

"The caste system as we know, is ~~an~~ anachronism. It must go if both Hinduism and India are to live ~~and grow~~ from day to day."

—Mahatma Gandhi.

"In the context of society to-day the caste system and much that goes with it are wholly incompatible, reactionary, restrictive, and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy, and much less economic democracy. Between these two conceptions conflict is inherent and only one of them can survive."

—Pandit Shri Jawaharlal Nehru.

"The caste system is the main hindrance in the way of achieving our goal of establishing casteless and egalitarian society. Identification of socially and educationally backward classes in terms of caste is perpetuation of the evils of the caste system. Sooner we get rid of it the better for the nation."

—Commission.

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INTRODUCTION

CIRCUMSTANCES WHICH LEAD TO THE APPOINTMENT OF THIS COMMISSION

Appointment of Socially and Educationally Backward Classes (First) Commission.

1. By Government of Gujarat, Education and Labour Department, Resolution No. MBC-1572-67508-J, dated 8th August, 1972, the Government had set-up a high level Commission, the composition of which was as follows :

(Appendix—I)

- | | | |
|--|--|---------------------------------|
| (1) SHRI A. R. BAXI | .. Retired High Court Judge and Chairman .. | .. CHAIRMAN |
| | of Law Commission. | |
| (2) PROF. C. N. VAKIL | .. Former Professor and Head of Department .. | .. MEMBER |
| | of Economics, School of Economics and Social Sciences, Bombay University and former Vice-Chancellor of South Gujarat University. | |
| (3) KUM. TARABEN
N. PATEL | .. Professor and Head of Department .. | .. MEMBER .. |
| | Sociology, Gujarat University, Ahmedabad. | |
| (4) DIRECTOR
of Social Welfare,
Gujarat State,
Ahmedabad. | .. — .. | .. MEMBER-
SECRETARY |

Subsequently, Shri B. D. Joshi was appointed as the Member-Secretary of the Commission with effect from 22nd August, 1975 and the Director of Social Welfare was continued as its Member.

2. The terms of reference of the Commission were as under :

“(i) The Commission shall enquire into social, educational and other relevant conditions of the people, castes, races, tribes or parts of or groups within castes or races or tribes in the State and report what section/sections of them (other than Scheduled Caste and Scheduled Tribes) should be treated as socially and educationally and in any other way backward, and therefore, deserve of special treatment and grants of special concessions similar to those being granted to the Scheduled Castes and Scheduled Tribes in the State in pursuance of provisions of the various Articles of the Constitution of India;

(ii) the Commission should also recommend what should be quantum and extent of such a concession and assistance to them and the period during which it should remain in force; and

(iii) any other recommendation germane to the main terms of reference as may be deemed necessary by the Commission.”

3. The above Commission, popularly known as Baxi Commission, submitted its report to the Government on 27th February, 1976. All the recommendations of Baxi Commission were accepted by the Government of Gujarat, under Labour, Social Welfare and Tribal Development Department, Resolution No. BCR-1078/13734/H, dated 1st of April, 1978 (Appendix-II). Corrigendum to the above Resolution is at Appendix—II-A.

4. 82 castes/classes/groups as detailed in the report of the Commission have been identified by it as socially and educationally backward (Appendix-II). Three castes from the above list namely; Bavcha, Bhils, and Padhar have been subsequently included in the list of Scheduled Tribes and Mochis in the list of Scheduled Castes. The aforesaid four castes, have therefore, been omitted from the above list in Appendix-II as a result of Government of Gujarat, Labour, Social Welfare & Tribal Development Department, Resolution No. BCR-1079/17982/H, dated 12th of June, 1979 (Appendix-III).

5. Subsequently, members of some of those castes which were not considered by the Commission to be socially and educationally backward, made representations to the Government that, their cases may be reconsidered. Representations were also made by members of those castes who had not made any representation to the Baxi Commission, for treating them as socially and educationally backward. The Government, therefore, decided to appoint a Second Commission to consider whether, there were any other castes/communities/classes which fell in the category of socially and educationally backward classes and by Government Resolution, Social Welfare & Tribal Development Department, No. NVP-2580/Kha-7(81)-H, dated 20th of April, 1981 (Appendix-IV), appointed this Commission, the composition of which is as follows :

- | | |
|---|-------------|
| (1) SHRI C. V. RANE,
Retired Judge, High Court of Gujarat. | .. CHAIRMAN |
| (2) DR. ISHAVARLAL P. DESAI,
Retired Professor in Sociology, M. S. University, Baroda
and retired Director of the Centre for Social Studies,
South Gujarat University. | .. MEMBER |
| (3) PROF. J. L. DHOLAKIA,
Professor in Economics, School of Social Sciences, Gujarat
University, Ahmedabad. | .. MEMBER |
| (4) DIRECTOR OF SOCIAL WELFARE,
Gujarat State, Ahmedabad. | .. MEMBER |

6. Terms of reference of the Commission are as under :

(i) To make suitable recommendations after inquiring into the representations for being considered as belonging to socially and educationally backward class, received from the members of such of the castes, other than those 82 castes which are accepted by the Government as belonging to socially and educationally backward classes, on the basis of the recommendations of the Baxi Commission, who had made representations to the Baxi Commission for being considered as socially and educationally backward, and whose representations were not accepted by the Baxi Commission and also from the members of those castes or classes who had either failed to make any representation to Baxi Commission for considering them as socially and educationally backward or had made such representations after the publication of the report of the Baxi Commission.

(ii) To make necessary inquiry and recommendations in regard to such of the sub-castes as are not included in the list of socially and educationally backward classes or in regard to which there is any ambiguity because of prevailing names of sub-castes.

(iii) To make suitable recommendations after necessary inquiry into the questions whether certain number of seats/posts should be reserved for socially and educationally backward classes in educational institutions and public services in proportion to their population in the manner in which they are reserved for Scheduled Castes and Scheduled Tribes in educational institutions and public services in proportion to their population or whether some other standard or basis should be adopted in the matter.

(iv) To make inquiry and suitable recommendations into the questions whether there should be relaxation in the age limit for socially and educationally backward classes for the purpose of recruitment in public services, and if so, in what manner.

(v) The Commission may make such other recommendations germane to the main terms of reference as may be deemed necessary by it.

7. This is how this Commission came to be appointed. The Headquarters of the Commission are located at Gandhinagar. The time for submitting the report of the Commission has been extended upto 31st October, 1983.

8. The Chairman assumed the Charge of his Office on 6th May, 1981. Shri B. D. Joshi, Joint Secretary to Government, Social Welfare & Tribal Development Department, was asked to work as a Secretary to the Commission as a sort of stop-gap arrangement, in addition to his duties in the above Department. The above arrangement came to an end on his retirement from service with effect from 31st August, 1981. In the absence of adequate staff in the Secretariat of the Commission, it was not possible to hold a meeting of the Commission at an earlier stage. Shri C. D. Parikh, Assistant Secretary assumed charge of his post on 1st July, 1981. Shri V. A. Patel, Section Officer, and two Assistants reported for duty in the Secretariat of the Commission on 20th July, 1981. The first meeting of the Commission could, therefore, be held on 22nd July, 1981. Shri D. G. Valand joined the Commission as its Secretary on 1st September, 1981 and on his retirement from service, Shri J. S. Patel has been appointed as the Secretary of the Commission with effect from 1st October, 1982. Strength of the staff in the Secretariat of the Commission was not commensurate with the increasing work load. This position was brought to the notice of the Government from time to time, and it was requested to sanction additional staff. There was, however, some delay in sanctioning and appointing additional staff. Details of the staff in the Secretariat of the Commission are given in the statement at Appendix—XXXVI. There was considerable delay in receiving information from some of the departments. Because of the above reasons, the work of the Commission was delayed to a certain extent. Relevant information as regards the work load in the Secretariat and the procedure followed by the Commission for obtaining information on various points to be dealt with by it have been given in Chapter—VII of the report. The Commission had undertaken an extensive tour of all the districts except the district of Dangs in the State for collecting information from various sources and recording evidence. Relevant information in that respect has been given in the statement at Appendix—XXII. Several meetings of the Commission were held to discuss various points to be decided by it as shown in the statement at Appendix—XXXV.

CHAPTER—I

SUMMARY OF THE RELEVANT PROVISIONS OF THE CONSTITUTION OF INDIA PROVIDING FOR THE PROMOTION OF EDUCATIONAL AND ECONOMIC INTERESTS AND THE ADVANCEMENT OF SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES AND OTHER WEAKER SECTIONS OF THE SOCIETY

1.1 The preamble to the Constitution expresses the determination of the people of India in the following terms :—

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of individual and the unity and integrity of the Nation;

IN OUR CONSTITUTION ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.'

In order to achieve the various objectives in the preamble, specific provisions have been made in the Constitution. The provisions which have bearing on the third objective, namely, "to secure to all its citizens equality of status and of opportunity" and which are relevant for our purpose are contained in Articles 46, 14, 15(4) and 16(4) of the Constitution of India.

1.2 The framers of the Constitution were well aware of the backwardness and the appalling conditions of the weaker sections of the people. Special provisions have, therefore, been made in the Constitution, in order to improve their conditions and to secure the advancement of socially and educationally backward classes of citizens. Article 46 of the Constitution enjoins upon the State that, it "shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation". Some of the provisions which enable the State to take adequate steps for carrying out the directive principles enshrined in Article 46 of the Constitution, are contained in Articles 15(4) and 16(4). Articles 15 and 16 read as under :—

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment;
or

(b) the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this Article shall prevent the State from making any special provision for women and children.

(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

"16. Equality of opportunity in matters of public employment.—(1) There shall equality of opportunity for all citizens in matters relating to employment or appointment to any Office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State, prior to such employment or appointment.

(4) 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 under the State.

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

The object of Articles 15(4) and 16(4) is to achieve equality by removing inequality.

1.3 The object of Articles 15(4) and 16(4) is to achieve equality by removing inequality between advanced classes and those weaker sections of the society which have remained backward because of social, cultural, educational and economic deprivation for hundreds of years. As pointed out by Shri Justice K. Subba Rao,¹ "... unless adventitious aids are given to the under-privileged people, it would be impossible to suggest that they have equal opportunities with the more advanced people". Article 15(4) enables the State to discriminate in favour of backward classes by taking suitable steps to secure their advancement; whereas Article 16(4) aims at increasing their opportunities of employment in the services of the State. Scope of Articles 15(4) and 16(4) has been considered by various High Courts and the Supreme Court in several cases and the law on the point is well settled. It is, therefore, not necessary to analyse the above Articles in detail and our purpose would be served by referring to certain decisions of the Supreme Court which explain the true meaning and the scope of Article 15(4) and 16(4) of the Constitution in the light of which, we have to deal with the terms of reference of this Commission.

1.4 Equality before law guaranteed by Article 14 of the Constitution means equality amongst equals. Any doctrinaire approach to the concept of equality enshrined in Article 14 would perpetuate inequality which it seeks to abolish. In a society where people differ physically, intellectually, educationally, socially and economically, the object of Article 14 can be achieved, only by giving adventitious aid to the weaker sections of the society to face boldly the competition of life. This is the justification for preferential treatment to backward classes as contemplated by Articles 15(4) and 16(4) of the Constitution which are intended to enable the State to take suitable steps for educational and economic advancement of socially and educationally backward classes. The Supreme Court has observed in the case of *C. A. Rajendran v. Union of India and Others*,² "Articles 14, 15 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion."

1.5 At this stage, we may point out that, clause (4) was introduced in Article 15 at a later stage, in order to bring Articles 15 and 29 in line with Article 16(4). As regards the circumstances in which clause (4) was added to Article 15, it is pointed by the Supreme Court in the case of *Balaji*³ that, "It will be recalled that in the case of *State of Madras v. Smt. Champakam Dorairajan* 1951 SCR 525 : (AIR 1951 SC 226) the validity of the Government

1. Social Justice and Law - by Shri Justice K. Subba Rao, National, New Delhi

2. AIR 1968 SC 507 (511)

3. AIR 1962 SC 649 (657).

order issued by the Madras Government fixing certain proportions in which students seeking for admission to the Engineering and Medical Colleges in the State should be admitted, was challenged. The said Government Order was on the face of it a communal order fixing the admissions in the stated proportion by reference to the communities of the candidates. This order was struck down by the Madras High Court and the decisions of the Madras High Court was confirmed by this Court in appeal on the ground that the fundamental rights guaranteed by Article 15(1) and 29(2) were not controlled by any exception, and that, since there was no provision under Article 15 corresponding to Article 16(4), the impugned order could not be sustained. It was directly as a result of this decision that Article 15 was amended and Article 15(4) was added. Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2). In other words, if the impugned order is justified by the provisions of Article 15(4), its validity cannot be impeached on the ground that it violates Article 15(1) or Article 29(2). The fundamental rights guaranteed by the said two provisions do not affect the validity of the special provision which it is permissible to make under Article 15(4)."

