		<u>Unreserved seats</u>		<u>Percentage of seats filled up</u>		
<u>Engineering.</u>						
<u>Year</u>	<u>Kept</u>	<u>Filled-up</u>	<u>Kept</u>	<u>Filled-up</u>	<u>Reserved</u>	<u>Un-reserved.</u>
1982-83	633	269	1477	1841	12.17	87.83
1983-84	680	320	1561	1951	14.09	85.81
1984-85	439	250	111	1309	16.09	83.91
<u>Medical</u>						
1982-83	183	100	442	525	16	84
1983-84	165	100	460	525	16	84
1984-85	175	69	450	556	11.69	88.91

(Source : Backward Classes and Reservations)

It is obvious that utilization of reserved seats has never been full and has nearly always been less than half. On the other hand open seats for which reservation is about 70% invariably eat up about 85% of the seats.

But as the figures themselves suggest, it would be wrong to conclude that reservation policy has completely failed. Let us look at the increase in SC/ST representation in the Central Government services over a 10 year period. It need not be stressed that the increase is primarily due to reservations.

Percentage of SC/ST in Central Govt. Service.

<u>Group of Posts</u>	<u>SCs</u>		<u>STs</u>		<u>SC ST INCREASE</u>	
	1977	87	1977	87		
A	4.16	8.23	0.77	2.05	4.07	1.28
B	6.07	10.40	0.77	1.92	4.33	1.15
C	11.84	14.46	2.78	4.23	2.62	1.45
D	19.07	20.09	4.35	5.84	1.02	1.49

Percentage of SC/ST representations in Public sector undertakings.

Group	1.1.77 (126 undertakings)		1.1.87 (211 undertakings)			Increase	
	SC	ST	SC	ST	SC	ST	
Group -A	1.81	0.43	4.86	1.17	3.07	0.74	
Group -B	3.09	0.55	6.17	1.55	3.08	1.00	
Group -C	16.76	7.68	18.54	8.82	1.78	1.14	
Group -D	22.53	10.32	30.82	17.07	8.29	6.75	

(Source : Report of Commission of Scheduled Castes and Scheduled Tribes-1986-87).

Though the overall percentage of both the SCs and STs is still much below their population proportion, it has virtually doubled in 10 years which itself is a positive step forward. But again, the representation of SC/ST in class III and class IV posts should not be seen as a very significant trend because many jobs in class III & IV are such that even poor forward caste persons are unwilling to take them up.

In a nutshell what one can say is that though the declared goals of reservation policy have not been fulfilled, a beginning in the right direction has been made. The gap is partly a result of lack of availability of sufficient reserved candidates. And one of the significant reasons for unfilled quota is also the negligence and deliberate manipulations on part of the authorities.

Let us pause here for a moment. There is sufficient

documentation and material available to show that regularly and deliberately most of the organisations violate the reservations policy. The most obvious way of doing this is by ignoring to advertise for the reserved posts. But there are many other subtle ways. Interview letters are sent to reserved candidates in such a manner that they reach only after the date of interview. Age relaxations and other concessions are regularly omitted from the advertisements. Instead of saying that the posts are reserved, "preference will be given to SC/ST" is mentioned. Separate interviews are not taken despite the legal requirement to that effect. No roster is maintained. There are innumerable such methods used for avoiding implementation of the reservation policy.

As the report from the Independent dated 13-9-90 reveals "deliberate attempts were made by the officers from upper castes to stop recruitment of SC/ST candidates. Confidential records of SC/ST are marred to debar them from departmental promotions ..... There appears to be a method in scuttling these candidates' chances of getting jobs. In case of promotions, spoilt confidential reports of SC/ST employees' (D Grade), prevent them from appearing from tests for promotions". Mind you 'Mandal's' recommended reservations in promotion will also require minimum grade from OBCs and so these methods will be used even for OBCs.

Forget reservation, even when it promises financial help the Government is so callous that last year three, SC students in Maharashtra including one Chandrakar Tepkhire from Jogeshwari, Bombay committed suicide because the promised government financial aid did not come through, leaving starvation as the only option.

90% of progressive laws in the country are not implemented but that does not mean we go around demanding their revocation. What we ask for is their stricter implementation and this should be our approach to reservations in general and Mandal Report in particular.

### **But what about dereservation ?**

It is alright to provide reservation but once given it becomes a permanent feature. Ultimately it is a vote catching device and no government would risk losing votes by dereserving. Yes, This is a peculiar problem. It is hard to imagine any of the present day parties willingly dereserving any caste or community. No doubt it is necessary to provide some mechanism by which at least some castes who are able to stand on their own after some time, are not given reservation. But wouldn't it be more meaningful at present to try and work towards implementation of reservation policy rather than cry hoarse about dereservation? Question of dereservation can arise only after one reaches the stage of consistently filling up reserved quota year after year. On the basis of existing data and experience given elsewhere in this document there is not even a semblance of a chance that we shall achieve such a state of affairs for another 75 years. SC/ST reservations have been in existence since more than 40 years but we are no where near reaching the target. Similar problem exists regarding OBC reservations in States where it has been applied. When one talks about dereservation in jobs and seats one is talking of long term problems. Many supporters of reservation also raise this issue out of genuine concern. What is however ludicrous is that even

the opponents rake up this long term issue. In everything else they are short sighted. Why does their epochal vision surface only when it is the question of reservation? This long term interest theory of dereservation is simply a method to hide the anti-lower caste and anti reservation thrust of these far sighted luminaries. If one takes this 'long term interest' theory to its logical conclusion it is exposed as self defeating. The anti reservationists should realise than even assuming that reservations cause short term hardship to some individuals as well as the country, it promotes the long term interest of 76% of the population of India, and therefore of the country as a whole.

Apart from anything else, I feel, presently, nothing much hinges on the issue of dereservation and though it is necessary to have a mechanism for dereservation, our support to Mandal or to reservation generally cannot be based on this for the two under mentioned causes.

First, dereservation of individual seats and jobs is always inbuilt in every reservation policy. If the carry forward rule is for three years, at the end of it, the reserved posts which are not filled are dereserved and open candidates are appointed. Experience of past 40 years shows that this is not an exceptional phenomena but a regular happening. Either because the authorities cannot find reserved candidates or because they make it a point not to find reserved candidates, many seats and at times even the majority of seats and posts are dereserved.

Second, the question of dereservation arises only when the quota is regularly filled up, and as explained elsewhere in the document we are far from achieving

this. To consider, let us<sup>7</sup> just look at the prevailing macro position.

The macro position in Central Government jobs is as below :

	percentage of population	percentage of Central Govt. jobs	percentage of class I Central Government
SCs and STs	23	19	6
OBCs	52	13	5
Forward castes	25	68	89
Total	<hr/> 100	<hr/> 100	<hr/> 100

(Source : Derived from statistics given in Mandal Commission Report)

## VI. THE 10 YEAR TIME LIMIT FOR RESERVATIONS

There is a great deal of confusion about the issue of time limit. Every 10 years the Government increases this time limit by 10 more years compounding the confusion.

Clarity on this aspect is essential. The Constitution permits three kinds of reservations.

- (i) Reservation in educational seats
- (ii) Reservation in jobs
- (iii) Reservation in legislature i.e. Parliament and Assembly.

Now the constitutionally laid down 10 year limit is only applicable to reservation in legislature, and not for reservation in seats or jobs. Nowhere is it provided that reservation in seats or jobs is for a time bound period. One is not saying that therefore there cannot be or should not be periodical review. But what is being stressed is that it is wrong to base one's argument on a belief that reservation in seats or jobs was only for 10 years.

What is being renewed every 10 years is the reservation of seats in legislature. The pros and cons about this extension is a separate issue and does not concern us here. Especially so because for OBCs no legislative reservation is provided. Mandal only recommends seat and job reservations.

The targets set for reservations of SC/ST as well as OBCs (in States) have not been even remotely achieved. The question of doing away with reservations

or reducing reservation can only arise when the representation of these groups in seats as also, in various rungs of employment stabilizes adequately in proportion to their population. Even then, it would have to be ensured that removing or reducing the plank of reservation does not lead to a collapse in their representation.

## VII. BACKWARDNESS OF THE OBCs

That in India there are certain backward classes (apart from SCs and STs) who need reservations is admitted even by the framers of the Constitution. That Indian, especially Hindu society, is caste ridden does not have to be argued. That the two most oppressed sections of this hierarchy are the outcastes (constitutionally speaking the SCs) and the sudras (virtually the OBCs) is also a fact established beyond doubt.

Reservation for OBCs is not a new phenomena. Most of the States have already provided some reservation for OBCs. These reservations are applicable to State Government Services and State level educational insitutions. But they do not apply to Central Government Service and Central level educational institutions.