1.6 As held by the Supreme Court in the case of *General Manager, Southern Railway v. Rangachari & Others*¹, "the Scheduled Castes and the Scheduled Tribes" are included in the words "backward class of citizens" in Article 16(4). According to the Supreme Court, Article 16(4) also contemplates "socially and educationally backward class of citizens", as in the case of *Article 15(4) Triloki Nath Tikku and another v. The State of Jammu and Kashmir and Others*² and *Janki Prasad v. State of Jammu and Kashmir and Others*³; In view of what is stated above, it become evident that, benefit of Articles 15(4) and 16(4) can be given to socially and educationally backward classes as well as to the Scheduled Castes and Scheduled Tribes. Article 341 provides *inter alia* that, the President may by public notification specify "the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution, be deemed to be Scheduled Castes." Article 342 makes a similar provision for issuing public notification for the purpose of specifying "the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes." Clauses (24) and (25) of Article 366, define Scheduled Castes and Scheduled Tribes respectively. Article 340 provides, among other things, for the appointment of a Commission "to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the step that should be taken by the Union or any State to remove such difficulties and to improve their condition." It is clear from the decision of the Supreme Court in the case of *Balaji*⁴ that action as contemplated by Articles 15(4) and 16(4) can be taken either by the Union or the State.

The problem of determining who are socially and educationally backward is very complex.

1.7 As observed above, Scheduled Castes and Scheduled Tribes are defined and specified in the Constitution. But there is no clause in it which defines "socially and educationally backward classes of citizens." The first task of this Commission is, therefore, to determine as to who should be included in "socially and educationally backward classes" as contemplated by Articles 15(4) and 16(4) of the Constitution. The following observations of the Supreme Court show how difficult the above task is; "The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem and evolving proper criteria for determining which classes are socially backward, is obviously very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way" *Balaji*⁵. "The laying down of criteria for ascertainment of social and educational backwardness of a class is a complex problem depending upon many circumstances which may vary from State to State and even from place to place in a State" *Chitrallekha v. State of Mysore*⁶. "The problem of determining who are socially and educationally backward classes is undoubtedly not simple. Sociological and economic considerations come into play in evolving proper criteria for its determination.." *Kumari K. S. Jayshree and Another v. The State of Kerala and Another*.⁷

1 AIR 1962 SC 36 (45)

2 AIR 1967 SC 1283,

3 AIR 1973 SC 930.

4 AIR 1963 SC 649.

5 AIR 1963 SC 649 (659).

6 AIR 1964 SC 1823 (1834).

7 AIR 1976 (3), S.C.C. 730 (736).

CHAPTER—II

THE CASTE SYSTEM IN INDIA

Caste system, the main cause of the deplorable conditions of our masses.

2.1 Before we proceed further with the discussion of law on the subject, it would be relevant to refer to the factors which have created social inequality and economic and educational disparities plunging large sections of our society into social and educational backwardness. The main cause of the deplorable conditions of our masses is the caste system which has created a feeling of superiority and inferiority and fostered narrow loyalties. In order to be able to determine in a satisfactory manner, as to which sections of the people fall in the category of socially and educationally backward classes of citizens, it would be necessary for us to first deal with the caste system in India.

2.2 A question may, however, arise as to why, should we refer to the caste system in India, when Articles 15(4) and 16(4) of the Constitution of India speak of socially and educationally backward *classes* of citizens? An answer to the above question is found in recognition of the fact that, Hindu society is divided into groups or classes known as castes, one of the main characteristics of which, is hierarchy based on status of different castes, resulting in social backwardness of sizable sections of our society. The following observations of the Supreme Court, make the position in the matter clear: "Let us take the question of social backwardness first. By what test should it be decided whether a particular class is socially backward or not? The group of citizens to whom Article 15(4) applies are described as 'classes of citizens', not as castes of citizens. A class, according to the dictionary meaning, shows division of society according to status, rank or caste. In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizens. Though according to sociologists and vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later overburdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority and to foster narrow caste loyalties. Therefore, in dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens." Balaji¹. "Now if the reservations in question had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15(1). But it must not be forgotten that, a caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4)."—P. Rajendran v. State of Madras². "Rajendran's case is an authority for the proposition that the classification of backward classes on the basis of castes is within the purview of Article 15(4) if those castes are shown to be socially and educationally backward." A. Pariakaruppan v. State of Tamil Nadu³. We shall deal with the question whether consideration of caste has any relevance while determining socially and educationally backward classes from amongst non-Hindu sections of the Indian society which do not recognise caste in the conventional sense known to Hindu society, at a later stage.

The meaning of the word 'caste'

2.3 The meaning of the word "caste", according to the Concise Oxford Dictionary⁴, is "Hindu hereditary class, with members socially equal, united in religion and usually following same trades, having no social intercourse with persons of other castes." A. L. Kroeber defines caste⁵ as "an endogamous and hereditary sub-division of an ethnic unit occupying a position of superior or inferior rank or social esteem in comparison with other such sub-divisions." According to Sir H. Risley,⁶ "a caste may be defined as a collection of families or groups of families

1. AIR 1963 SC 649 (659).

2. AIR 1968 SC 1012 (1014)

3. AIR 1971 SC 2303 (2310)

4. Sixth Edition, p. 154.

5. Encyclopedia of the Social Science Vol. 3, 1935, n. 254.

6. "Origin and Growth of Caste in India" by N. K. Dutt, Vol. I, p. 1.

bearing a common name; claiming common descent from a mythical ancestor, human or divine; professing to follow the same hereditary calling; and regarded by those who are competent to give opinion as forming a single homogeneous community. The name generally denotes or is associated with a specific occupation. A caste is almost invariably endogamous in the sense that a member of the large circle denoted by the common name may not marry outside that circle, but within the circle there are usually a number of small circles each of which is also endogamous". Sir E. A. Gait¹ observes that "the main characteristics of a caste are the belief in common origin held by all the members and the possession of the traditional occupation. It may be defined as an endogamous group or collection of such groups bearing a common name, having the same traditional occupation, claiming descent from the same source, and commonly regarded as forming a single homogeneous community." Ketkar² in his "History of Caste", defines caste as "a social group having two characteristics; (1) membership is confined to those who are born of members and includes all persons so born, (2) the members are forbidden by inexorable social law to marry outside the group. Each one of such groups has a special name by which it is called. Several of such small aggregate are grouped together under a common name, while those larger groups are but sub-divisions of groups still larger which have independent names"

2.4 According to Encyclopaedia Britannica (1965), Vol. V, p. 24, "No term in the literature of social science has been so misused and misinterpreted as "caste", indeed it is arguable that the ambiguity of the term itself has been a major reason for the difficulty in reaching a clear understanding of the system it describes." There is no unanimity among the scholars as regards the definition of the term "caste". It, however, appears that, the main characteristics on which emphasis has been laid by them while defining the term "caste" are endogamy, traditional calling, common origin, rigid social stratification and hierarchy. It is, however, interesting to find that, in Sanskrit, there is no equivalent of the word "caste" which was first used by Portuguese with reference to certain social classifications of Hindu society in Sixteenth Century. Thus, the word "caste" is derived from the Portuguese word "casta" which means breed or lineage.

Caste system in its present form was not in existence in ancient India.

2.5 It is generally agreed that, the caste system in its present form was not in existence in Ancient India. While referring to the history of Ancient India, R. C. Dutt has observed in the introduction to his highly illuminative book "Civilization in Ancient India", "Ancient India has a connected story to tell, and so far from being uninteresting, its special feature is its intense attractiveness. We read in that ancient story how a gifted Aryan people, separated by circumstances from the outside world, worked out their civilisation amidst natural and climatic conditions which were peculiarly favourable. We note their intellectual discoveries age after age; we watch their religious progress and developments through successive centuries; we mark their political career, as they gradually expand over India, and found new kingdoms and dynasties; we observe their struggles against priestly domination, their successes and their failures; we study with interest their great social and religious revolutions and their far-reaching consequences. And this great story of a nation's intellectual life—more thrilling in its interest than any tale which Shaharzadi told—is nowhere broken and nowhere disconnected. The great causes which led to great social and religious changes are manifest to the reader, and he follows the gradual development of ancient Hindu civilization through thirty centuries, from 2000 B. C. to 1000 years after Christ".

History of ancient India divides itself into several distinct periods or epochs.

2.6 As pointed out by R. C. Dutt⁴, "the history of Ancient India is a history of thirty centuries of human culture and progress. It divides itself into several distinct and long periods or epochs. The hymns of Rig Veda throw considerable light on the history of the First Epoch. As regards castes in that period, R. C. Dutt writes⁵, "the entire body of Aryans was then a united community; and the only distinction of castes was between the Aryans and the aborigines. Even the distinction between professions was not very marked; and the sturdy lord of many acres, who ploughed his fields and owned large heron in times of peace, went

1. Ibid, p. 2

2. Ibid, p. 2

3. Ibid, p. 3

4. Ibid, p. 4

5. Ibid, pp. 5, 6

out to defend his village or plunder the aborigines in times of war, and often composed spirited hymns to the martial gods in his hours of devotion. There were no temples and no idols; each patriarch of a family lighted the sacrificial fire in his own hearth, and offered milk and rice, offerings, or animals, or libations of the Soma juice to the fire, and invoked the "bright" gods for blessings and health and wealth for himself and his children. Chiefs or tribes were kings, and had professional priests to perform sacrifices and utter hymns for them, but there was no priestly caste, and no royal caste. The people were free enjoying the freedom which belongs to vigorous pastoral and agricultural tribes." The above period is called the "Vedic Period." (2000 to 1400 B. C.).

2.7 He point out¹ that in the Epic Period (Second Epoch) which is supposed to have extended approximately from 1400 to 1000 B.C., "Religious observances were vastly elaborated, social rules were changed, the caste system was formed, the supremacy of priests was established and confirmed and ultimately questioned by the Kshatriyas, and lastly, within this age, a varied and voluminous literature was recorded. According to him², "The system arose out of weakness and lifelessness among the people and to a certain extent it has perpetuated that weakness ever after."

2.8 As regards the third epoch, from 1000 B.C to 320 B.C, which is called the "*Philosophical or Rationalistic Period*" by R. C. Dutt, he has observed³ "The Third Epoch is, perhaps, the most brilliant period of Hindu history. It was in this period that the Aryans issued out of the Gangetic valley, spread themselves far and wide, and introduced Hindu civilisation and founded Hindu Kingdoms as far as the southernmost limits of India."

2.9 According to R. C. Dutt, Fourth or Buddhist period begins with the brilliant reign of Chandragupta. During this period from 320 B. C to 500 A. D., Hinduism and Buddhism, flourished in India side by side and persecution was almost unknown.

2.10 "The fifth or last epoch of Hindu History". according to R. C. Dutt,⁴ "is the epoch of Hindu revival, and covers five centuries from 500 A.D. to 1000 A.D. the date of the first invasion of Mohmud of Ghazni. He, however, adds,⁵ "We have dated the Fifth or *Puranic Period* from 500 A.D. to 1000 A.D., but from what has been stated above, it will appear that the Puranic age really ends at 800 A.D. The history of Ancient India terminates at that date and is followed by two centuries of Dark Age. As pointed out by him,⁶ "Priestly monopoly in its closest form and the unhealthiest restrictions of modern Hinduism date from this period, and were perpetuated during the seven centuries of national lifelessness under the Mussalman rule."

Social life and absence of caste system in the Vedic period.

2.11 As regards social life in the Vedic Period, R. C. Dutt observes,⁷ "The first thing that strikes us here is the absence of those unhealthy rules and restrictions, those marked distinctions between man and man and between class and class, which form the most unpleasant feature of later Hindu Society."—"We have seen too, that the Rishis did not form a separate and exclusive class, and did not pass their lives away from the world in penance and contemplation. On the contrary, the Rishis were practical man of the world who owned larger herds of cattle, cultivated fields, fought against the aboriginal enemies in times of war, and prayed to their gods for wealth and cattle, for victory in wars, and for blessings on their wives and children. Every father of a family was in fact a Rishi on a small scale, and worshipped his gods in the own house in his own humble fashion, and the women of the family joined in worship, and helped in the performance of the ceremonies. Some among the community were of course prominent in the composition of hymns and the performance of great sacrifices; and kings and rich man sent for them on great occasions, and rewarded them handsomely. But even these great composers—these great Rishis of the Rig Veda—did not form an exclusive caste of their own.

1. Ibid, p. 9

2. Ibid. p 8.

3. Ibid, p 12.

4. Ibid, p. 18.

5. Ibid, p 21.

6. Ibid, p 20.

7. Ibid, p. 63,

They were worldly men, mixed and married with the people, shared property with the people, fought the wars of the people, and were of the people".

2.12 As regards the absence of caste system in that period, R. C. Dutt has observed,¹ "Throughout the Rig Veda the Rishis are the people. There is not the shadow of any evidence that the Rishis or priests were a "caste" of their own, different from the fighters and cultivators.

"This will be considered by impartial judges to be very good evidence that the caste system did not exist. It proves a negative much more convincingly than many positive facts can be proved. In a vast collection of hymns, composed during six hundred years and more, and replete with reference to the habits and manners and customs of the people,—replete with allusions to agriculture and pasture and manufacture, to ward against aborigines, to marriage and domestic rules, and the duties and position of women, to religious observances and to elementary astronomy as then known,—we have not one single passage to show that the community was cut up into hereditary "Castes". It is possible to suppose that that wonderful system existed, and yet there is no allusion to that fundamental principle of society in the ten thousand verses of the Rig Veda ? Is it possible to find a single religious work of later times, of one-tenth the dimensions of the Rig Veda, which is silent on that system ?