The present situation of reservation quotas in various States is as following :



Sr.No.	State	SC	ST	OBCs	Total Reservation
1.	A.P	14	4	25	43
2.	Bihar	14	10	24	48
3.	J & K	8	5	42	55
4.	Karnataka	15	3	50	68
5.	Kerala	8	2	40	50
6.	M.P.	15	18	29	62
7.	Maharashtra	13	7	14	34
8.	Punjab	25	5	5 + 20 (EX Servicemen)	55
9.	U.P.	18	2	15	35
10.	T.N.	- 18 - (Unit)		50	68
11.	Haryana	20	-	10	30
12.	H.P.	15	7 1/2	5	27 1/2
13.	Assam	7	12	-	19
14.	Gujarat	7	14	10	31
15.	Manipur	15	7 1/2	-	22 1/2
16.	Meghalaya	58	48	-	98
17.	Nagaland	-	45	-	45
18.	Orissa	16	24	-	40
19.	Sikkim	-	-	-	-
20.	Rajasthan	16	12	-	28

S.No.	State	SC	ST	OBCs	Total Reservation
21.	Tripura	13	29	-	42
22.	W. Bengal	-	5	-	20
23.	Andaman/Nicobar		16	-	16
24.	Arunachal	-	45	-	45
25.	Chandigarh	20	-	-	20
26.	Dadora/Nagar	15	7 1/2		22 1/2
27.	Delhi	15	7 1/2		22 1/2
28.	Goa,Daman,Diu	2	5	-	7
29.	Lakshadweep	-	15	-	15
30.	Mizoram	-	-	-	-
31.	Pondicherry	16	5	-	21
32.	All India	15	7 1/2	-	22 1/2

In all big states except Rajasthan and West Bengal reservation for OBCs is already in existence. In many of these States it even exceeds 50%. This is the situation even prior to the acceptance of the Mandal report. In the Southern States, reservations have been institutionalised since before 1947. While in the northern States they are a totally new phenomenon

Maharashtra has OBC reservations since 1964. Of course each State has formulated its own criteria for backwardness and therefore there is much variance in the classification. What Mandal seeks to do is for the first time apply uniform criteria for backwardness for the whole of India, and apart from other things, introduce reservation also in Central Government services. It needs to be again stressed that reservations as recommended by Mandal are not over and above the State reservations for OBCs. For instance in Gujarat and Maharashtra the total OBC reservation at present is 10%. Implementation of Mandal recommendation does not mean 10% + 27%. It only means overall OBC reservation of 27%.

But are the OBCs really backward? Forget the caste aspect which is even otherwise voluminously documented, let us look at some statistics regarding their representation. The Mandal report itself provides details of OBC representation in Central Government services. The table is reproduced from the report.

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**Percentage Representation of OBCs, SC/STs in Central Govt. Services**  
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	Class - I		Class-II		Class III & IV		Total	
	SC/ST	OBC	SC/ST	OBC	SC/ST	OBC	SC/ST	OBC
1. Ministries/Depts.	7.18	2.59	13.66	3.98	30.95	8.41	16.31	4.83
2. Autonomous bodies Attached & subordinate offices	6.64	5.09	18.16	11.74	20.78	20.98	18.06	14.43
3. Public Sector undertakings	4.51	4.59	18.74	9.91	31.72	15.77	19.95	10.61
4. Total	5.68	4.69	18.18	10.63	24.40	18.98	18.72	12.55

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 (Source : Report of the Backward Classes Commission 1980,  
 New Delhi).  
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We must not forget that SC/STs constitute about 23% of the population while OBCs are 52% of the population. Despite this, SC/STs, socially the lowest of the low, have a relatively better representation than the OBCs. Of course, this is mainly due to 40 years of reservations. Besides, the overall representation percentage reaches double figures for both SC/STs and OBCs partly due to the fact that many jobs in class IV posts are such that even poor forward caste candidates are unwilling to take them up. What is indeed shocking is that 75% of the SC, ST and OBC population occupies totally only 10% Class I posts, and that too 40 years after SC/ST reservation.

Or let us look at castewise representation in managerial cadre. Though the data is a bit old it is quite revealing.

Caste	Percentage in the cadre of Manager
Brahmins	41.4%
Bania, Arora etc.	43.1%
Jat, Patel, etc.	14.3%
OBCs	0.8%
Untouchables	0.4%

(Source : Jain Sagar : Indian Manager, His social origin and career (1971))

This is the state of affairs in the private sector. Brahmins constitute only 5.5% of the Indian population. Let us look at the overall control they exercise in

## Administration, Judiciary and Legislature.

S.No.	Post	Total No.	Held by Brahmins only	Percentage of Brahmins
1.	Secretaries/ Dy. Secretaries, etc.	500	310	62%
2.	State Chief Secretaries	26	14	54%
3.	Governors/Lt Governors	27	13	50%
4.	Supreme court judges	16	9	56%
5.	High court judges	330	166	50%
6.	Ambassadors etc.	140	58	40%
7.	Vice Chancellors	98	50	51%
8.	I.A.S. officers	3,300	2,376	72%
9.	District Magistrates	438	250	60%
10.	Lok Sabha Members	530	190	36%
11.	Rajya Sabha Members	244	89	36%

If we take into account the other forward castes we will find that the control is virtually total.

On the other hand details compiled in 1986 in respect of OBCs is quite revealing. The total number of class I posts in 27 Central Government Ministries or Departments was 10051. Based on their percentage the number of OBCs holding these posts should have been 5226. However the actual figure was a shocking 279 just 5.37% of what it should have been (Source: The Examiner, 6.10.90).

Let us also look at the caste wise land holding pattern in Bihar :

	Upper castes	Intermediary upper castes	O.B.Cs	SCs
Landlords/ Rich peasants	95.90	36.40	4.24	2.67
Middle peasants	1.23	19.79	7.63	2.63
Poor peasants	1.23	16.96	3.39	2.01
Agricultural Labourers.	1.84	23.35	84.74	92.74

Source : Mandal Report : An attack on caste inequality 1990 (NBS/VPS)

Or look at the level of literacy amongst the OBCs. A study conducted in Gujarat, revealed that the level of absolute illiteracy amongst OBCs was worse than that amongst SCs. It was found that the illiteracy levels amongst SCs was 27%, amongst Kolis was 35%, while amongst OBCs it was 46%. Amongst SCs, for every 100 students 6 manage to get college education while amongst Kolis and OBCs, the rate is 2 students per 100. (Prof. Ghanshyam Shah's Article in EPW on 19.1.85).

Ultimately OBCs are nothing else but the Sudras grouped together. They are the lowest group in the four varna hierarchy and their social and economic oppression is too well known and well documented to require any repetition. They are not merely socially and educationally backward but also economically on the lowest rung. No doubt some castes included in Mandal's list ought not to have been classified as backward, but these are only a handful.

One argument which is sometimes heard is that, yes, they are oppressed but they are not as oppressed as the SC/STs. On many occasions they even indulge in caste violence against Dalits. To say the least the argument misses the point. Do not Dalits often take part in communal violence against Muslims? So do you remove reservations for SCs?

Comparison of oppression is also a wrong way of assessment. Indian society is tremendously caste ridden with thousands of sub-castes each claiming at least a marginal superiority over some other caste. If one goes around using the "most oppressed caste" criterion one will end up having only one or two castes at the bottom. In Gujarat, Vankars and Chamars belong to SC category and in the context of society as a whole, are treated virtually as untouchables. But Vankars look down upon and in some ways even



exploit the Chamars leading to skirmishes between the two groups. But does it mean we remove Vankars from the list of SCs ? Or to take another example in Andhra Pradesh, the pot makers consider themselves superior to Kurumas (shepherds and wool weavers), the Kurumas consider themselves superior to Goudas (toddy tappers), Pachmashalis, Dhobis and Barbers. Each higher caste avoids dining in the house of a lower caste. So to whom do you give reservation and whom do you exclude ? Of course if the argument is carried to its logical conclusion we will next have to ascertain whether SCs are more oppressed than the STs and amongst the STs which tribal group is the most oppressed.

In the 4 varna system existing in Hindu society the three higher Varnas-Brahmins, Kshatriyas and Vaishyas have been given extensive privileges social, educational and economic, which have been denied to the Fourth Varna-Shudra and the outcastes. The interests of the three higher Varnas are to a large extent opposed to the interests of Shudras and outcastes. Though caste distinction is a feature, caste oppression and caste discrimination as we have come to know is not in any significant sense a feature of Brahmins vis-a-vis Kshatriyas or Vaishyas but of Brahmins Kshatriyas and Vaishyas vis-a-vis Shudras and outcastes. This is the every day reality of India proved by innumerable investigations, statistics as well as experiences and if one takes an ostrich like attitude towards it, no rational discourse is possible. The only practical way is to divide the Indian society into two broad layers-upper castes/communities and lower castes/communities within which are included SCs, STs and OBCs. Then depending on comparative population one can compartmentalise reservation

as has already been done i.e. 15 1/2% for SC, 7 1/2% for ST and 27% for OBCs.