So far, then, we have proved a negative in the only way in which a negative can be proved. But curiously enough there is positive proof, and various passages in the Rig Veda show, that the caste-system did not exist. The very word "*varna*", which in later Sanskrit indicates caste, is used in the Rig Veda to distinguish the Aryans and the non-Aryans, and nowhere indicates separate sections in the Aryan community (III, 34, 9 & c.). The very word "*kshatriya*", which in later Sanskrit means the military caste, is used in the Veda simply as an adjective which means strong, and is applied to gods (VII, 64, 2, VII, 89, 1 & c.). The very word *Vipra*, which in later Sanskrit means the priestly caste, is used in the Rig Veda merely as an adjective which means wise, and which is applied to gods (VIII, II, 6, & c.). And the very word *Brahmana*, which in later Sanskrit means also the priestly caste, is used in a hundred places in the Rig Veda to imply the composers of hymns, and nothing else (VII, 103, 8, & c.)."

2.13 R. C. Dutt adds in the Foot-note,² "It gives us much pleasure to be able to cite here the authority of three scholars who have devoted their lifetime to the study of the Veda, and who form the Triumvirate of Vedic scholarship in Europe :—

If then, with all the documents before us, we ask the question, does caste as we find it in Manu, and at present day, form part of the most ancient religious teaching of the Vedas ? We can answer with a decided 'No'—Max Muller, *Chips from a German Workshop*, Vol. ii (1867), p. 307.

"There are no castes as yet, the people are still one united whole, and bear but one name, that of "Visas"—Weber, *Indian Literature*, (translation), p. 38.

And lastly, Dr. Roth shows how in the Vedic Age, the domestic priests of petty kings were called Brahmanas, and had not yet formed into caste. And the great scholar explains how in a later age,—that of the Mahabharata,—"powerful communities should arise among the domestic priests of petty kings, and their families should attain to the highest importance in every department of life, and should grow into a caste"—Quoted in Muir's Sanskrit Texts, Vol. i (1872), p. 291."

Caste system in the epic period.

2.14 It is thus fairly established that, the caste]system in its present form was not in existence during Vedic period. As regards emergence of caste system in Epic period, R. C. Dutt has observed,³ "In the Epic Age, however, priests and kings separated themselves as distinct castes, and people also formed themselves into the lower orders, the Vaishyas and Sudras." e, however, adds,⁴ "As we have stated before, the caste-system first formed itself among the

¹Ibid, pp. 64-65.

²Ibid, p. 66

³Ibid, pp. 154-155.

⁴Ibid, pp 155-156.

peaceful citizens of Gangetic India, it never should be forgotten, however, that the worst results of that system did not appear, and could not appear, until the Hindus had ceased to be a free nation. In the *Epic Period* the body of the people were still entitled to acquire religious knowledge and learning, and to perform religious rites, just like Brahamans and Kshatriyas. And even intermarriage between Brahamans, Kshatriyas, and Vaishyas was allowed under certain restrictions. However, much, therefore, the historian of Ancient India may deplore the commencement of the caste-system, he should never forget that the worst results of that system were unknown in India until after the Mahommedan conquest."

Distinction between the ancient caste system and that of the present age.

2.15 As regards the distinction between the ancient caste system and that of the present age, R. C. Dutt has observed¹, "Throughout the Epic Period, and throughout the succeeding period almost to the time of the Mahommedan conquest, the great body of the Aryan people were Vaishyas, although they followed numerous professions. Along with the Brahamans and the Kshatriyas they formed the Aryan nation, and were entitled to all the rights and privileges, and the literary and the religious heritages of the nation. The conquered aborigines, who formed the Sudra caste, were along debarred from the heritage of the Aryans."

"This is the cardinal distinction between the ancient caste-system, and the caste-system of the present age. Caste reserved some privileges for priests, and some privileges for warriors, in ancient times; but *never divided and disunited the Aryan people*. Priests and warriors and citizens, though following their hereditary professions from generation to generation, felt that they were one nation and one race; received the same religious instructions, attended the same schools of learning, possessed the same literature and traditions, ate and drank together, intermarried and intermixed in all respects; and were proud to call themselves the Aryan race as against the conquered aborigines. Caste in modern times has cut up the Aryan people, the Vaishyas, into scores of communities, has opened the wide gulf of race distinctions among these different communities; has interdicted marriage and social communion among them, has starved the entire body of the people of religious knowledge and literature, and has degraded them to the rank of Sudras".

2.16 The legend of Satyakam Jabala shows that, in those days the rules of caste had not become yet rigid. While referring to the above legend, R. C. Dutt has observed,² "Similarly, in the beautiful legend of Satyakama Jabala in the Chhandyoga Upnishad (IV, 4), is exemplified the fact that truth and learning opened out in those days a path to the highest honour and to the highest caste. The legend is so beautiful in its simplicity and its poetry, that we feel no hesitation in quoting a portion of it :—

"1. Satyakama, the son of Jabala, addressed his mother and said: 'I wish to become a Brahmacharin (Religious student), mother. Of what family, am I ?

"2. She said to him : 'I do not know, my child, of what family thou art. In my youth when I had to move about much as a servant, I conceived thee. I do not know of what family thou art. I am Jabala by name, thou art Satyakama; say that thou art Satyakama Jabala'".

"3. He, going to Gautam Haridrumata, said to him : "I wish to become a Brahmacharin with you, Sir. May I come to you, Sir ?

"4. He said to him : 'Of what family are you, my friend ?' He replied : 'I do not know, Sir, of what family I am. I asked my mother, and she answered—"In my youth, when I had to move about much as a servant, I conceived thee. I do not know of what family thou art. I am Jabala by name, thou art Sayakama." I am therefore Satyakama Jabala, Sir."

"5. He said to him : "No one but a true Brahaman would thus speak out. Go and fetch fuel, friend, I shall initiate you. You have not swerved from the truth."

1. Ibid, d 157.

2. Ibid, pp 158, 159, 160.

Caste systems in subsequent periods.

2.17 Referring to the caste system in the Philosophical or Rationalistic Period, R. C. Dutt says¹: "The Aryan Vaishyas followed different trades and professions in Ancient India without forming separate caste; they were scribes and physicians, goldsmiths and blacksmiths, potters, and weavers while still belonging to the same common Vaishryas caste. Thus the great body of the Aryan population was still united, and was still entitled to religious knowledge and learning."

2.18 Alluding to the caste-system in Buddhist period, R. C. Dutt observes²: "How ever much, then, we may deplore the results of the caste system, it is important to remember that even in the centuries immediately before and immediately after the Christian Era, the system had not reached its worst stage. Sacred learning had not yet become the monopoly of priests, and honest citizens, who gained a livelihood as scribes, physicians, goldsmiths, blacksmiths, weavers, potters, etc. were still vaisyas, still united as one caste, and still entitled to all the literary and religious heritage of Aryans."

2.19 While pointing out the process of disintegration in the Puranic period, he has observed³: "We have seen in the last Book that the great Aryan population of India (except priestic and kings) was still a united body in the Buddhist Period, and has not yet been disunited into the profession-castes of modern times. The tendency to disintegration was greater in the Puranic Period, and we have frequent allusions to different professions distinctly marked off from each other. But nevertheless an impartial examination of the evidence available will convince a candid reader that the profession-caste of the modern times were not completely formed even in the Puranic Period, and that the body of the people was still one united caste,— the Vaisyas, — engaged in various professions. The complete disintegration of the nation into numerous and distinct profession-castes was subsequent to the Muslim conquest of India and the national death of the Hindus." He has deplored the caste-system in its later phase in the following words⁴; "The caste-system, which unduly exalted the powers and privileges of priests, had the inevitable result of degrading all honest trades and industries other than that of priests. We note this in the pages of Manu himself we note this still more prominently in the pages of Yajnavalkya. In a passage which we have referred to before (I, 160-165), he condemns a large class of professions as impure, and classes physicians, goldsmiths, blacksmith, weavers, dyers, armourers, and oil manufacturers with thieves and prostitutes." Thus the caste-system in its later phase has served a twofold object, as our readers will note from passages like these. It has served to *divide the nation* and create mutual ill-feelings. And it has served to degrade the nation in order to exalt the priests."

Extent of deterioration of the caste system in the modern age.

2.20. As regards the extent to which the caste system has deteriorated in the modern age, R. C. Dutt observes,⁵ "Let the reader compare this account of the Vaisya's status with that given by Manu, and he will have before him the history of the gradual degeneracy of the nation, and the growing power of priests. The descendants of the Vaisyas, who had an equal right with Bhrahmanas to learn and recite the Veda and to sacrifice to the fire, came, after religious and political revolutions of the ninth and tenth centuries, to be classed with Sudras, and considered unworthy of religious knowledge; Kshatriyas still held their own as long as India was a free country, but lost their glory and independence after the twelfth century. And then the bold myth was proclaimed that the Kshatriyas too as a caste had, like the Vaishyas, ceased to exist, that all who were not Brahmanas were Sudras — all equally incapable of reciting the Veda and sacrificing to the fire; Does the modern reader wish to go beyond this specious myth of the extinction of the Kshatriyas and Vaishyas, and desire to know what has really become of them and their descendants? He will find them classed under new names 'Kayastha, Vaidya, Vanik, Svarnakara, Karmakars, etc. as new castes unknown to Manu and Yajnavalkya. And room has been kindly provided for these new castes, formed out of Kshatriyas and Vaisyas, in the growing list of "mixed castes" which Manu had reserved for aborigines like Nishadas and Chandals; But modern education is

1. Ibid, p. 248.

2. Ibid (Vol. II, Book IV., Chapter VIII), p. 87.

3. Ibid (Vol. II, Book V. Chapter VIII), p. 214.

4. Ibid, (Vol. II, Book V. Chapter VIII), p. 219.

5. Ibid, (Chapter XVI), pp. 321-322.

gradually opening the eyes of the people, and the great Hindu nation is learning to demand its ancient religious and social privileges as it is rising to a consciousness of its national and political life."

2.21. While lamenting over calamitous consequences of the caste system, he says in the concluding part of his book,¹ "Great is the penalty which the Hindus have paid for their caste disunion and their political weakness. For six centuries after 1200 A.D., the history of the Hindus is a blank. They were the only Aryan nation in the earth who were civilised four thousand years ago; they are the only Aryan nation in the earth who are socially lifeless and politically prostrate in the present day."

¹. Ibid, p. 333.

CHAPTER—III

PERNICIOUS EFFECTS OF THE CASTE SYSTEM

3.1 As observed in Chapter—II, R. C. Dutt has dealt with the evolution of the caste system in India in a scholarly manner and pointed out as to how, in course of time, the caste system deteriorated, became rigid and divided the people into several strata or grades. The views of three great scholars, namely, Max Muller, Weber and Dr. Rath, on the subject to which he has referred, are also very illuminative. We are, however, more concerned with the pernicious effects of the rigid caste system of the modern age, than with the question of finding out its origin. It is, therefore, not necessary for us to refer to the views of other scholars on the question of the origin of caste system and we would only refer to their views on the question as to how, in course of time, the caste system became rigid and resulted into social backwardness of large sections of our society. According to G. S. Ghurye,¹ "POST-VEDIC period testifies to the rigid stratification and internal solidarity of the four varnas. Each group was recognised as distinct, almost complete in itself, for its social life." "...and although the development of the caste system and its stabilization have crystallised the peoples of India into a large number of fairly 'watertight' communities, the barriers between them were less rigid while the system was in its early development than they are now...."²

As regards, the terms 'varna' and 'rishis' Hutton says :

"Something must here be said about varna, 'colour', a term which is often confused with caste (jati, jat) though it is far from having the same meaning. The varna seem to have been originally the four classes into which Rigvedic society was divided; that is, the three categories of twice-born Brahman, Kshatriya and Vaishya, and fourthly the Sudra, below whom were the outcastes."³

"At the time of the Rigvedic invasion the four varna must be held to represent a fourfold division of society into classes—Brahmans who acted as priests, Kshatriyas or Rajanyas who were rulers, nobles and fighters, Vaishyas, the people generally ordinary householders so to speak, the Sudras, the servile classes drawn from the people of the country. The last term 'does not even occur in the early parts of the collection of the Vedas, while the Brahman was the utterer of prayer and conductor of ceremonial, but apparently had no privilege on that account and attained his greatest dignity as the purohita or family priest of kings and princes, of the Rajanya that is, who were the holders of the raj or Government and Possessors of Kshatra, authority. The highest religious authorities seem to have been the sages or rishis, the poetical authors of the vedic hymns, and *these rishis came from any varna and belonged in some cases to indigenous families....*" (emphasis supplied).