### VIII. SOCIAL BACKWARDNESS AND RESERVATIONS

Seat reservations can to an extent remove educational backwardness. But how is reservation in jobs and seats going to at all affect social backwardness ?

As discussed earlier social backwardness is very much linked to caste status. Caste system is to a large extent based on and dependent for its survival on a rigid occupational pattern. Brahmins apart from other things are the teachers, healers and administrators; kshatriyas are the warrior caste; Vaishyas are the peasants and traders; and Shudras are the agricultural labourers, barbers, shoemakers, carpenters and other such occupational groups. If Shudras in large numbers start becoming teachers or administrators or army officers or doctors what happens to the sanctity of the caste system ? Undoubtedly it will be undermined. Effective reservation policy is bound to at least partially offset the social backwardness of OBCs.

Even if one ignores the caste system, the social status of a person would still depend to a large extent on the kind of jobs he or she has, and the kind of degree he or she has. One need only give a cursory look to the matrimonial columns appearing in newspapers to realise the high social status of doctors and engineers, (Seat Reservation is primarily provided in these two branches). It is also well known that in our country high social status is attached to Government jobs.

Effective implementation of Reservation is bound to affect the social status of OBCs.

### **IX. CRITERIA FOR BACKWARDNESS**

Much noise has been made about the caste criterion for backwardness, by even those who support reservations. The anti-reservationists are of course quick to point out that Supreme Court has banned the use of caste criteria and so the Mandal Report is constitutionally bad. It is true that Mandal uses caste criteria but he links it up with 11 other indicators as shown earlier in this paper. It would be wrong to say that Mandal only uses caste criteria for identification of backwardness.

Indian Society also provides a further problem. The major plank of Hindu society is the four Varna system. Even amongst Muslims, Christians and Sikhs, there are strong indicators of a replication of a varna type hierarchy. We find Christian Harijans, Majabi Sikhs, Muslim Pinjaras, and numerous other such caste type formations which are virtually treated in their respective societies as outcastes or Shudras. So how do you define social backwardness in Indian society except in relation to caste? Ultimately social situation depends on the status, occupation, style of life etc. In all these aspects a person's caste most often becomes the dividing line. If you are a harijan, no matter which step of the economic ladder you are, you will be looked upon as 'Bhangi'. Mandal himself (a Yadav) faced this problem in his school despite his father being a landlord. On the other hand there are no examples of Patels facing similar problems from Rajputs (though being lower in the caste hierarchy) or Jats facing similar problems from Brahmins. This is more generally a problem faced by the backward castes

and outcastes i.e. Shudras and Dalits. For Dalits reservation has already been provided upto 15% i.e. proportionate to their population. Mandal provides reservation for Shudras.

The objective is to provide reservation to socially backward categories. It is true that broadly and speaking in a general way caste status also determines economic status. Even if some of the OBCs may not be badly off financially, the social stigma, schooling conditions, family attitudes due to generations of discrimination and prejudice of teachers etc. are such that sufficient attention and guidance for studies is lacking. To expect them to succeed with flying colours is to expect the impossible. If on top of this the financial condition is bad good school results are even more of a problem. In this situation to provide reservation for lower castes is the only way to allow them access to specialised academic studies. Similar problems are faced in the job market. Selection to a job itself depends on many occasions on caste criteria. On other occasions, even after appointment, promotional prospects, transferability, etc. depend on caste criteria. It is to overcome this problem that reservations are provided and what better basis than caste status to decide the social backwardness?

While analysing the Mandal Report an aspect which needs to be borne in mind is that his job was not to draft a party manifesto but to prepare a constitutionally workable report. He had to work within the four corners of the law as laid down by the Constitution. Besides, most of the previous reports have been challenged in courts, so he had to take into account the various court decisions on this, lest his report was also challenged (which it has already been). It is all right to say that ultimately it is only genuine socialism which can solve the problems but it was not Mandal's task to provide a radical

charter for removal of exploitation.

Let us look at the constitutional provisions. Article 14 provides that all citizens are equal before the law and will be treated equally. Article 15 (1) prohibits discrimination on grounds of race, caste, sex, religion or place of birth. Article 16(1) provides that in respect of public employment there will be equality of opportunity for all.

Article 15 (4) and 16(4) are the reservation clauses. Article 15(4) says; "Nothing in this Article .....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".

Article 16 (4) reads: "Nothing in this Article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services of the State".

OBCs who constitute 52% of the total population occupy only 4% of the class I posts in the State. Obviously this is not adequate representation and therefore reservation. Reservation has to be provided to "socially and educationally backward classes".

The Constitution gives no definition of backward classes, so the past 40 years have been spent by Courts in trying to formulate a definition of backward classes- an exercise in which the Courts have failed miserably.

Let us first find out what the Courts have to say about the use of "Caste" for classifying backwardness.

Balaji's case (AIR 63 SC 649) was the first of its kind where the Court was called upon to decide the list of OBCs prepared by the Karnataka Government. The Court observed: "A Class according to dictionary meaning shows division of society according to status, rank or class. In the Hindu social structure caste unfortunately plays an important part in determining the status of the citizens. Therefore in dealing with the question as to whether any class is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens. In this connection it is however necessary to bear in mind that the special provision is for classes of citizens and not for individual citizens as such and so though the caste of the group or citizens may be relevant, its importance should not be exaggerated".

So the Supreme Court held that caste can be a relevant but not the sole or dominant consideration. In M.R. Rajendran's case, (AIR 1968 SC 1012) where the Tamil Nadu Government had mainly used the caste criteria, the Supreme Court held: "Now if the reservation in question had been based only on castes and not taken account of the social and economic backwardness of the caste in question, it would be violative of Article 15(1). It must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and economically backward, reservation can be made in favour of such a caste on the ground that it is a socially and economically backward class of citizens within the meaning of Article 15(4)."

In Trilokinath Tiku's case (AIR 69 SC. 1) the Supreme Court compounded the confusion by the following words: "The members of an entire caste of community may in the social, economic or educational scale

of values at given time be backward and may on that account be treated as a backward class, but that is not because they are members of a caste or community but because they form a class."

In Perriakerrupani's case (AIR 71 SC. 2303) the Supreme Court, said that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the reality. On the other hand in Thomas's case (AIR 75 SC 563) one of the Judges said, "the socially and educationally backward classes are groups other than groups based on caste." But went on to say that caste can still be an important criterion : Thus caste as a criterion has never been disallowed. The only question is what should be the weightage given to it.

Caste can be used along with other factors. What are these other factors? In Balaji's case itself, the Supreme Court had recommended that occupation could be one such factor. In Trilok Nath's case, the Court felt that inadequate representation in State services by itself cannot be decisive. It has to be used with other criteria.

In Janaki Prasad Parimoo's case the Supreme Court held that mere poverty cannot be a test of backwardness. Applying this yardstick, priestly classes following a traditional profession were not held to be backward. Also cultivators of land designated as backward measured by the size of the holding was held to impermissible.

In the case of the State of U.P. versus Pradip Tandon (AIR 1975 SC. 563) reservation in favour of rural

areas was held to be unconstitutional on the ground that poverty in rural areas cannot be the basis of classification. But reservation for hill areas was held to be valid.

What is enumerated above is a most simplified statement of Supreme Court decisions. But when one actually reads these decisions the confusion is striking. In short, neither any concrete fool proof criteria nor any understandable principles have been laid down to ascertain backwardness.

So there was tremendous confusion as to what should be the basis of backwardness. When State Governments prepared lists of OBCs they invariably landed up in Courts and no one had any clue as to what would happen. As a result, in 1985 the Karnataka Government made a special request to the Supreme Court to once and for all clearly decide the criteria for backwardness. Here is what the five Judges had to say:

1. Justice Chandrachud. Backwardness should be comparable to that of SC/ST coupled with a means test to be applied to each backward class as a whole.

2. Justice Desai. He totally rejects caste criteria and to use his words "The only criterion which can be realistically devised is the one of economic backwardness. To this may be added some relevant criteria such as the secular character of the group, its opportunity for having livelihood, etc." It is not clear whether he was in favour of an individual or class economic cut-off.

3 Justice Chinappa Reddy

He totally rejects "comparability to SC/ST criteria"



as proposed by Justice Chandrachud. This is on the basis that SC/STs social backwardness is so specific that if you try to decide backwardness of other groups on the basis of a comparable criteria you will end up classifying everyone else as non-backward. His criteria is class poverty, not individual poverty as the primary test. Other ancillary tests are the way of life, the standard of living, the place in the social hierarchy, the habits and customs etc.. Despite individual exceptions it may be possible to identify social backwardness with reference to caste, with reference to residence, with reference to occupation or some other dominant feature.