3.2 Commenting on the evils of the caste system, Prof. A. R. Wadia has observed⁴ "The high metaphysics of Upanishads and ethics of the Gita have been reduced to mere words by the tyranny of the caste. Emphasising the unity of the whole world, animate and inanimate, India has yet fostered a social system which has divided her children into water-tight compartments, divided them from one another, generation to generation, for endless centuries." Chief Justice Rajamannar of the Madras High Court, has observed, in the case of G. Michael v. S. Venkataswaran,⁵ "It is a matter of common knowledge that the institution of Caste is peculiarly Indian. Caste as we now understand it is a social combination the members of which are enlisted by birth and not by enrolment (vide Ganapathi Aiyar's Hindu law, page 410). Whatever may be the origin of the various castes and sub-castes, it is likely that at its inception the caste system was much more elastic than it grew to be in later times. It might be, as some scholars suggest, division was based upon differences of colour and race; but it is equally clear that the castes and certainly many, if not most, of the sub-castes were economic occupational group.

1. "Caste and Race in India", p. 75.

2. "Caste in India by J. H. Hutton, p. 6.

3. Ibid, pp. 64—65.

4. "Contemporary Indian Philosophy," p. 368.

5. AIR 1952, Madras, p. 474 (477).

Plato in his Republic envisaged the division of society into classes based on difference of function and occupation. It was a part of his definition of justice that the members of each class (caste) that is followers of each occupation should know and attend to their business and did not aspire to perform the functions of members of different castes. An almost identical principle is enunciated in the Gita which dwells on the importance of following one's own 'dharma' in preference to 'paradharma'. There can be no doubt, as a modern English philosopher has said, that the caste system in its early stages :

"represents one of the most successful applications of a philosophic principle to the world of concrete fact that mankind has contrived."

At the same time it is a matter of history that the system gradually hardened into a rigid frame work based upon heredity. Inevitably it gave rise to gradation which resulted in social inequality and put a premium upon snobbery. Social snobbery is not the monopoly of any race or country. But the caste system tended to develop, as it were, a group snobbery one group, caste or sub-caste, looking down upon another group. At the bottom of the scale of social values, were the members of the fifth caste, the panchamas, who were again members of several well-defined sub-castes. Even the best of human institutions, when it becomes mechanical and decadent, becomes also oppressive. This happened also to the caste system in India. The result was the perpetration of a certain amount of social injustice by the so-called higher castes on the lower castes and naturally the lowest of the castes became gradually the 'depressed classes'.

3.3 According to Mr. Justice Gajendragadkar¹—as he then was—of the Supreme Court, "In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizen. Though according to sociologists and Vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later over-burdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility, and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority, and to foster narrow caste loyalties". Pandit Shri Jawaharlal Nehru has described the unfortunate consequences of the rigid caste system thus² :

"The conception and practice of caste embodied aristocratic ideal and was obviously opposed to democratic conceptions. It has its strong sense of *noblesse oblige*, provided people kept their hereditary status and did not challenge the established order. India's success and achievements were on the whole confined to the upper classes those lower down in the scale had very few chances and their opportunities were strictly limited. These upper classes were not small limited groups but large in numbers and there was also a diffusion of power, authority and influence. Hence they carried on successfully for a very long period. But the ultimate weakness and failing of the caste system and the Indian social structure were such that they degraded a mass of human beings and gave them no opportunities to get out of that condition educationally, culturally, or economically. That degradation brought deterioration, all along the line including in its scope even the upper classes. It led to the petrification which became a dominant feature of India's economy and life. The contrasts between this social structure and those existing elsewhere in the past were not great, but with the changes that have taken place all over the world during the past few generations they have become far more pronounced. In the context of society today, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy and much less economic democracy. Between these two conceptions conflict is inherent and only one of them can survive." He has also observed, "Education and opportunities of growth were withheld from the lower castes who were taught to be submissive to those higher in the scale. The caste system was a barrier to any change. For all its virtues and the stability it had given to the Indian society, it carried within it needs of destruction."

1 AIR 1963 SC 645 (659)

2. 'Discovery of India' (3rd Edition, Chap. VI, p. 234),

3.4. According to S. Radhakrishnan,¹ caste "degenerated into an instrument of oppression and intolerance and tended to perpetuate inequality and develop the spirit of exclusiveness." Referring to the caste system, K. M. Panikar² said that caste "divided the Hindu people into such small units as to render the development of any common social feeling impossible. In fact it is a negation of the idea of society." As pointed out by the Backward Classes Commission,³ "The religious caste complex has become so deep-rooted that it is not easy for any caste-group to get away from its strong grip. Even the most intellectual including those who declared themselves to be the enemies of caste, are not often entirely free, and consciously or unconsciously they act in a manner which gives a fresh lease of life to the caste system. Both by the force of inherited habit and the training imparted to an individual he feels a deep loyalty to the caste-group. That loyalty is so deep that he is generally unable to shake it off even when he is intellectually convinced that it is baneful. The social differences of caste have become so firm in the mind of the Hindu that he regards them as natural. The two important elements in the Hindu caste system are endogamy and hierarchy. The desire to keep themselves pure is responsible for the rigid observance of endogamy. The feeling of superiority or inferiority has resulted in caste hierarchy."

3.5 The catastrophic result of the rigid caste system was that, even the members of those castes which were treated as inferior in the hierarchy of castes, came to believe that, the social order to which they belonged having the sanction of religion, was ultimately for their good, if they performed the duties assigned to that order, in a proper manner. The above impression on the minds of those who belonged to castes which were considered lower, was the result to a great extent, of conscious efforts in that direction, on the part of priests and those who claimed to belong to higher castes. The lower castes were impressed by the Hindu philosophy that whatever may be one's caste, Brahman or Shudras, one can attain perfection by doing well the duties assigned to him and remaining within the fold of his castes. People were not induced to aspire for higher social status. The performance of duties rather than the demand for rights was emphasised. Dr. Ambedkar has observed,⁴ "Inequality is the official doctrine of Brahmanism and the suppression of the lower classes aspiring to equality has been looked upon by them and carried out by them without remorse as their bounden duty." Observations in the Report of the Backward Classes (Kalelkar) Commission, 1955 (Vol. I, p. 22-23), on the above aspect are⁵ :

"There was a systematic suppression behind the rules and codes of social conduct. The leaders of society thought that the upper classes could be safe only by maintaining the ignorance and poverty of the masses. The latter were told that the social arrangement was ordained by God. The theory of 'Karma' and 'Re-birth' was misused to sustain such an arrangement. The masses were told that they would be punished in the other world for any violation of the social laws and that they would be rewarded by way of better status in the next life if they remained humble, docile and serviceable. Such were the ideas of justice and retribution that were laid down to support the social injustice of the minority towards the ignorant majority. Constant preaching for generations produced a mentality which perpetuated itself through ignorance and inertia. Even the king in the olden days could not ignore the social laws thus prescribed : his duty was merely to uphold the recognised social order. These ideas have sunk so deep into the social fabric that even today people in villages feel that the social order inherited from their forefathers is the best arrangement ; that it had the sanction of religion and morality and therefore, of God. The poor and ignorant people think that it is a social virtue to submit to all restrictions, privations, and humiliations enjoined by the old social order. A good many of the upper classes honestly feel that there is nothing objectionable in keeping the untouchables down or in treating the other Backward classes with contempt. The pervasive influence is such that even the reforms introduced by Government are accepted by the orthodox in a spirit of helplessness and with a feeling that it is the effect of 'kaliyuga' or 'Iron-age'. The result is that while there is abject obedience and conformity to reform, it is effected without any corresponding change in the social outlook of the people.

1. "Hindu View of Life", p. 93,

2. "Hindu Society at Cross Roads" 3rd Edition, p. 36.

3. Report of the First Backward Classes (Kalelkar) Commission, p. 21.

4. "The Indian Constitution," by Ratna Revankar, p. 25.

5. Quoted in Dhananjay Keer, Dr. Ambedkar : Life and Mission, 1954, p. 220,

Strangely enough, attempts made by social and religious reformers in the past, have sometimes ended not in obliterating caste but in creating a new one of their followers. Reforms are thus segregated and not allowed to spread. We find this phenomenon going on in India from time immemorial. The whole idea was conceived because of insufficient recognition and respect for the human personality. The idea has become so deep-rooted in the psychology of Hindu society that one finds greater rigidity of caste practices among the lower castes. It is against such a background that steps to remove the backwardness of a vast number of people must be considered."

3.6 We have already pointed out as to how social and educational backwardness is the result of the rigid caste system which has divided Hindu society into hundreds of castes with all attending evils. While deciding the question as to which sections of the people can be said to be socially and educationally backward and also for the purpose of formulating our recommendations as regards the steps that may be taken by the State to achieve the object underlying Articles 15(4), 16(4) and 46 of the Constitution of India. It is necessary for us to take into consideration, the factors which are responsible for social and educational backwardness of large sections of the society. As pointed out by the Supreme Court, in the case of *M. R. Balaji and Others v. State of Mysore and Others*,¹ "Social backwardness which results from poverty is likely to be aggravated by considerations of castes to which the poor citizens may belong." "The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward."² "Social backwardness can contribute to educational backwardness and educational backwardness may perpetuate social backwardness. Both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition." *K. S. Jayasree v. State of Kerala*.³

3.7 One more reason why, we have elaborately discussed various aspects of the caste system, and pointed out as to how "caste degenerated into an instrument of oppression and intolerance"⁴ is to impress upon those who are inclined to oppose or are unable to appreciate various ameliorative measures taken for the advancement of backward classes that, social educational and economic backwardness of the majority of our people is the result of tyranny of the castes and high handedness on the part of priestly and so-called upper classes, and their callous disregard for the welfare of those, whom they have contrived to keep at lower positions in the hierarchy of castes, for a considerably long time, for achieving their own selfish purpose.

3.9 It would, therefore, be in the fitness of things to point out some of the revolting and deplorable instances of perpetuation of injustice and inequality against lower castes by the law-givers belonging to the Brahmin caste. G. S. Ghurye has quoted several such instances in his "Caste and Race in India", and some of them are :

"The name of the fourth class, the Shudra, occurs only once in the Rigveda. It seems the class represented domestic servants, approximating very nearly to the position of slaves. The Shudra is described as "the servant of another", "to be expelled at will", and "to be slain at will". The Panchavimsha Brahmana defines this position still more precisely when it declares that the Shudra, even if he prosperous, cannot but be a servant of another, washing his superior's feet being his main business".

"The Shatapatha Brahmana goes to the length of declaring that the Shudra is untruth itself".

"The Brahmin was exempt from the usual taxes".

"The Brahmin was exempt from corporal punishment. The estate of heirless persons of the Kshatriya, Vaishya, and Shudra varnas went to the King, who had to distribute it among learned Brahmins, while the estate of an heirless Brahmin belonged directly to them. The property of a Brahmin is described as the worst poison destroying him who takes it. On the other hand, in order to defray the expenses of a marriage or of a religious rite, he may help himself to the money of a Shudra by fraud or by force".

1. AIR 1963 SC 649 (659)

2. Ibid.

3. 1976(3), SCC, 731 (735)

4. Ibid

"Even to accuse a Brahmin of a crime that he might have committed is a sin."

"Even as regards the highly lauded and essential duty of a householder, viz. hospitality, the Brahmin has his privileges. He need not treat a non-Brahmin as his guest unless he comes on the occasion of a sacrifice."

"The statement that God created the Sudra to be the slave of all is repeated and he is given the name 'padaja' (born from the feet). He is to be supported, to be fed, to be clothed with the remnants and castaways of food and raiment by the three varnas."

"The Veda must not be recited in his presence, no advice must be given to him, nor the remnants of the offerings to the gods. Holy law must not be expounded to him, nor must he be asked to perform a penance. He shall use the old shoes, discarded garments, etc., of the members of the other varnas, and eat leavings of their food. So great was the feeling against the Sudra performing a sacrifice that Guatama exhorted a person to cast off his father if he either sacrificed with the money given by a Shudra or officiated at his sacrifice."

"The utter indifference shown to the Shudras is further brought out by the fact that out of the eight forms of marriage the two forms recommended for the Shudra are entirely devoid of religious content. In fact, one of them may be termed rape as consummated marriage, and the curious justification offered for this prescription is that the Shudras are not particular about their wives."

"The Mahabharata says that the Shudra can have no absolute property, because his wealth can be appropriated by his master at will. If the master of a Shudra has fallen into distress, the latter shall be placed at the disposal of the poor master."

"Shudra trying to hear the Vedic texts shall have his ears filled with molten tin or lac, if he recites the Veda his tongue shall be cut off, and if he remembers it he shall be dismembered. If he assumes a position of equality with twice-born man, either in sitting, conversing, or going along the road, he shall receive corporal punishment."

"On the other hand, a Shudra can be abused by a Brahmin without entailing any punishment."

"Altogether so unworthy is the Shudra, that if he comes as a guest, he shall be fed together with one's servants and that, too, perhaps after getting some work out of him."

"The Shudra, thus, had no civil or religious rights."

"Servitude is proclaimed to be a permanent condition of a Shudra, whether he be actually bought or not. A Shudra must not acquire wealth, because thereby he causes pain to the Brahmins."

"A member of the first three castes must not travel in the company of Shudras. It seems that the Shudras were considered to impart some sort of defilement to objects like bed and seat by their touch. According to Kautilya, a Shudra calling himself a Brahmin shall have his eyes destroyed by poison or shall pay the heavy fine of eight hundred 'panas.'"

3.9 Kalelkar Commission has also referred to callous attitude of social leaders towards lower castes in the following terms :

"The attitude of social leaders ever since mediaeval times has been one of callousness. Even law-givers like Manu gave support to an unsocial attitude towards fellow human beings. He laid down that the Shudra should not be allowed to study the scriptures, nor should he have a spotlessly clean dress nor ride a conveyance in the presence of men of the upper classes. He must bow low if he finds a man of upper caste passing by." Mandal Commission has also pointed out in its report as to how the law-givers in the past have been unfair to Shudras, and other non-Brahmin Communities. Some of the

observations of the above point in the above report are :

"Regarding litigation : "In a local dispute between a Brahmin and a non-Brahmin the arbitrator or a witness must speak in favour of the former" According to 'Satpath Brahmana', "a murder of a Brahmin alone is the real murder, while the Yajurveda declare it to be a more heinous crime than that of killing any other man." On the other hand Manu says that the "slaying of a Shudra by a Brahmin is equivalent merely to the killing of a cat, a mongoose, a blue jay, a frog, a lizard, an owl or a cow."

"If a shudra mentions the name and class of the twice-born with contumely, an iron nail, ten fingers long shall be thrust red-hot into his mouth."

"Mythology and scriptures were also pressed into service to establish the inherent superiority of the Brahmin and the low social ranking of the Shudras. For instance Tulsidas states in his Ramayana :

पूजये विप्रशौच गुण हीना
नहि शूद्र गुण ज्ञान प्रविणा

(Venerate a Brahmin even if he is devoid of all virtue but not a Shudra even if he is packed with virtue and knowledge)."

Quoting from apasthmba, Ghurye says, "Between a hundred year old Kshatriya and a 10 year old Brahmin, the later is said to be like the father."

3.10. At this stage, we may point out that, the term 'Shudras' is not synonym for the word untouchables (or Harijans), but it refers to castes regarded inferior to Vaishyas, "The varna seem to have been originally the four classes into which Rigvedic society was divided; that is, the three categories of twice-born, Brahmin, Kshatriya and Vaishya, and fourthly the Sudra, below whom were the outcastes."¹ "In Hindustan proper, castes can be divided into five groups, first, the twice-born castes; second, those castes at whose hands the twice born can take 'Pakka' food; third, those castes at whose hands the twice-born cannot accept any kind of food but may take water; fourth, castes that are not untouchable yet are such that water from them cannot be used by the twice-born; last come all those castes whose touch defiles not only the twice-born but any orthodox Hindu."²

Even though, it were Brahmin law-makers who framed rules and evolved codes condemning Shudras to lower positions and conferred innumerable indignities on them, and placed all types of hurdles in the path of their progress, other castes who were above Shudras did not lag behind in exploiting their miserable plight resulted from the application of the above rules and codes, for their own selfish purpose. Thus, Shudras who formed the bulk of Hindu society had to suffer injustice and humiliation not only at the hands of Brahmin law-givers but also at the hands of other castes who were above them in caste hierarchy. As the upper classes were interested in keeping the masses in a state of bondage and servility, progress of their march on the road of advancement has naturally been slow, the blame for which lies squarely on the upper classes. It is hoped that, they would realise the part played by them in suppressing the masses for their own selfish purpose, for several centuries and willingly come forward to atone for their sins not only by removing the hurdles in the way of their advancement but, also by supporting various measures being taken for their uplift. The purpose of giving adventitious aids to socially and educationally backward classes and other weaker sections of the society is required to be appreciated in proper spirit in the light of what is stated above. If that is done, there would not be any heart burning on the part of the upper classes for the ameliorative measures to be taken for the benefit of the underprivileged.

Lot of Scheduled Castes and Scheduled Tribes is miserable.

3.11 It is hardly necessary to add that, so far as Scheduled Castes (Harijans) are concerned, their lot has been most miserable. They suffer from the stigma of untouchability in consequence of which several disabilities are imposed on them. Indignities heaped on them are revolting and atrocities committed on them are gruesome and a blot on the Hindu society. Most of the Scheduled Tribes live in jungles and hills, isolated from the rest of the society, as a result of which they lead a sort of primitive life and remain backward. As pointed out

1. 'Caste in India, J. H. Hutton, p. 64.

2. 'Caste and Class in India by D. S. Ghurye.

in Chapter I of this Report, Scheduled Castes and Scheduled Tribes are defined and specified in the Constitution. In view of the above position and looking to the terms of reference of this Commission, we are not required to deal with their cases. We have, however, made reference to them in order to make it clear that, we are quite conscious of their miserable existence.

3.12. It is easy to understand that economic, educational and social backwardness suffered by the victims of caste tyranny for endless centuries cannot be got rid of overnight, by giving them adventitious aids and that, it would be necessary to give them reasonable times for their growth and advancement, in order to enable them to catch up with their fortunate brethren of the upper classes. The above aspect will have to be kept in mind, while considering the question as to how long the adventitious aids and preferential treatment for the uplift of the backward classes, as contemplated by the relevant provisions of the Constitution, should be continued.

CHAPTER—IV

RELEVANT CRITERIA, TESTS AND FACTORS FOR DETERMINING WHO ARE SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES IN THE LIGHT OF THE DECISIONS OF THE SUPREME COURT

The backwardness must be both social and educational. It need not be exactly similar to that of Scheduled Castes and Scheduled Tribes.

4.1 We have to determine social and educational backwardness of a particular class of citizens on the basis of the relevant provisions of the Constitution of India. We have already pointed out that "the laying down of a criteria for ascertainment of social and educational backwardness, is a complex problem, depending upon many circumstances, which may vary from State to State and even from place to a place in a State." R. Chitralakha.¹ The above question has, however, been considered by the Supreme Court in several cases and it has laid down certain guidelines which we have followed for the purpose of deciding as to who are socially and educationally backward classes. As the law on the point is well settled, no useful purpose would be served by narrating the facts of each case. We would, therefore, refer only to those observations and statements of the Supreme Court which explain or declare the law on the subject. Important guidelines have been laid down by the Supreme Court in the case of Balaji,² which is regarded as the *locus classicus* on the subject. The relevant observations on the subject in the above case, are :

"Under Article 338(3), it is provided that references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a Commission appointed under Article 340(1) by order, specify and also to the Anglo-Indian community. It would thus be seen that this provision contemplates that some Backward Classes may by the Presidential order be included in Scheduled Castes and Scheduled Tribes. That helps to bring out the point that the Backward Classes for whose improvement special provision is contemplated by Article 15(4) are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes." In a later decision in the case of State of A. P. v. U.S.V. Balaram,³ the Supreme Court, while referring to the case of Balaji and other cases on the point, has clarified that : "It must be pointed out that none of the above decisions lay down that social and educational backwardness must be exactly similar in all respects to that of the Scheduled Castes and Scheduled Tribes." While considering the scope and extent of the expression "backward classes" under Article 15(4), it is pointed out in the case of Balaji⁴ that "the concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes and each one of them may claim to be included under Article 15(4)".... "The backwardness under Article 15(4) must be social and educational. It is not either social or educational, but it is both social and educational."⁵

Caste, poverty and backwardness.

4.2. As regards the question whether, while determining social backwardness of a particular class, caste should be taken into consideration, the Supreme Court has observed in the above case⁶: "The group of citizens to whom Article 15(4) applies are described as 'classes of citizens', not as castes of citizens. A class, according to the dictionary meaning, shows division of society according to status, rank or caste. In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizen. Though according to sociologists and vedic scholars, the caste system may have originally begun on occu-

1. AIR 1964 SC 1823 (1834).

2. AIR 1963 SC 649 (658)

3. AIR 1972 SC 1375 (1395)

4. AIR 1963 SC 649 (658).

5. Ibid

6. Ibid, 659

pational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later over-burdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority, and to foster narrow caste loyalties. Therefore, in dealing with the question as to whether any class of citizen 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 contemplated for classes of citizens and not for individual citizens as such, and so, though the caste of group of citizens may be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the castes themselves." It is also pointed out in the above case¹ that, "if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups *in toto* from the operation of Article 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens".

Other factors relevant for determining backwardness.

4.3 As regards the other factors, which are relevant for the purpose of determining who are socially backward classes, it is pointed out in the above case²: "The occupations of citizens may, also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Article 15(4). The problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way. That is the function of the State which purports to act under Article 15(4)".

Tests for determining educational backwardness.

4.4 At this stage, we may incidentally point out that, in the case of Balaji, the Supreme Court was considering the orders passed by the Government of Mysore on the basis of the report and the recommendations made by Nagan Gowda Committee. As regards the question of educational backwardness of the classes of citizens, the Supreme Court has observed in the above case³: "The Nagan Gowda Report and the impugned order proceed to deal with this question on the basis of the average of student population in the last three High School classes of all High Schools in the State in relation to a thousand citizens of that community. On the figures supplied to the Committee which admittedly are approximate and not fully accurate, the Committee came to the conclusion that the State average of student population in the last three High School classes of all High Schools in the State was 6.9 per thousand. The Committee

1. Ibid

2. Ibid

3. Ibid, 660

decided that all castes whose average was less than the State average of 6.9 per thousand should be regarded as backward communities, and it further held that if the average of any community was less than 50% of the State average, it should be regarded as constituting the more backward classes. It may be conceded that in determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports may not be adequate; but it is doubtful if the test of the average of student population in the last three High School classes is appropriate in determining the educational backwardness. Having regard to the fact that the test is intended to determine who are educationally backward classes, it may not be necessary or proper to put the test as high as has been done by the Committee. But even assuming that the test applied is rational and permissible under Article 15(4), the question still remains as to whether it would be legitimate to treat castes or communities which are just below the State average as educationally backward classes. If the State average is 6.9 per thousand, a community which satisfied the said test or is just below the said test cannot be regarded as backward. It is only communities which are well below the State average that can properly be regarded as educationally backward classes of citizens. Classes of citizens whose average of student population works below 50% of the State average are obviously educationally backward classes of citizens. Therefore, in our opinion, the State was not justified in including in the list of Backward Classes, castes or communities whose average of student population per thousand was slightly above, or very near, or just below the State average."

"In regard to the Muslims, the majority view in the Committee was that the Muslim community as a whole should be treated as socially backward. This conclusion is stated merely as a conclusion and no data or reasons are cited in support of it. The average of student population in respect of this community works at 5 per thousand and that, in our opinion, is not so below the State average that the community could be treated as educationally backward in the State of Mysore. Therefore, we are not satisfied that the State was justified in taking the view that communities or castes whose average of student population was the same as, or just below the State average, should be treated as educationally backward classes of citizens. If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens whose average is well or substantially below the State average can be treated as educationally backward. On this point again, we do not propose to lay down any hard and fast rule; it is for the State to consider the matter and decide it in a manner which is consistent with the requirements of Article 15(4)."

Social backwardness can be determined without reference to caste.

4.5 In the case of *Chitralekha v. State of Mysore*,² while referring to the case of *Balaji*, it is pointed out that : "Two principles stand out prominently from the said observations, namely, (1) the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness and (2) though it is a relevant factor to determine the social backwardness of a class of citizens, it cannot be the sole or dominant test in that behalf." Further observations in the case of *Chitralekha*, on the point are³ ; "We would hasten to make it clear that caste is only a relevant circumstance in ascertaining the backwardness of a class and there is nothing in the judgment of this Court, which precludes the authority concerned from determining the social backwardness of a group of citizens if it can do so without reference to caste. While this Court has not excluded caste from ascertaining the backwardness of a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of a class. To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but, if it does not, its order will not be bad on that account, if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria." The Supreme Court has observed in the case of *Minor P. Rajendran v. State of Madras and others*: "...But it must not be forgotten that, a caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens within the meaning of Article 15(4)."

1. Ibid p 661

2. AIR 1964 SC 1823 (1833)

3. Ibid

4. AIR 1968 SC 1012 (1014)

4.6. In the case of *State of Andhra Pradesh v. P. Sagar*,¹ the Supreme Court has observed that one of the principles which had been enunciated in the decision in the case of *M. R. Balaji*, is : "The criteria for determining the backwardness must not be based solely on religion, race, caste, sex or place of birth, and the backwardness being social and educational must be similar to the backwardness from which the Scheduled Castes and Scheduled Tribes suffer, . . ."

Caste is also a class of citizens.

4.7. The Supreme Court has reiterated in the case of *State of Andhra Pradesh v. U.S.V. Balaram*,² : ".....But it should not also be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward." If after collecting the necessary data, it is found that caste as a whole is socially and educationally backward, in our opinion, the reservation made of such persons will have to be upheld notwithstanding the fact that a few individuals in that group may be both socially and educationally above the general average. There is no gainsaying the fact that there are numerous castes in the country, which are socially and educationally backward and therefore a suitable provision will have to be made by the State as charged in Article 15(4) to safeguard their interest."

Tests for determining educational backwardness. Observations in the case of Balaji explained.