4. Justice Sen : Poverty along with caste or sub-caste for the purpose of identification. But poverty not to be the sole criterion.

5. Justice Venkatramiha : Backward classes are those born in a particular caste or tribe or community which were backward. Purely caste/community based criterion.

In short, no two Judges could come to a common conclusion. As the Supreme Court itself admitted: "A brief summary of decisions bearing on the subject would reveal the confusion and the present state of malaise".

With such divergent criteria what was Mandal to do? One thing was clear that caste could be a relevant factor and could be linked with other factors to arrive at the test of backwardness. This is precisely what he does. He links caste with 11 other social economic and social indicators to determine the test for backwardness. There is nothing unconstitutional about this.

## x. INSTITUTIONALISATION OF CASTE

Even pro-reservationists get carried away by the argument that the caste system will be institutionalised if caste-criteria is the basis for deciding who are OBCs. This is a classic case of inverted logic.

It is the institution of caste system which gives rise to Mandal not vice versa. The caste system has been existing in the country for thousands of years. Caste exploitation, caste prejudices, caste discrimination and caste riots are very much part of our every day reality. Some restructuring some upward mobilization, some breakdown has definitely taken place but the overwhelming majority of the lower castes still carry with them the burden of high societal oppression. Mandal does not institutionalise, he merely recognises this reality.

Communal identities are not a result of Muslim personal Law, sexism is not an effect of Woman's Right to Property Act. Dowry deaths do not originate from the Dowry Prohibition Act. No Brahmin will permit his daughter to get married to a Dalit boy just because SC/ST reservations are abolished. There is no causal connection between the burning of a poor illiterate Dalit and reservations. These are just plain and simple excuses. One does not oppose concrete rights merely because academically one feels uncomfortable about them.

When this argument comes from anti-reservationists it smacks of utter dishonesty and double facedness. If caste institutionalisation is the result of Mandal, then why is it that even in present day India only

Brahmins can become priests and perform religious ceremonies. Why in Modern India are there thousands of temples and wells which are inaccessible to the lower castes ? Why is it that lower caste people are burnt if they so much as dare to wear the 'sacred thread' ? Why is it that the "right of first night" is exercised by upper caste landlords over only lower caste women ? (Not that it can be tolerated in respect of anyone).

It is absolutely nauseating to hear these caste eradicators going on and on about Reservations throwing India back into the mediæval times. What great steps have they taken to eradicate casteism ? If they are so worried about caste institutionalisation why don't they take a vow that in their or their children's marriage caste will not be a criteria ? Why don't they take steps so that a person belonging to the Bhangi caste is appointed as the next Shankracharya ? Why don't they publicly boycott all gatherings of caste associations ? Why don't they refuse to enter temples where low caste persons are denied entry ? "When the communists have been talking about class and class struggles the upper caste intellectuals have turned around and said "this is a country of castes but not of classes". When the Government is granting caste based reservations to socially and educationally backward classes they turn around to say you must provide class based reservations. Their philosophy is simple-whichever idiom disturbs their comforts they would turn around to show the other idiom."

Mr. Shourie uses the same method. Just to give one example - when he writes about Bofors, the State machinery is rotten, but when he writes on Mandal it is 'manned' by the meritorious and the efficient.

Yes. To an extent caste identities will be sharpened due to reservations. But that hardly furnishes a reason for opposing reservations. Any beneficial legislation is bound to at least somewhat sharpen the existing contradictions. Implementation of Minimum Wages Act does lead to increasing resort by the Management to the hire-fire rule. But that does not mean we should oppose the Minimum Wages Act. Prevention of Alienation of Tribals Lands Act does sharpen the contradiction between Tribals and Non-Tribals and also gives more substance to tribal as against Indian or peasant identity. Do we therefore oppose the Act? These kinds of arguments are raised every time positive discrimination measures are adopted.

India is already divided on caste basis. Caste identities already exist. The objection to these identities cannot be that in the abstract they give rise to divided loyalties, but that they lead to caste oppression and its legitimisation. Is not reservation, if properly implemented and even otherwise, in the long run a contributory factor towards preparing the lower castes to fight back the oppression? Obviously it is not a solution. But is not reservation going to provide some avenues, some hope and some confidence to wage battle against social oppression. If we take the anti-reservationists argument to its logical conclusion, caste atrocities in southern-high reservation States should be much more than the northern low-reservation States. Again, the facts are quite the reverse. One should of course, not get carried away by reservations. One of the major reasons for the relatively less backward condition of the oppressed in some southern States and in Maharashtra has been due to a long history of anti-forward caste movements in these States. Is it not

remarkable that lower castes have been able to achieve some respectability only when they have mobilized on 'caste basis' ? One really wonders whether this fact is what causes the anti-reservationists to shout from roof tops against "Caste-institutionalisation."

## XI. ECONOMIC CRITERIA

All right, all right say some, may be some reservation is necessary. But it should be on an economic basis. Those who argue for economic criteria are most of the time not even clear as to what they are talking about. Theoretically four different kinds of economic cut-offs can be applied.

### (i) Overall Economic Cut-off Rule.

Have reservation purely on economic basis i.e. irrespective of the caste, community education, occupation etc. Just have a simple cut-off point. For instance, one can decide to have, say 25% reservation for all those whose family income is below Rs. 2000 p.a. or some such formula. No other criterion is to be considered.

### (ii) Economically Backward Classes Rule.

Though not the sole, one of the criteria for deciding whether a "class" is backward can be economic. The overall economic situation of the class and not of individuals has to be determined. This is what Mandal has done.

**(iii) Individual Economic Cut-off Rule :**

Within the backward classes a financial cut-off for individuals can be provided. An individual within a "backward class" will be eligible for reservation only if his or her family income is below a particular ceiling.

**(iv) Preference Rule :**

Do not provide for any economic cut-offs but if, for a job or seat, there is competition amongst OBC candidates, to give preference to the OBC candidate who is financially worse off.

Mandal has preferred the Economic Backward Classes Rule i.e. while deciding whether a particular caste is backward or ~~not~~, he has taken into account four economic indicators. We will argue that this is the correct approach. Many times when arguments are raised against Mandal, the fact that Mandal takes into account economic criteria is totally glossed over.

let us first critically examine the first option i.e. Overall Economic Cut-off Rule. Two major problems arise. First, the Supreme Court has repeatedly held that pure economic criteria cannot be a basis for reservation. in Janki Prasad Parimoo's case and Pradip Tandon's case (AIR 75 SC 563) the Supreme Court has categorically said that mere poverty cannot be the test for backwardness. Mandal, even if he wanted to adopt such a criterion, had no choice in the matter. When we are looking for practical and legally sustainable solutions to a concrete problem, it is no point coming out with revolutionary sounding slogans, if on the very next day they are going to be struck

down by the Court. it is true that the NF Government had made an announcement proposing to reserve 5% to 10% seats for economically backward classes, but whether this will ever materialise into an actual policy and if so whether it will stand the test of judicial scrutiny is yet to be seen. Besides, you do not go around appointing commissions if the idea is to devise an Overall economic Cut-off point. It is half a day's job for any secretary to look at the latest census data, see what is the poverty line and provide a cut-off. The fact that the Mandal Commission was appointed by Janata Party, granted extensions by Cong. (I) and not opposed at that time at all by any of its present major Opponents is itself a manifestation of the fact that no one wanted an Overall economic cut-off in any case.

Second, the purpose of reservation is and should be to offset social and educational backwardness. For overcoming purely economic backwardness, other means like free or subsidised education, books, hostel accomodation etc. should be used. One of Mandal's recommendations is precisely this. The lack of education seats and jobs for SCs, STs, and OBCs is not purely due to economic reasons. It is also to a large extent a result of their social backwardness. As Prof. Ghanshyam Shah notes, "some castes in which the rich members are relatively more provide through caste associations encouragement to the poor of their caste for education by providing scholarships, books, hostels, etc. But those castes where the number of rich members are relatively less, even if they have a caste association, it is very difficult for them to help the poor of their caste. Some Baniyas, Patidars and Brahmin caste Associations have lakhs of Rupees while, for instance, the Koli Caste Associations have

hardly any money to even carry on correspondence. Because of this, the poor students in Bania, Brahmin and Patidar communities do not have much of a problem in acquiring higher education as a Koli or Waghri Student would face." The proportion of rich people in the upper castes is much higher than those in OBCs, SCs or STs. So just classifying all the poor as one class is not satisfactory for reservation.