4.8. The observations of the Supreme Court in the case of *Balaji* as regards the criteria for determining educational backwardness, have been explained in the above case in the following terms;³ "In 1963 Supp. (1) SCR 439=(AIR 1963 SC 649), it was observed that it is doubtful if the test of average student population in the last three High School classes is appropriate in determining the educational backwardness and that it may not be necessary or proper to put the test as high. Even in respect of educational State average, it was observed in the said decision that the legitimate view to take would be that classes of citizens whose average is well below the State average can be treated as educationally backward. But here again, it was emphasized that the Court does not propose to lay down any hard and fast rule as it is for the State to consider the matter and decide it in a manner which is consistent with the requirements of Article 15(4). These observations made by this Court in the above decisions have, in our opinion, been misapplied by the High Court to the case on hand. It has proceeded on the basis that it is axiomatic that the educational average of the class should not be calculated on the basis of the student population in the last three high school classes and that only those classes whose average is below the State average, that can be treated as educationally backward. This Court has only indicated the broad principles to be kept in view when making the provision under Article 15(4)."

Poverty not to be the exclusive test.

4.9. As regards the question whether poverty can be one of the tests in determining social backwardness, it is observed by the Supreme Court in the case of *Janki Prasad v. State of Jammu & Kashmir*,⁴ : "..... In India social and educational backwardness is further associated with economic backwardness and it is observed in *Balaji's* case referred to above 1963 Supp. (1) SCR 439=(AIR 1963 SC 649), that backwardness, socially and educationally, is ultimately and primarily due to poverty. But if poverty is the exclusive test, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservations are made only on the ground of economic considerations, an untenable situation may arise because even in sectors which are recognised as socially and educationally advanced, there are large pockets of poverty. In this country, except for a small percentage of the population, the people are generally poor some being more poor, others less poor. Therefore, when a social investigator tries to identify socially and educationally backward classes, he may do it with confidence that they are bound to be poor. His chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though the two words 'socially' and 'educationally' are used cumulatively for the purpose of describing the backward class, one may find that if a class as a whole is educationally advanced, it is generally also a socially advanced because of the reformatory effect of education on that class. The words 'advanced' and 'backward', are only relative terms—

1. AIR 1968 SC 1379 (1968).

2. AIR 1972 SC 173 (1972).

3. Ibid, p. 1397.

4. AIR 1973 SC 930 (1973).

there being several layers or stratas or classes hovering between 'advanced' and 'backward' and the difficult task is which class can be recognised out of these several layers as being socially and educationally backward.

A class can be identified on the basis of traditional occupations.

4.10 It is further held in the above case¹: "...A class can be identified on the basis of traditional occupation. A traditional occupation means an occupation followed in a family in which it is handed down by an ancestor to his posterity. If there is a section of the population following an occupation of that description that section can be regarded as a class."

Lower income groups alone are backward.

4.11 In the case of *Kumari K. S. Jayasree v. State of Kerala*,² the recommendation of the Commission appointed by the State of Kerala to enquire into the social and educational conditions of the people and report as to what section of the people in the State of Kerala should be treated as socially and educationally backward classes, was that "only citizens who are members of families which have an aggregate income of less than Rs. 4,200 per annum and which belong to the castes and communities mentioned in Appendix—VIII constitute socially and educationally backward classes for purposes of Article 15(4)."

4.12 On the basis of the recommendation of the Commission, Government passed the following orders :

"After the Commission collected data for its report, the cost of living has risen further and the income tax exemption limit has been raised. Having regard to the current cost of maintenance of a student in a professional or technical institution, Government consider that the income limit of Rs. 4,200 suggested by the Commission should appropriately be raised to Rs. 6,000 per annum."

It is thus clear that, the Government accepted the above recommendation subject to the modification that, only citizens who are members of families which have an aggregate income of less than Rs. 6,000 per annum and which belong to the castes and communities mentioned in the Annexure to the Government Order, will constitute socially and educationally backward classes as contemplated by Article 15(4).

4.13 As pointed out by the Supreme Court,³ "As regards the educational backwardness of the classes of citizens, the Commission found that the State average of the students in the last of the High School classes can safely be taken as one of the elements of the composite test for ascertaining educational backwardness. The Commission treated as backward the communities which have an abnormal fall-out". Further observations of the Supreme Court as regards findings of the Commission are⁴ :

"The Commission applied the tests for educational backwardness, test of habitation, necessity for a means-cum-caste/community test, the income level for the means-cum-caste/community test, and came to the conclusion that citizens in the State of Kerala who are members of families which have an aggregate income less than Rs. 4,200/ per annum from all sources and which belong to castes or communities mentioned in Appendix—VIII constitute socially and educationally backward classes for purposes of Article 15(4). The Commission found that generally the members of the castes and communities mentioned in Appendix—VIII are educationally backward and that the lower income groups which have an aggregate income of less than Rs. 4,200/ per annum are socially backward also. The lower income group of these castes and communities belongs in the opinion of the Commission to classes of citizens who are both socially and educationally backward."

While upholding validity of the order of the Government, the Supreme Court observed⁵ :

"Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by

1. *Ibid*, p. 939

2. 1976 (3) S.C.C. 730 (732)

3. *Ibid*, p. 732

4. *Ibid*, p. 735

5. *Ibid*, p. 735

considerations of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness. The Commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based solely on the caste of citizen it will perpetuate the vice of caste system. Again, if the classification is based solely on poverty it will not be logical. The society is taking steps for uplift of the people. In such a task groups or classes who are socially and educationally backward are helped by the society. That is the philosophy of our Constitution. It is in this context that social backwardness which results from poverty is likely to be magnified by caste considerations. Occupations, place of habitation may also be relevant factors in determining who are socially and educationally backward classes. Social and economic considerations come into operation in solving the problem and evolving the proper criteria for determining which classes are socially and educationally backward. That is why our Constitution provided for special consideration of socially and educationally backward classes of citizens as also scheduled castes and tribes. It is only by directing the society and the State to offer them all facilities for social and educational uplift that the problem is solved. It is in that context that the Commission in the present case found that the income of the classes of citizens mentioned in Appendix—VIII was a relevant factor in determining their social and educational backwardness."

"Social backwardness is the result of poverty to a very large extent. Caste and poverty are both relevant for determining the backwardness.".....

"The different castes that have been described in Appendix—VIII to the Commission report have not been accepted by the Commission as embodying the group of socially and educationally backward classes of people. Only those among the members of the castes mentioned in Appendix—VIII whose economic means was below that stated by the Commission were treated as socially and educationally backward. The educational backwardness is reflected to a certain extent by the economic conditions of the group."

1. Ibid, p. 736.

CHAPTER-V

RELEVANT CRITERIA, TESTS AND FACTORS FOR DETERMINING WHO ARE SOCIALLY AND EDUCATIONALLY BACKWARD IN THE LIGHT OF THE DECISIONS OF THE SUPREME COURT (CONTINUED)

Criterion of caste in relation to non-Hindus.

5.1 We have pointed out in Chapter—IV that according to the various decisions of the Supreme Court, the caste is a relevant circumstance in ascertaining the backwardness of a class and that, if a caste as a whole is socially and educationally backward, reservations can be made in favour of such a caste on the ground that, it is a socially and educationally backward class of citizens. We shall now deal with the question whether a caste is a relevant circumstance for the purpose of determining social and educational backwardness of non-Hindu communities or sections of the Indian society.

5.2 The relevant observations on the point, in the Report of the First Backward Classes Commission¹ appointed by the President of India under Article 340 of the Constitution, in the year 1953, are as under :

"Officially, Muslims do not recognise any caste. It must be said to the credit of Islam that it did not compromise its position in the matter of untouchables. All Muslims, drawn from any stock or community, were regarded as equal, both in the mosque and at dinner parties. They did not recognize social distinctions as is done in the case of caste groups in Hindu society. Gradually, however, Islamic society in India succumbed to the influence of caste and lost its pristine purity. The racial distinction of Mughal and Pathan, Sheikh and Syed has been maintained though without any sense of social inferiority. There are certain professions, however, that are regarded as inferior even by the Muslims. The sense of high and low has gradually permeated Muslim society and today there are a number of communities amongst them that are suffering from social inferiority and consequent educational backwardness."

5.3 As regards Christians, it is observed in the above report² :

"Christianity has consistently refused to recognise caste. Taboos on inter-marriages, inter-dinning and widow-marriages are systematically opposed in Christian Society. There is no segregation of communities as such amongst them. And yet in practice we found that segregation of converts from Scheduled Castes was not successfully overcome in certain parts of South India. We were informed that this segregation has spread even beyond the secular side of life and sometimes Harijan converts were not allowed to pray together with the upper class Christians. We were also told that in some places in the South these classes are forced to have a separate cemetery for their dead. We could not refuse to recognise this unchristian state of affairs and have recommended that such communities, especially in the South, should be recognized as backward and given all concessions and facilities available to the Other Backward Classes." Observations of the First Socially and Educationally Backward Classes Commission, popularly known as the Bakshi Commission, appointed by the Government of Gujarat in its report on the point, are³ :

"The dangers of adopting a Caste criterion are also obvious. The criterion, for example, will fail and will not apply in the case of Muslims."

5.4 Karnataka Backward Classes Commission has also dealt with the above question. According to that Commission⁴ :

"The caste system peculiar to Hindu religion is unknown to other religions, even to Buddhism, Jainism and Lingayatism (Virashaivism). But on account of the impact of

1. Commission's Report, p. 27, para 1.

2. Ibid, p. 28, para 5.

3. Ibid, p. 36, para 2.31

4. Commission's Report, Vol. I, Part I, p. 71, para 9.

Hinduism on Islam, Christianity, Buddhism, Jainism and Virashaivism there are certain sections among them also."

5.5 Observations of the Backward Classes Second Commission, appointed by the President of India, on the point, are¹ :

"There is no doubt that social and educational backwardness among non-Hindu communities is more or less of the same order as among Hindu communities. Though caste system is peculiar to Hindu society yet, in actual practice, it also pervades the non-Hindu communities in India in varying degrees. There are two main reasons for this phenomenon : first, caste system is a great conditioner of the mind and leaves an indelible mark on a person's social consciousness and cultural modes. Consequently, even after conversion, the ex-Hindu carried with them their deeply ingrained ideas of social hierarchy and stratification. This resulted in the Hindu converts inadvertently acting as Trojan horses of caste system among highly equalitarian religions such as Islam, Christianity, Sikhism, etc. Secondly non-Hindu minorities living in pre-dominantly Hindu India could not escape from its dominant, social and cultural influences. Thus, both from within and without, caste amongst non-Hindu communities received continuous sustenance and stimulus."

According to Zeyauddin Ahmed² : "... Sayyads and Sheikhs are the priestly castes like the Brahmins and Mughals and Pathans, famous for their chivalry, are equal to the Kshatriyas There are occupational castes who are considered lower castes in the hierarchy... castes have hereditary names based on their occupation and there is definite tendency among them to practice endogamy.... They are descendents of the members of Hindu clean castes who have been converted to Islam either in groups from different castes or as whole castes." On the same point, Dr. Imtiaz Ahmed observes³, "There is a notion of hierarchy among the Muslims though it is hard to say how far the criterion of the ranking among them can be said to conform to the Hindu model.... It is clear that caste exists as a basis of social relations amongst them (Muslims) but its form has been greatly weakened and modified as it differs from the Hindu model in certain details."

Similar is the situation among Indian Christians⁴. "... Christians in Kerala are divided into various denominations on the basis of beliefs and rituals and into various ethnic groups on the basis of their caste background.... even after conversion, the lower caste converts were continued to be treated as Harijans by all sections of the society including the Syrian Christians, even though with conversion the former ceased to be Harijans and untouchables.... In the presence of rich Syrian Christian, the Harijan Christians had to remove their head-dress while speaking with their Syrian Christian masters, they had to keep their mouth closed with a hand.... It was found that the Syrian and Pulaya members of the same Church conduct religious rituals separately in separate buildings.... Thus lower caste converts to a very egalitarian religion like Christianity, ever anxious to expand its membership, even after generations were not able to efface the effect of their castes background."

"About Sikhs, the Hindu caste model is almost literally replicated and the fact is too well-known to need any elaboration."

"But despite the prevalence of caste system among non-Hindu communities in varying degrees, the fact of the matter is that all these religions are totally egalitarian in their outlook, they proclaim absolute equality of all their co-religionists and any social differentiation based on caste is anathema to them. In view of this, caste cannot be made the basis for identifying socially and educationally backward classes among non-Hindu communities. We, therefore, shall have to evolve some other rough and ready criteria for identifying non-Hindu OBCs."

1. Commission's Report, 1st Part, Vol. I, p. 55, para 12.11

2. "Caste among non-Hindus in India", edited by Dr. Harijinder Singh, National, 1971, p. 10.

3. "Caste & Social Stratification among Muslims in India", edited by Dr. Imtiaz Ahmed, Manchar Publications, 1978, pp 7 and 12.