As Kancha Ilaiah, a BC person from Andhra Pradesh who has been able to benefit from reservations says in an article in EPW (13.10.90) "Having come from iniquitous backgrounds, iniquitous cultures, speaking languages which have been reduced to being "dialects", differing from others in our whole upbringing it is just not possible to compete in tests even if some economic facilities are provided".

A poor Brahmin may be economically an equivalent of a poor 'Koli' or a poor 'Machhi' but socially he is not. As Ghanshyam Shah's quote suggests there is much more opportunity for Brahmins to acquire higher education than are available to the children of Koli. So also the social and family environment available to Brahmins is much more favourable. Poor will be found in both upper and lower castes. But why only a poor dalit carries night soil on his head and not a poor Brahmin? Even a poor Brahmin family does not stay outside the village. They already have role models of higher education to follow. The family apathy towards higher education is much less among Brahmins. Neither in school nor in college do they have to face social humiliation or discrimination. Caste status is not going to effect a Brahmin's job opportunities. A Brahmin's confidential reports are



not going to be meddled with because he or she are Brahmins. All these advantages are not available to Koli or Macchi students. Similar comparisons will hold true between any high caste student and an OBC. Even after the Mandal recommendations are implemented the scenario is not going to drastically change. The experience of reservations in the past 40 years is enough to make us realise that a fundamental reversion of such a process in the short term is not likely.

The proponents of the third option namely : individual economic cut-off within a backward class, are also wrong. The poorer sections amongst the OBCs are not even able to complete their matriculation let alone compete for Engineering or Medical seats. They are not likely to compete for the Class I or Class II posts in the job hierarchy. This situation will continue for quite some time. There is a strong apathy against education, and in the absence of role models, social discrimination is unlikely to give them a thrust towards higher education or high ranking jobs. It is the financially well off, who will have some chance for competing for educational seats or higher jobs. This is what had happened to the SCs and STs. By not providing reservation for economically well off OBCs one is virtually, nullifying reservation. Because there is no financial cut-off amongst SCS/STS they have been able to throw up at least some Engineers, Doctors and IAS Officers. The upper castes will obviously prefer reservations with individual economic criteria because effectively it means negating reservations.

Let us also try to be realistic. Financial assistance for SCs and STs has been institutionalised since more

than 50 years. But the proportion of central government expenditure devoted to scholarships has not reached upto 0.1 per cent up to the third plan in the case of SCs and not even in the sixth plan in these case of STs. The highest amount that is devoted to the post matric scholarships of the scheduled castes was 0.16 per cent. in the fifth plan and it was 0.027 per cent in the case of Scheduled Tribes in the Fourth plan period.

The argument that the elite of OBCs will reap benefits at the expense of the poor member is also baseless. Out of the reservation quota of 15% for SCs hardly 4% is actually filled. Assuming this entire 4% to be occupied by an elite, there is still a balance of 11% which even the elite are unable to fill and these posts are occupied by neither the elite nor the poor of OBCs. The question of one group benefiting at the expense of another within the reserved category arises only when the full quota is filled up. Competition for jobs in the sense we are talking about, can only take place if enough jobs are not there for everyone or, to put it in other words, when candidates exceed the number of jobs. Otherwise where is the question of competition ? Within the reserved category there is as yet and for quite some going to be enough quota for everyone. So where is the question of one group benefiting at the expense of another ?

The same argument holds true for the fourth option i.e. preference to poor. This situation will arise only when a choice has to be made amongst two OBC candidates., i.e. when there are more OBC candidates than seats/jobs available. Till then talking about preference is meaningless.

All in all, the criteria chosen by Mandal, namely, class economic criteria rather than a blanket economic criteria or an individual economic criteria is the most suitable at least for quite some time to come.

## **XII. THE MERIT MYTH**

"Efficiency is very much on the lips of the privileged whenever reservation is mentioned. Efficiency it seems will be impaired if total reservation exceeds 50%. Efficiency it seems will suffer if the carry forward rule is adopted, efficiency it seems will be injured if the rule of reservation is extended to promotional posts. From the protests one would think that the civil service is a heavenly paradise into which only the archangels, the chosen of the elite, the very cream, may enter and be allowed to go higher up the ladder. But the truth is otherwise. The truth is that the civil service is no paradise and the upper echelons belonging to the 'chosen' classes are not necessarily models of efficiency. The underlying assumption that those belonging to the upper castes and classes, who are appointed to the non-reserved posts will, because of their presumed merit, 'naturally' perform better than those who have been appointed to the reserved posts is a vicious assumption, typical of the superiority complex of the elitist classes. There is neither statistical basis nor expert evidence to support the assumption that efficiency will necessarily be impaired if reservation exceeds 50%, if reservation is carried forward or if reservation is extended to promotional posts. Arguments are advanced and opinions are expressed entirely on an ad-hoc presumptive basis. Although in actual practice their virtual

monopoly in elite occupations and posts is hardly threatened, the forward castes, (are) nevertheless increasingly afraid that they might lose this monopoly in the higher ranks of government service and the profession. The mere securing of high marks at an examination may not necessarily mark out a good administrator, one takes it, must be one who possesses among other qualities the capacity to understand with sympathy and therefore, tackle bravely the problem of a large segment of population constituting the weaker sections of the people. And who better than the ones belonging to those very sections? Why not ask ourselves why 35 years after independence, the position of the SCs, etc. has not greatly improved. Is it not a legitimate question to ask whether things might have been different had the district and the state and Central Bureaucrats been drawn in larger number from these classes?"

These are not the words of some fanatic OBC but of a Supreme court judge directly confronted with the issue of OBC reservations in Vasanth Kumar's case (AIR 85 SC 1495). But still "Meritocracy will be substituted by mediocrity" is the chorus song of messers Seerwai, Shourie and Palkhiwala. It is claimed that efficiency will suffer, administration will break down and there will be complete chaos in the country. Palkhiwala - the most prominent of the lot is fearing that security of the State will be threatened and India will be wiped out from the world map. Though superficially very attractive a closer look exposes this fraudulent argument.

In Karnataka, A.P., Maharashtra, Gujarat, Kerala, Tamil Nadu, etc. reservations for SC/ST as well as OBCs have been institutionalised for many years.

In most, of these States, quantum wise, they are equivalent to the Mandal recommendation. In Karnataka and Tamil Nadu, the total reservations are 68% and in Andhra Pradesh 71% (i.e more than the so-called cut-off of 50%). On the other hand, States like Rajasthan and Orissa do not have any reservation for OBCs and everyone (apart from SCs/STs) is appointed apparently on the basis of merit. Similarly in Haryana it is 5% and in Bihar it has only been introduced recently, and hardly has had any chance for becoming institutionalised. As per the grand thesis propounded by Messers Shourie, Seerwai and Palkhiwala, administration in Bihar, Orissa, Haryana and Rajasthan should be much more efficient and meritorious than that in Maharashtra, Tamil Nadu or Karnataka. But any school child will be able to point out that the facts are reverse. One is not trying to prove that reservation leads to better administration but these self-appointed leaders of the upper castes, are expected to do at least some homework before distributing their pearls of wisdom. The least which is expected of them is to study the effect of reservation in States which have already been implementing this for a number of years.

The argument of merit is even less substantial on the question of reservation in educational seats. It should be realised that here, the only reservation is at the point of entrance and not at the point of passing. The minimum marks required for obtaining the Degree are identical for all. Reserved candidates do not get any additional grace marks nor is any leniency involved in their paper correction.

The logic behind the demand for meritocracy namely "otherwise the nation will suffer" needs also to be

reassessed. If one look for instance at the merit holders from the cream of higher education i.e. I.I.T. every year more than 60% of the successful students leave India in search of a green card and are of no use to country. Also how many upper caste doctors practice in low-caste areas ? The dearth of medical facilities, in low caste areas is well-known. The upper castes neither want to practice in these areas nor do they want anyone from backward castes to become a doctor. Obviously public interest requires reservation. One should also not forget that your marks for entrance to I.I.T. or Medical education depend to a large extent on whether your father has sufficient money to spend on coaching classes and if you are a woman, whether in your caste woman's education is at all given a priority. What is wrong if these students are allowed to offset their handicap through reservation ?

Merely because a backward class student has lower marks at the time of admission does not necessarily mean that he or she will lag behind throughout. In a recent study conducted in Andhra Pradesh (Paramaji, S.(ED) Caste Reservations and performance), it has been clearly proved that, for instance, if a backward class category boy is admitted in an engineering college with 65% marks and a forward caste boy with 68.5% in the first year, the backward class boy is coming up with 70.1% while the forward caste boy is coming up with 70.2% at the end of four year courses. Generally while the average percent growth for forward caste was 2.45 students per cent for Backward caste students it was 17.44 per cent. Similar evidence has been provided for I.I.T. students at Kanpur (Om Prakash : Caste and politics in Indian Education, 1986) Additional studies are likely to throw up similar

results.

In any case merit in the Indian educational system at least in its non-higher educational aspect is nothing else but a competition of memorising useless facts. It has nothing to do with creativity or application of mind. Besides it is well known and in many States even legal for private medical and engineering colleges to charge lakhs of rupees as capitation fee for admission of students. In all these private colleges there is always a large management's discretion quota which can be filled in complete disregard to merit. Why does Palkhiwala not open his mouth about this ?

Even in case of reservation of jobs, it is not that minimum qualifications are done away with for recruitment. Both at the level of recruitment and promotion minimum qualifications, minimum standards etc. are always required even from the reserved candidates. Mr. Palkhiwala can rest assured that a non-graduate cannot become the Air Chief Marshal of India even as per the Mandal Commission. And what are merit and efficiency anyway ?

"Efficiency means, in terms of good government not marks in examinations only but responsible and responsive services to the people. A chaotic genius is a grave danger in public administration. The inputs of efficiency include a sense of belonging and of accountability which springs in the bosom of the bureaucracy (not pejoratively used) if its composition takes in also the weaker section of 'We the people of India'. No other understanding can reconcile the unjust past".

"Sincere dedication and intellectual integrity-these are some of the major components of "merit" and "suitability" not degrees from Oxford or Cambridge; Harvard or similar, though Indian, institutions. Unfortunately the very orientation of our selection process is distorted and those like the candidates from SCs & STs who, from their birth have had a traumatic understanding of the condition of agrarian India have in one sense, more capability than those who have lived under affluent circumstances and are callous to the human lot of the sorrowing masses. Moreover, our examination systems make memory the master of merit and banishes creativity into exile".

This is what the Supreme Court had to say in two separate Judgments dealing with reservations (and let me assure Mr. Shourie that all the Judges involved belonged by birth to the upper castes).

What merit is Mr. Shourie talking about ? Thousands of undertrials languish for years in jails manned by upper caste superintendents but Mr. Shourie says it is reservation which affects efficiency. Hundreds of innocents die every year in encounter deaths at the hands of military forces headed by upper caste personnel, but Mr. Shourie says it is reservations which affects efficiency. Kickbacks and not merit is the reason for buying German Submarines but Mr. Shourie says that it is reservation which impairs efficiency. Development licenses are sold for a price by upper caste ward officers to rapacious upper caste builders, but Mr. Shourie says that it is reservation which will impair efficiency. All the Judges of Bombay High Court against whom no-confidence motions have passed belong to the upper castes but Mr. Shourie



says it is reservation which affects merit. The links between Mr. Arun Nehru and Bofors are deliberately suppressed by Mr. Shourie, a member of the upper caste, but he says that it is reservation which will affect merit.

What efficiency and what merit ? In our country efficiency for the police only means searching out innovative methods of torture; efficiency for the military is equivalent to increasingly brutalised repression and efficiency of administration means speedier illegal licenses to rapacious industrial houses. The hue and cry of efficiency is just a garb used by upper castes and upper classes to maintain their hold. For forty years we have allowed this 'meritorious' and 'efficient' bureaucracy to deliver the goods. It has failed completely, For forty years we have let the 96% upper caste top bureaucrats rape and ravish the country. It is high time that either they step down or are pulled down. If this is the kind of efficiency which will be impaired by reservations the earlier it is done the better. Efficiency can only mean greater response to people's needs. The "cream" of society has completely failed to deliver the goods. Is it not time the others are given a chance ?

K. Balgopal in his EPW Article (6.10.90) very effectively counters the merit argument in the following words: "For four full decades it is the forward caste Hindus who have dominated every aspect of life in the country. They have held all the land, all the capital in trade, finance and industry, they have held all the top position in administration, education, science, technology and medicine, and what a pass they have brought the country to ! The economy is running a fever of nearly double-digit inflation, coupled with sluggish growth and paucity of resources; its politics is ridden with crises of all kinds and is perverted by the ills

of corruption, its agriculture is stagnant even in green revolution show piece areas; its administration is inefficient, unimaginative and of course corrupt. And it is these people who today claim that if others are allowed to get in, that will spell the death of development for India !"

"But of course the biggest reservation of them all is property. Property is reserved for the progeny of the propertied, for generation after generation, irrespective of talent or merit. It will no doubt be treated as sacriligious if one suggests that hereafter property shall not be inherited by the children of the propertied, but by the persons who possess the greatest merit in handling it. After all, if it is a national disaster for jobs to be given to meritless persons on grounds of caste, it is equally a national disaster for property to pass into the hands of persons not competent to put it to use for no reasons other than a genetic accident. And let nobody answer that if they are inefficient in managing property than they will lose it sooner or later, and let nobody prove a marginalist theorem to support this. We know very well, that no such thing happens in real life."

Let us conclude this merit argument by reproducing a lucid comment of the Supreme Court: "And what is merit ? Is not a child of the SC, ST or OBC who has been brought up in an atmosphere of penury, illiteracy and anti-culture, who is looked down by tradition and society, who has no books and magazines to read at home, no radio to listen, no T.V. to watch, no one to help him with his housework, who goes to the nearest local board school or college, whose parents are either illiterate or so ignorant and ill-

informed that he cannot even hope to seek their advice on any matter of importance, a child who must perform trudge to the nearest public reading room to read a newspaper to know what is happening in the world, has not this child got merit if he with all disadvantages is able to secure the qualifying 40% or 50% of the marks at a competitive examination where the children of the upper classes, who have all the advantages, who go to St. Paul's High School and St. Stephen's college and who have perhaps been specially coached for the examination may secure 70%, 80% or even 90% of the marks? Surely a child who has been able to jump so many hurdles may be expected to do better and better as he progresses in life? Why then should he be stopped at the threshold on any alleged meritorious principles? The requirements of efficiency may always be safeguarded by the prescription of minimum standards. Mediocrity has always triumphed in the past in the case of the upper classes. But why should the so called meritorious principle be put against mediocrity when we come to SCs, STs, BCs?" (AIR 1985 SC. 1495).

### XIII. Exception or Rule? The 50% Debate.

Much ado has been made about Mandal pegging reservation at 27% on the ground that reservation-an exception is being converted into a rule. Or as Shourie puts it, "A concession becomes a right, a ceiling beyond which it is not to be given becomes a floor....." Mandal himself fell prey to this

hypothesis as he believed that the Supreme Court has laid down a ceiling of 50% for reservation. Thus, though the total population of OBC was 52%, he reserved only 27% seats and jobs for them as reservation in excess of this would cause the overall reservation (including 22% for SC/ST) to cross the 50% mark.

But the reality is quite different. No court has ever laid down any clear cut Laxman Rekha of 50%. In the earlier period there was some confusion about the concept of reservation and the Courts felt that it was an exception to the rule of equality. Consequently it could not be so extensive as to nullify the rule. In the 1964 case of Balaji's the Supreme Court felt that the rule of reservation was an exception, to the equality clause. The Judges said "Speaking generally and in a broad way, a special provision should be less than 50%". Even here there is no definite principle laid down about 50% cut off.

In last 15 years even the "Exception" concept has been discarded and reservation is considered an integral part of the principle of equality. As a result, it would be logically absurd to lay down any maximum limit. In the case of Akhil Bhartiya Shoshit Karmachari Sangh (1981.1. SCC 246) it has been clearly held that : "Article 16 (4) is not an exception to Article 16(1). It is a facet of Article 16(1) which fosters and furthers the idea of equality of opportunity with special reference to an under privileged and deprived class of citizens to whom formal or legal equality is not practical or factual equality".

In Vasanth Kumar's case (AIR 1985 SC 1495) the Balaji case which has been cited ad nauseam by Shourie and others in furtherance of their argument of 50% as the maximum limit has been reinterpreted as follows:

"For a court to say that reservation should not exceed 40% 50% or 60% would be arbitrary and the Constitution does not permit us to be arbitrary. In the Balaji case the court confessed 'In this matter again we are reluctant to say definitely what would be a proper provision to make' .....Naturally if the lost ground is to be gained, the extent of reservation may even have to be slightly higher than the percentage of population of the backward classes". So what is the complaint ? Mandal grants only 27% reservation for 52% of the population.

In Pradeep Jain's case (1984 3 SCC.654) where the question was of various types of reservations (locality based, etc.) for medical seats, the Supreme Court held that reservation should not exceed 70%. Similarly in Dipak Sibal's case, 71% reservation was permitted for seats for evening L.L.B. Classes. Even in many States more than 50% seat are reserved. In Madhya Pradesh 62% seats and in Karnataka 68% and Tamil Nadu 68% seats have been reserved.