4. K. C. Alexander in 'Caste among non-Hindus in India', edited by Dr. Harijinder Singh, ps. 53, 54, 55 and 56.

5. Mandal Commission Report, p. 55, para 12.15.

6. Ibid, para 12.16.

For the reasons stated above, the Commission had evolved the following rough and ready criteria for identifying non-Hindu OBCs (para 12.18):

- “(i) All untouchables converted to any non-Hindu religion ; and
- (ii) Such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list of Hindu OBCs. (Examples : Dhobi, Teli, Dheemer, Nai, Gujar, Kumhar, Lohar, Darji, Badhai, etc.).”

5.6. The Supreme Court has also considered the above question in some cases. In the case of *Balaji*,¹ it is pointed out that “If the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of the Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayates are socially backward or not ? The test of castes would be inapplicable to those groups, but that would hardly justify the exclusion of these groups *in toto* from the operation of Article 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social and educational backwardness is on the ultimate analysis the result of poverty to a very large extent.”

5.7. Imtiaz Ahmed has pointed out in his Introduction to “Caste and Social stratification among Muslims in India”, edited by him²:

“All the contributors to this volume are agreed that the Hindu ideological justification of the caste system does not exist in the case of Muslims. Aggarwal cites the Koranic verse which explicitly rejects gradation of groups and individuals in terms of birth and the ideology of pure and impure and suggests that the only criterion of social evaluation recognised in Islam is religious piety (p. 141). Bhattacharya notes that the formal religious values of Islam are opposed to any rigid system of ethnic and social stratification as the Islamic Great Tradition does not offer any sanction for it. Siddiqui also asserts that the existence of an hierarchical order generally receives overt denial from the great traditional values of the Muslims. But the evidence presented by these and other contributions clearly indicates that, while the formal religious ideology to which all Muslims claim adherence denies castes distinctions, there is another alternative ideology which recognize such distinctions and according to which observable social inequalities are correlated to Islamic tenets.”

5.8 Even though, a caste in the conventional sense known to Hindu society, cannot be made the basis for determining social backwardness so far as non-Hindu communities are concerned, it would be possible to determine who are socially and educationally backward classes amongst those communities by applying other relevant criteria or tests one of which is poverty. Social backwardness is in the ultimate analysis, the result of poverty to a very large extent. It will have to be ascertained whether some sort of notion akin to a caste system is prevalent amongst any of non-Hindu communities. There are certain professions that are regarded as inferior even by non-Hindu communities and there is a feeling of high and low amongst them. Those who are considered low in a social hierarchy, usually remain socially backward. We have already pointed out that, social backwardness can contribute to educational backwardness. Under these circumstances, all those factors which are likely or found to have contributed to social backwardness amongst non-Hindu communities can be taken into consideration for the purpose of ascertaining their social backwardness. We have kept in mind the above position while evolving criteria for ascertaining socially and educationally backward classes.

Relevant criteria, tests and factors enumerated.

5.9. As pointed out by the Supreme Court in the case of *Balaji*,³ “the problem of determining who are socially backward classes is undoubtedly very complex. Sociological, social

1. AIR 1963 SC 649 (659)

2. p 11

3. AIR 1963 S.C 649 (659)

and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task; it will need an elaborate investigation and collection of data and examining the said data in a rational and scientific way." We have referred to all the relevant decisions of the Supreme Court on the subject and carefully considered all the relevant factors in the light of those decisions and followed the guidelines laid down by it on various points and topics. Relevant criteria, tests, and factors to be considered for ascertaining social and educational backwardness or different classes of citizens, as could be gathered from the decisions of the Supreme Court and its pronouncements and deductions of general importance in regard to various aspects of the subject, are :

(1) Though the caste of a group of citizens is a relevant circumstance, in ascertaining social backwardness of a class, its importance should not be exaggerated.

(2) Caste cannot be made the sole or dominant test for ascertaining social backwardness.

(3) A caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservations can be made in favour of such a caste on the ground that, it is a socially and educationally backward class of citizens.

(4) If the caste of a group of citizens is made the sole basis for determining social backwardness of the said group that test would break down in relation to many sections of the Indian society which do not recognize caste in the conventional sense known to Hindu society.

(5) Poverty is one of the relevant factors but not the decisive or determining factor of social backwardness.

(6) Social and educational backwardness is, in the ultimate analysis, the result of poverty to a very large extent.

(7) Caste and poverty are both relevant for determining social backwardness.

(8) Social backwardness which results from poverty is likely to be aggravated by considerations of caste.

(9) Those classes of citizens who are deplorably poor, automatically become socially backward. They do not enjoy a status in society.

(10) Social and economic considerations come into operation in evolving the proper criteria for determining which classes are socially and educationally backward.

(11) The occupations of citizens may also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional belief and the classes of citizens who follow these occupations are considered lower in status and consequently they are apt to become socially backward.

(12) Such mode of living, customs and beliefs as are indicative of backwardness.

(13) The place of habitation and environmental factors; the place of habitation also plays not a minor part in determining the backwardness of a community or persons.

(14) In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Article 15(4).

(15) Whether any classes of citizens have permanently migrated from their original places of habitation for their livelihood. Whether they migrate from one place to another seasonally or periodically.

(16) Inadequate representation in Government/Public services. But mere inadequacy of representation in the services under the State is not the sole test of social and educational backwardness.

(17) The concept of backwardness is not intended to be relative in the sense that, any classes who are backward in relation to the most advanced classes of the society, should be included in it.

(18) Backward classes are, in the matter of their backwardness comparable to scheduled castes and scheduled tribes. It is, however, not necessary that, their social and educational backwardness must be exactly similar in all respects to that of scheduled castes and scheduled tribes.

(19) The backwardness under Articles 15(4) and 16(4) must be social and educational. It should be both social and educational.

(20) Inflexibility and rigidity of the caste system has tended to create a feeling of superiority and inferiority.

(21) It is open to determine social backwardness of a group of citizens on the basis of other relevant criteria without reference to caste.

(22) The criteria for determining backwardness must not be based solely on religion, race, caste, sex or place of birth.

(23) If a class as a whole is educationally advanced, it is generally also socially advanced because of reformatory effect of education on that class.

(24) A class can be identified on the basis of traditional occupation.

(25) There are certain professions that are regarded as inferior even by non-Hindu communities.

(26) There is a feeling of high and low even amongst non-Hindu communities.

(27) Those who are considered low in a social hierarchy usually remain socially backward.

(28) Means-cum-caste/community test.

(29) Social backwardness can contribute to educational backwardness and educational backwardness may perpetuate social backwardness.

(30) The class of citizens whose educational average is well on substantially below the State average, can be treated as educationally backward. No hard and fast rules can be laid down in the matter which can be decided in a manner which is consistent with the requirements of Article 15(4).

5.10 We have followed the above guidelines and applied the various tests and criteria in the light of the observations of the Supreme Court,¹ that "The laying down of criteria for ascertainment of social and educational backwardness of a class is a complex problem depending upon many circumstances which may vary from State to State and even from place to place in a State." (emphasis added.)

1. AIR 1964 SC 1823 (1834)

CHAPTER—VI

THE FIRST AND THE SECOND BACKWARD CLASSES COMMISSIONS APPOINTED BY THE PRESIDENT OF INDIA AND COMMISSIONS APPOINTED BY THE STATES

6.1 After the Constitution came into force, the first Backward Classes Commission was appointed by the President of India on January 29, 1953. The terms of its reference are given in Appendix—V. The above Commission popularly known as Kaka Kalekar Commission submitted its report to the President of India on March 30, 1955. A copy of the report of the Commission together with a memorandum explaining the action taken thereon was laid before each House of the Parliament on September 3, 1956 as contemplated by clause 3 of Article 340 of the Constitution of India.

6.2 Amongst other things, it was observed in the above memorandum, "For the purpose of the enquiry specifically contemplated in Article 340 of the Constitution, it was necessary to consider whether these other backward sections could be properly classified, and the Commission had to find objective tests and criteria by which such classifications were to be made; they had to find indisputable yardsticks by which social and educational backwardness could be measured. The report of the Commission has not been unanimous on this point, in fact, it reveals considerable divergence of opinion." It is further stated in it, "The Commission's list contains as many as 2399 communities out of which 930 alone account for an estimated population of 11.5 crores; Scheduled Castes and Tribes will make up another 7 crores."

6.3 As regards the acceptance of caste as one of the criteria for backwardness, it is observed in the above memorandum, "It cannot be denied that the caste system is the greatest hindrance in the way of our progress towards an egalitarian society, and the recognition of the specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of caste."

6.4 As regards the consequences of identifying a large number of castes and communities as backward, it has been pointed out in the above memorandum, "If the entire community, barring a few exceptions, has thus to be regarded as backward, the really need would be swamped by the multitude and hardly receive any special attention or adequate assistance, nor would such dispensation fulfil the conditions laid down in Article 340 of the Constitution."

6.5 The matter was considered again by the Central Government and also discussed at a conference of State representatives on 7th April, 1959. As regards the final decision taken by the Central Government in regard to the report of the above Commission, it is observed in the report of the Backward Classes Commission (Second). "The Central Government ultimately took a decision that no all India lists of backward classes should be drawn up, nor any reservation made in the Central Government service for any group of backward classes other than the Scheduled Castes and Scheduled Tribes. Consequently, on August 14th, 1961 the Ministry of Home Affairs, addressed all the State Government stating, "while the State Governments have the discretion to choose their own criteria for defining backwardness, in the view of the Government of India it would be better to apply economic tests than to go by caste." Regarding the preparation of lists of backward classes it was observed, "Even if the Central Government were to specify under Article 338(3) certain groups of people as belonging to 'Other Backward Classes', it will still be open for every State Government to draw up its own lists for the purposes of Articles 15 and 16. As, therefore, the State Government may adhere to their own lists, any all-India list drawn up by the Central Government would have no practical utility."

6.6 The Second Backward Classes (Mandal) Commission has discussed the report of the First Backward Classes Commission in details in Chapter—I of its report (Appendix—VI). The Second Backward Classes Commission was appointed by the President of India under Article 340 of the Constitution on January 1, 1979 under the Chairmanship of Shri B. P. Mandal. The above Commission has submitted its report to the President of India on December 31, 1980. The Central Government has not yet taken a final decision on the above report.

6.7 Commissions were also appointed in some of the State, to prepare lists of Socially and Educationally Backward Classes. The relevant information in regard to the above Commissions is contained in Chapter—II of the Second Backward Classes Commission. It is, therefore, not necessary to mention all the relevant details of Commissions appointed in the Other States in this part of the report and the purpose would be served if Chapter—II of the Second Backward Classes Commission is appended to this report, Appendix—VII.

CHAPTER — VII

METHODOLOGY

7.1. Looking to the terms of reference of the Commission and in the light of the relevant provisions of the Constitution of India, it was decided by us in the beginning to collect information on various points to be considered by the Commission, by issuing questionnaires. The Commission has amongst other things considered the following materials for the purpose of dealing with all the relevant points, aspects, and topics while preparing the report.

(i) (a) Information received from various sources on the basis of questionnaires or otherwise;

(b) Information supplied by different departments of the Government.

(ii) Representations received from social workers and/or representatives and leaders of castes/communities/groups/classes or sections of the people.

(iii) Oral as well as documentary evidence received from different sources including that produced by representatives of different castes/sub-castes/communities/groups/classes or sections and other persons.

(iv) Views or suggestions of MPs, ML As, social scientists, social workers, social welfare officers, and officers of other departments and other persons.

(v) Reports of other Commissions and standard books and papers on the subject.

(vi) Relevant provisions of the Constitution of India and the decisions of the Supreme Court and some of the High Courts.

We shall discuss the materials and evidence considered by us, at subsequent relevant stages of this report.

7.2 As soon as the Commission was constituted, a press note was issued for the information of the public. Representations were received from the representatives of different castes and also from other persons before any questionnaire were issued. The Bakshi Commission had devised 7 questionnaires for the purpose of collecting information on various points. We have also utilised 7 questionnaires. Having regard to the procedure adopted by this Commission for collecting evidence, we felt that, Questionnaire No. 5 devised by the Bakshi Commission was not of any use to us. It was, however, decided that, the rest of the questionnaires could be utilised by us with suitable modifications. We, therefore, amended the remaining questionnaires accordingly and utilised them for collecting information from various sources. Questionnaire No. 7 was devised by us for the purpose of collecting information in regard to the students studying in technical institutions and those for vocational training. As soon as the questionnaires were printed and made available to this Commission, press notes as well as advertisements were published in different newspapers in the State calling upon all concerned to obtain copies of relevant questionnaires from the Secretariat of this Commission. They were also permitted to ask for the copies of the questionnaires by post. Announcements to the above effect were also made on the radio.

7.3 At this stage, we may refer to certain details of the questionnaires, which are appended to this report.

Questionnaire No. 1—Appendix-VIII

This questionnaire has been devised for collecting relevant information from District Panchayats. Copies of this questionnaire were sent to the Presidents of all the District Panchayats and District Development Officers in 19 districts as shown in the list at Appendix-IX. Copies of the list of castes/sub-castes/communities identified by the Bakshi Commission as socially and educationally backward were sent alongwith the copies of the above questionnaire and Presidents of District Panchayats and District Development Officers were requested

to state as to which other castes/sub-castes/communities or classes than those referred to in the above list and Scheduled Castes and Scheduled Tribes were accordingly to them socially and educationally backward. They were also requested to give relevant information on various topics which included type of habitation, mode of living occupations, and backwardness in regard to the above caste/sub-caste/community etc. Information as to their educational level was also called for from them. 15 District Development Officers and only one President of District Panchayat filled in the above questionnaire and returned them to the Commission (*vide* Appendix—IX).