It is nonsense that 49% reservation converts an exception into a rule or that constitutionally more than 50% seats cannot be reserved. Reservation is not an exception to the equality principle, it is not a deviation from the equality principle, it is a method for historical unequals to secure future equality. Without reservation equality becomes meaningless.

#### XIV. PROMOTION, CARRY FORWARD AND THE REST.

The anti-reservationists, especially Shourie and Palkhiwala have tried to make out that the biggest monstrosity of Mandal Commission report is its recommendation that reservation should not only be at the point of recruitment but also at all levels of promotion. This, it seems, is aggravated by the recommendation or the carry forward rule which allows for unfilled reserved vacancies to be carried forward for 3 years before being dereserved. A strong innuendo is also made that this kind of reservation is historically unprecedented.

But is it so ? Reservation is a package deal. Even for SCs/STs there is reservation in promotions and carry forward. Various states which provide for reservation for OBCs also provide for reservation for OBCs also provide for promotional and carry forward rules. These aspects have already undergone rigorous Supreme Court's scrutiny. In no less than 3 Supreme Court cases, Rangachari, Thomas and Akhil Bharatiya Shoshit Karmachari Sangh the Supreme Court has repeatedly held that reservation in promotions and the carry forward rule are constitutionally valid and are in fact necessary for achieving genuine equality of opportunity. It is an absolute fraud on the people for Shourie (even otherwise legendary for his wilful suppression of facts) to make it appear as if reservation in promotions or carry forward is a macabre creation of Mandal.

What is carry forward any way ? Those reserved vacancies which are not filled because of unavailability of reserved candidates are carried forward for 3 years and thereafter dereserved. If properly implemented in its totality reservation cannot give

rise to an unmanageable problem of carry forward since most of the positions would be filled. Instead of crying ourselves hoarse about the carry forward rule it would be more meaningful and in their interest if the anti-reservationists instead try to spend some time over implementation. Secondly, even against reserved vacancies for which reserved candidates are not available temporary appointment of open candidates are always made and at the end of a 3 year period upon dereservation these open candidates are confirmed. Third, the carry forward rule does not mean more than 50% reservation. Whichever way you implement the carry forward rule, overall reservation for SC/ST and OBC can never exceed 50% of the total jobs.

Social oppression is a historic phenomenon. Its eradication will also require a historical perspective. Even after all the opportunities are provided the OBCs, whose social oppression dates back 2000 years cannot be expected to become eligible to avail of the benefits in the first year itself. To imagine that from the beginning or within a short span sufficient OBC candidates will be able to pick up all the reserved jobs (even with relaxation of marks) is to live in illusion. A cursory look at the history of reservation for SC/ST and OBCs clearly shows that even after decades of reservation sufficient candidates are not found, or are by some trick, excluded. The carry forward rule in fact was introduced consequent to the initial reservation policy, when the Governments realised that unless the carry forward rule for at least 3 years is provided reservation policy will become a mockery. Reservations in promotions have also similarly received absolute sanction from the Supreme Court and in Rangachari's case (AIR 62 SC 36), Thomas's case, Akhil Bhartiya Shoshit Kamachari Sangh Case (1981.1. SCC.246) and in Nagatha's case (1986.2.SCC.679).

In all these cases giving concessions and relaxations to reserved candidates was held to be valid.

Without reservation in promotion what is most likely to happen is that the reserved candidates will remain in class IV posts as peons and sweepers and at best as junior clerks. The purpose of reservation is not just to provide jobs to the reserved candidates but to ensure that they receive adequate representation at all rungs of the employment ladder. Historical oppression can only be offset by positive discrimination even at the expense of some eligible, open candidates. Otherwise the hierarchical four varna societal structure will be repeated in the hierarchical four class employment structure. It is well known and well-documented as to how deliberately, confidential reports and vivas are manipulated to prevent low caste people from getting promotions.

Besides, even for the reserved candidates it is necessary to have some minimum requirements and qualifications for promotions and they are not entitled to promotion merely because they belong to the reserved category. As Mandal points out and as has been repeatedly directed by the Supreme Court it is the responsibility of the respective departments to provide in-house training to the reserved candidates. If the past history of reservations is anything to go by, there are very promotional posts actually filled by reserved candidates. The over and above Rule (i.e. rule providing that those OBCs who are selected on merit cannot be offset against the Reserved quota) has also come in for a lot of flak.

You not only want 50% reservation but in addition want to eat up the balances ! Where will this leave



the non-backward castes ? A good question. But again without any substance. The over-and-above rule has been there for SCs and STs for decades and even for OBCs in States which provide for their reservation. The Supreme Court has also upheld the validity of this rule.

Suppose a rule as suggested by Shourie namely, any reserved category person appointed on merit should be included within the 50% reserved quota is agreed to, what is the likely result ? No SC/ST/OBC can be appointed against the open category. This means for the balance of 50% seats only forward caste candidates can be appointed. In other words an effective legally recognised reservation of 50% seats and jobs for a forward caste and Brahmin population of 26%. But does this not militate against Shourie's own argument against reservation ? Well.. may be. But how does a little trifling with truth matter if it results in the desired frenzied outcry from the upper castes.

On the other hand let us look at the working of the over-and-above rule. Let us even assume that all 50% reserved seats will actually be occupied by reserved candidates (even in the long run a highly improbable scenario). At present about 4% OBCs in class I posts acquire jobs on the 'merit' criterion. Similarly about 1% SCs/STs acquire it on 'merit' criterion i.e. totally 5% reserved candidates actually get jobs on the basis of the so-called merit criterion. Suppose this figure doubles in the next twenty years (again highly unlikely). Then the reserved candidates will totally occupy 10% of the non-reserved posts. If the over-and-above rule applied, the 26% forward castes would still be occupying 40% jobs in class I category. So what's the big problem?

## XI. Anti Reservation stir

Many persons who are otherwise if not pro-Mandal but at least neutral have shown signs of wavering because of the massive Anti-Mandal agitation especially in the North. Obviously when young people immolate themselves, and thousands of students come out on the streets one is forced to look at the issue more carefully.

At the same time we should not get swayed by the agitation. As has been documented through interviews with the agitationists: as well as the relatives of some of the students who committed self immolation Mandal was not the only nor the main cause for those actions. It was only a triggering factor for students for who even otherwise job opportunities are few, bureaucracy is ridden with corruption, and favouritism as well as nepotism are prime considerations for employment, upper caste status is one factor which has provided many with a less hazardous path towards employment. Now, even that qualification is being taken away though only partially. Ultimately Mandal is only a symbolic withdrawal of this qualification. In a job market of 10 million, Mandal's recommendations, as accepted by the Government even if implemented with full vigour, will only affect 8000 jobs annually. The Central issue in the agitation and immolations, though may be only subconsciously, is not reservations or merit or efficiency. How else does one explain attempts at self immolation by 12 or 13 year old children? Existing and to a large extent even justified frustration due to other causes has found a vent through Mandal report. No doubt one cannot look

at entire student protest with contempt, but that is no reason to oppose Mandal report.

But what do you tell the students who argue that they should not be made to suffer for wrongs which may have been perpetuated by their ancestors ?

To begin with, no one is blaming an individual student or asking an individual student to suffer for what is essentially a group discrimination.

But certain amount of individual hardship is unavoidable. Some small entrepreneurs ekeing out a bare living by employing a few hands, may genuinely suffer because of the implementation of minimum wages Act. A few impoverished landlords may suffer because of an overwhelmingly pro-tenant rent legislation. Any general policy of this kind is bound to affect some people adversely. But this cannot be an excuse for throwing out Mandal.

More important, it is not correct to even say that present generation is made to suffer for ills that may have been inflicted by their ancestors. This is the correct approach in taking a position on Ram Janmabhoomi case but not on the issue of Mandal Report.

This argument smacks of opportunism especially when it comes from the intelligents. The same people will not mind Babri Masjid to be demolished or to use a euphemism for it to be shifted, for atrocities supposedly inflicted not by the present generation Muslims but by Babu about 600 years back. Most of the princely states in India whether Hindu or Muslims have at

some time waged battles and killed people belonging to other princely states.

This is an event of the past done and over with. Today, if people start killing each other on the basis that someone's great-great-great grandfather killed some one else's kin two hundred years ago, we obviously cannot support this. Jews might have stayed in Israel thousands of years ago. But thereafter they migrated and that was done and over with. That is precisely why the formation of Isreal by driving out Palestinians, on the basis that thousands of years back Jews stayed there has been opposed. But is caste done and over with ? As Balagopal writes :

"Whatever Babur did or did not do to the temple which did or did not exist at the spot where Rama did or did not take birth is a historic relic, a happening or non-happening of the past. Caste is very much a living reality. Caste was one of the principal determination of the distribution of resources and power in mediveal India, and the principal theoretical justification for exploitation, today it continues to play both the roles inspite of a certain amount of capital pénétration and political democratisation the principal difference being that it is today juridically displaced from the high place it had in the age of Dharmachashtra. Caste is juridically dead but very much alive politically and idologically". Reservation tries to set right, not just historical but present wrongs by present remedies.

Whatever may be the understanding of the students, at least the articulate leaders and investigators of anti-reservation very clearly understand what are the real issues behind the agitation. "Everybody knows

that if employment is all that is involved, reservation is a small issue. The role of the public sector in employment generation, which has never been commensurate with its share in investment, is now gradually being decreased. The initiative in investment is passing into the hands of the private sector, and there is very free talk of handing over even basic industry to the private sector. Even essential services like education and health are getting privatised rapidly. Within the public sector many state governments are already implementing reservations for backward castes, and anyway V P Singh has promised he will not 'impose' the decision to implement Mandal commission recommendations on any state government a promise that was promptly followed by announcements from the chief ministers of Orissa and Himachal Pradesh that their states would not implement the decision; Uttar Pradesh and Bihar would have followed suit if only both the states had not had Yadav Chief ministers. And within what is left, V.P Singh has excluded defence establishments, scientific and technological research institutions, and central government educational institutions from reservations for backward castes. What this leaves out, for all practical purposes, is a few jobs like postal runners and railway booking clerks, which is clearly nothing much to get excited over either way. The highly emotional opposition to reservations, therefore, must be seen not in the context of employment and unemployment, but in the context of the caste system, and the continuing role it is playing in determining the distribution of resources and political power. It is precisely because reservations attack the caste system, an attack that the Indian polity can ill-afford, that there is so much fuss against them.

Reservation is at one level just a symbolic gesture towards eradicating caste discrimination. It is a 'symbolic recognition' which can lead to and open up avenues for moving towards such an eradication. What is astounding is that the upper castes are so petrified of even this symbolic recognition. This is one of the reasons why Mandal has to be supported. The defeat of Mandal will mean that even at the symbolic level fight against caste oppression is not allowed legitimacy. How then can one expect an all pervading battle against caste oppression to be legitimised ?

#### XVI. CONCLUSION

The Mandal Commission Report is not a perfect document. It does suffer from some lacunae. It includes some castes like Yadavs and Kurmis in Bihar for whom the label of backwardness is hardly appropriate. Probably, if a larger sample size is chosen a few castes identified by Mandal as backward may have to be excluded while a few others may have to be included. May be one or two relevant criterion have not been taken into account.

But these lacunae are not so central as to require a downright rejection of Mandal Report. First, no report howsoever well documented and thorough is likely to have the consensus even of those who support caste based reservations for two reasons: (i) With a population of about 80 crores, no matter how large the sample size, it is impossible to expect that any commission, irrespective of its academic perfection will not exclude some OBCs from the list and include

some who ought not to be in the list. (ii) There is no clearcut criteria to define socially and educationally backward classes despite a chequered history of more than 35 different commissions and about 15 Supreme Court Judgments.

The Supreme Court decisions are so muddled that the first major case on the issue namely Balaji's case decided in 1964 has received 5 different interpretations in 5 subsequent cases. Even when the Supreme Court in 1985 was requested specifically by the Karnataka Government to decide the basis for determining socially and economically backward classes, each of the five Judges of the Supreme Court came to a different conclusion. In such a situation, the criteria for defining backwardness is very unlikely to be fool proof and as such the demand for consensual classification can only mean postponing reservation for OBCs till an indeterminate future point of time. Second, it cannot be denied that overwhelming majority of the selected 3,800 castes are in fact socially and educationally backward. Many of these are Dalits and Tribals who should have been included in the original list of SCs and STs. Most of the rest are Shudras belonging to the lowest rung of caste hierarchy, whose social and educational backwardness does not need the stamp of a Mandal. May be a few of these castes have not remained backward, but to deny reservation to more than 3000 OBCs merely because a handful out of them are actual not backward is absolute injustice. At the most what can be suggested is that the Central Government which has the power to add or delete a caste from the list should drop those castes which are obviously forward castes like

Yadavs, Lingayats etc. As an alternative, these disputable backward castes may be provided reservation of a restrictive percentage of the total OBC reservation. What is revealing is that apart from naming 3 or 4 of these 3,8000 castes as forward none of the torch bearers of Anti-Reservation have pointed out any substantial number of OBCs which can be classified as forward castes.

Third, it is true that Mandal has relied on the 1931 census. But what can any commission do if subsequent data is not available ? In any event, even if one looks at the comparative data of SCs and STs there has hardly been any significant change in the past 50 years. The proportion of Hindus, since Partition has decreased by about 2% which is not significant at all. It is very unlikely that the population proportion of OBCs since 1931 has changed by more than 5%. Let us even assume the impossible proposition that since 1931 the OBC population has decreased by as much as 20% i.e. 15 crores less than what Mandal's estimate is, what difference does it make ? Instead of the OBC population being 52% it would be 32%. But Mandal fixes reservation at only 27% i.e. still less than the population estimate ! Mandal wanted to fix the reservation percentage on the basis of population but he was faced with the assumed ceiling of 50%. So whether the OBC population is 27% or 80% he would still have arrived at the figure of 27% reservation. A case can be made out against Mandal only if it is shown, that the population of OBCs has reduced from 52% to somewhere below 27% i.e. if it is shown that virtually half of the OBC population in India has been wiped out in 50 years a preposterous assumption.



To reject Mandal Commission on the basis of these anomalies will amount to falling into the trap laid by forward castes. It would mean that a new Commission would have to be set up and the question of reservation for OBCs will be postponed for at least 25 years. The demand for excellence is fine, but why is it always raised when the rights of underprivileged are at stake. Is there even one document produced by any branch of the Government which is perfect ? Are the blanket tax exemptions given to industries on many occasions based on some profound study ? Is the conversion of crores of Rupees of black money into white money through bearer bonds the result of erudite scholarship ?

With all its limitations, the Mandal Commission Report is a rigorous and fairly well argued document where in the commission has taken into account 11 indicators besides caste, invited recommendations and information from State Governments and public at large, carried out personal survey, considered various judicial pronouncements as well as other Commission Reports. It provides a rough and ready list of about 3,800 backward castes on the basis of criteria which though may not be perfect are still substantially justified. No doubt the list and the criteria will have to be reviewed from time to time, but not by postponing the implementation of Mandal Commission Report.

To quote from the Report "In the end it may be emphasised that this survey has no pretensions to being a piece of academic research. It has been conducted by the administrative machinery of the Government and used as a rough and ready tool for evolving a set of simple criteria for identifying social

and educational backwardness."

It is the need of the hour to provide reservations for OBCs-the Shudras who have since thousands of years suffered tremendous social oppression at the hands of upper castes. After 45 years of independence their condition is still quite pathetic. They are demanding their rightful claim and it has to be given. Drastic problems require drastic solutions. One may criticise some parts of the Report, one may call for dropping some other parts and incorporating some new portion. But do not throw out the baby with the bath water. Do not call for postponment of implementation of the Mandal report. Ultimately it is a tool for social change and not some hairsplitting academic research paper meant for archival accumulation.

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## C. G. SHAH (1896-1969)

C. G. Shah in whose memory the C. G. Shah Memorial Trust was created, was an erudite Marxist. He was a pioneer in spreading Marxist ideas in India and influenced large number of people.

C.G.Shah was born in 1896 into a middle-class family in Ahmedabad. During his school and college days he mastered the thoughts of eminent democratic thinkers. He assimilated the philosophical and artistic traditions of modern Europe. Mastery over Sanskrit enabled him to study the philosophical and literary works of India. After completing a bright academic career, he chose a life of dedicated service to the people, shunning all alluring higher positions in the Indian Civil and Educational Services. He worked as a part-time teacher and earned his living by freelance journalism.

He was among the first in India to react sympathetically to the October Revolution. Along with Dange and others he became one of the founders of the Communist movement in India. C.G.Shah was actively involved in the founding of many progressive, rationalist and anti-imperialist movements and organizations which arose in the twenties. As a result, a large number of left intellectuals and dedicated workers gravitated to Marxism under his influence.

C.G.Shah's political life can be divided into two distinct phases. The first phase lasted until 1937, when he was still recognised as a considerable intellectual influence by all groups of Marxists. From 1937 onwards and more particularly after the C.P.I. supported British war efforts in India, and when the Soviet Union was attacked by German Nazi forces, Shah's critique of Stalinism alienated him from the C.P.I.

Though isolated, in his later life C.G. Shah devoted himself to the cause and spread of ideas which he considered correct.

C. G. Shah died in 1969 at the age of 74.

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