Questionnaire No. 2—Appendix—X

7.4 This is the most important questionnaire by which information on different points was sought to be collected from the representatives of various castes/sub-castes/communities and others to ascertain whether a particular caste/sub-caste/community/group/section or class of people was socially and educationally backward. This questionnaire has been devised in such a way that information on various points is received in an uniform manner from all those who intended to submit their cases to this Commission. Amongst other things, it seeks information on the following points : (1) population, (2) occupation, (3) habitation, (4) literacy, (5) details as to education, (6) income, (7) social customs, and such other matters as may be useful for the purpose of deciding the question of social and educational backwardness. 1069 copies of this questionnaire were sent to various caste associations and other persons, but only 563 questionnaire were filled in and returned to the Commission. The names of the caste associations and persons, who filled in and returned the questionnaire are at Appendix—XI. At this stage it may be pointed out that, representations were also received from 684 other persons who had not utilised the questionnaire and they have also been duly considered by us. Some persons who had not made any representation to the Commission at any earlier stage, had appeared before it, for the first time only, when it was visiting different districts in the State for the purpose of recording evidence. They were also given a proper opportunity of being heard and their evidence was also recorded. The names of such persons are at Appendix—XII.

Questionnaire No. 3—Appendix—XIII.

7.5 This questionnaire has been devised to obtain views of experts regarding the criteria and method for determining social, educational, and any other type of backwardness. Copies of this questionnaires were sent to 56 experts of whom only 22 have expressed their views (*See*, Appendix—XIV).

Questionnaire No. 4—Appendix—XV.

7.6 This questionnaire has been utilised for seeking views of the Ministers, Members of Parliament from the State of Gujarat, Members of the Gujarat State Legislative Assembly, Secretaries to Government, Collectors, Social Welfare Officers, Social organisations, Social workers and others interested in the subject. Copies of this questionnaire were sent to 727 persons social organisations of whom only 90 persons and/or social organisation, as detailed below have furnished the information (Appendix—XVI).

Members of Parliament	3
Members of Legislative Assembly	13
Secretaries to Government	6
Collectors	4
District Planning Officers	4
District Backward Class Welfare Officers	4
Social Welfare Officers (State Bakshi)	12
Social Welfare Officers (Panchayat)	8
Social Organisations	8
Others	28
	90

Questionnaire Nos. 5, 6, 7—Appendix—XVII, XVIII, XIX.

7.7 These questionnaires are intended to obtain necessary information to facilitate the decision on the question of educational backwardness. Questionnaire No. 5 relates to the information to be obtained from primary, secondary and higher secondary schools. Copies of this questionnaire were sent to as many as 28,703 schools of whom only 12,285 have supplied the information called for from them. Questionnaire No. 6 is intended to collect similar information from colleges. Copies of this questionnaire were sent to 420 colleges. Information has, however, been received from only 285 colleges. Questionnaire No. 7 relates to technical institutions including those imparting vocational training. Copies of this Questionnaire were sent to 602 institutions of whom only 304 have supplied the information.

7.8 Questionnaire Nos. 5, 6, and 7 are devised to seek amongst other things, information on the following points :

(1) Number of students studying in different classes/faculties/courses etc.

(2) Information as above in regard to the students belonging to Scheduled Castes, Scheduled Tribes, 4 Nomadic Tribes specified in the above questionnaires, and the classes who have already been declared to be socially and educationally backward.

(3) Caste-wise figures of the students other than those referred to at (2) above, who in the opinion of Heads of institutions are socially and educationally backward. So far as Questionnaire No. 5 is concerned, it further seeks to obtain information on the following additional points :

(i) Reasons for the students other than those belonging to advanced classes, leaving schools without completing the course.

(ii) Reasons for the students other than those belonging to advanced classes not attending schools at all after securing admission or remaining absent during three-fourthth period of the academic year.

(iii) The seasons during which students generally remain absent from the schools.

(iv) Suggestions as to steps or measures to encourage parents to send their children to schools.

As observed above, the number of schools which have furnished information on the basis of questionnaire No. 5 is pretty large. It was, therefore, decided to get the information received from the schools computerized. 11,130 questionnaires received from schools were found to be suitable for codification according to the computer programme. Codification was done by the staff of the Commission, and the coded material was sent to Gujarat Computer Centre, Gandhinagar which has carried out the work of computerization. On the basis of the relevant tables received from the above Centre, two statements have been prepared by the Secretariat of the Commission. Statement at Appendix—XX shows caste-wise figures of students studying in standards 8, 9 and 10 in various high schools in the State in the year 1981-82, their average per thousand population of each caste. The manner in which the above averages have been calculated is indicated in the note above the statement. The statement at Appendix—XXI also shows caste-wise figures of students studying in standards I to XII. As regards this statement, it may be pointed out that, the information received from the schools is neither uniform nor complete. The above aspect should, therefore, be kept in mind while referring to the above statement.

7.9. All the questionnaires were got printed at the Government Central Press, Gandhinagar. Questionnaire No. 2 which, as observed above, is of considerable importance for the purpose of collecting relevant information, was made available to the Commission by the Press on November 10, 1981. Copies of the above questionnaire were sent to all concerned immediately after they were received by the Commission. Information on the basis of the above questionnaire was expected to be furnished to the Commission on or before January 15, 1982, but it accepted such information even at a later stage after the above date. Those who could not utilise the above questionnaire due to some reason or other have submitted representations to the Commission which were accepted without any restriction as to time

limit. It was felt that, before the Commission could undertake the tour of various districts in the State, it should have some relevant basis data with it. Profiles in respect of various castes/sub-castes/communities etc., prepared on the basis of the information received in pursuance of questionnaire No. 2 and the representations received from various persons provided such data.

Extensive tour programme.

7.10. The Commission had undertaken an extensive tour of all the districts except the district of Dangs in the State during the period from October 11, 1982 to March 26, 1983 for the purpose of obtaining first-hand information from various sources and recording evidence of the representatives of different castes/communities and classes and other persons. 92.31% of the population of the District of Dangs consists of Scheduled Tribes and no representation was received from anyone in that district to agitate the question of social and educational backwardness with reference to any caste/community or class in that district. It was, therefore, thought not necessary to visit any place in that district. List of the places which were visited by the Commission and where its sittings were held is at Appendix—XXIII. Wide publicity was given to our tour programme. It was published in advance in different newspapers and also broadcast from all the stations of All India Radio in the State. It was given publicity in various other ways also. Written intimations were sent to all those who had sent representations to the Commission, in order to enable them to remain present at the places of its sittings on the dates fixed for the purpose. The Commission recorded evidence of 781 persons. Their names are at Appendix—XXIII. Those who did not want to be examined as witnesses were given an opportunity of being heard and they included MPs, MLAs, Government Servants, advocates, social workers, and others as shown in Appendix—XXIV. The Commission had also visited certain localities in some of the towns and villages while on tour in order to get the first-hand information as regards the types of habitation and mode of living of various sections of the people.

7.11. The Commission had received representations in some form or the other from the representatives of several Hindu castes/sub-castes and non-Hindu communities. The Gujarat Minorities Board had also forwarded the names of several Muslim communities to the Commission. We have also received representation from Gujarat State Government Class IV Employees Confederation, Gandhinagar. Some of the representations did not contain any relevant information. The Commission has considered the cases of all those castes/sub-castes or communities who have furnished such information as was found useful for the purpose of deciding relevant points concerning them. The above cases include even those who had not represented to the Commission earlier, and had only appeared before it for the first time, when it was visiting various places in the State for the purpose of recording evidence. The list of castes/communities whose cases have been considered by the Commission is at Appendix—XXV.

CHAPTER—VIII

FACTORS CONTRIBUTING TO SOCIAL AND EDUCATIONAL BACKWARDNESS

8.1 As regards the factors which have more or less contributed to social and educational backwardness amongst various castes/communities or classes of citizens in the State, on consideration of all the relevant materials and the evidence on record, we find that :

(i) Incidence of social and educational backwardness is higher in rural areas than in urban areas.

(ii) Rigid caste or social customs relating to marriage, divorce and other social matters hinder social and educational progress.

(iii) Beliefs based on superstitions lead to backwardness.

(iv) Environmental factors such as habitation in slums or areas lacking in sanitary facilities are responsible to a considerable extent for social and educational backwardness.

(v) There are certain occupations which are treated as inferior and those who follow those occupations are considered lower in status. They do not get adequate returns as a result of which their economic condition is poor. Those engaged in the above occupations are generally found to be socially and educationally backward.

(vi) Children in the families residing in the areas which are at a long distance from and have no adequate communications with the places having schools generally remain educationally backward.

(vii) Many of those following certain occupations traditional—or otherwise are because of economic considerations, required to employ their children at very young age to assist them as a result of which those children remain educationally backward.

(viii) Because of poverty children are required to be employed at young age in various occupations to augment the family income. Many of the poor families utilise the services of children to look after their younger brothers and sisters. The above factors also contribute to educational and social backwardness.

(ix) There are some castes/communities or classes of citizens who have apathy for education because of social environment or otherwise. Illiteracy of parents further adds to educational backwardness.

(x) There are certain occupations which can be followed even in the absence of any education. This is one of the reasons of educational backwardness amongst those following such occupations.

(xi) Acquisition of occupational skill, especially in traditional occupations from generation to generation is also one of the reasons for the neglect of education.

(xii) Unemployment among the educated, acts as a damper in the sense that, when the grown-up children and the young people find that, even those who have acquired educational qualifications prescribed for entries into various categories of public services or for employment in other sectors, remain unemployed for a long time, they feel discouraged and lose all interest in and enthusiasm for education and leave schools at a young age in order to take up the jobs or occupations which do not require much or special education or any fixed educational qualifications.

(xiii) Those who are poor do not enjoy a status in society and are looked down upon not only by the members of other castes/communities but, also by those belonging to their castes/communities.

(xiv) Poverty is one of the main causes of social and educational backwardness. Economic backwardness contributes to social backwardness and prevents educational advancement.

(xv) Persons belonging to certain castes/communities/classes are not adequately represented in public services.

(xvi) In various castes/communities/classes only the lower income groups, constitute socially and educationally backward classes.

(xvii) Those who are considered low in social hierarchy usually remain socially backward.

(xviii) Those class of citizens who are required to migrate seasonally or move from place to place for following their occupations are usually socially and educationally backward.

At this stage, we may point out that, the above list of factors contributing to social and educational backwardness is not exhaustive, and we will refer to the above aspects as and when necessary at subsequent stages also.

CHAPTER—IX

TESTS FOR DETERMINING EDUCATIONAL BACKWARDNESS OF THE CLASSES OF CITIZENS

tatio of the relevant decisions of the Supreme Court.

9.1 As observed earlier, for the purpose of Article 15(4) of the Constitution of India, backwardness should be both social and educational. We have already dealt with the questions relating to social backwardness and we shall now proceed to consider as to what tests should be applied for determining educational backwardness. The Supreme Court has laid down certain guidelines on the point in its decisions to which we have already referred. The Supreme Court had an occasion to consider the above question in the case of *M. R. Balaji v. State of Mysore*.¹ The relevant observations are : "The next question to consider is in regard to the educational backwardness of the classes of citizens. The Nagan Gowda Report and the impugned order proceed to deal with this question on the basis of the average of student population in the last three High School classes of all High Schools in the State in relation to a thousand citizens of that community. On the figures supplied to the Committee which admittedly are approximate and not fully accurate, the Committee came to the conclusion that the State average of student population in the last three High School classes of all High Schools in the State was 6.9 per thousand. The Committee decided that all castes whose average was less than the State average, of 6.9 per thousand, should be regarded as backward communities, and it further held that if the average of any community was less than 50% of the State average, it should be regarded as constituting the more backward classes. It may be conceded that in determining the educational backwardness of a class of citizens, the literacy test supplied by the Census Reports may not be adequate; but it is doubtful if the test of the average of student population in the last three High School classes is appropriate in determining the educational backwardness. Having regard to the fact that the test is intended to determine who are educationally backward classes, it may not be necessary or proper to put the test as high as has been done by the Committee. But even assuming that, the test applied is rational and permissible under Article 15(4) the question still remains as to whether it would be legitimate to treat castes or communities which are just below the State average as educationally backward classes. If the State average is 6.9 per thousand, a community which satisfied the said test or is just below the said test cannot be regarded as backward. It is only communities which are well below the State average that can properly be regarded as educationally backward classes of citizens. Classes of citizens whose average of student population works below 50% of the State average are obviously educationally backward classes of citizens, therefore, in our opinion, the State was not justified in including in the list of Backward Classes, castes or communities whose average of student population per thousand was slightly above, or very near, or just below the State average." In the same case, the Supreme Court has clarified that,² "If the test has to be applied by a reference to the State average of student population, the legitimate view to take would be that the classes of citizens whose average is well or substantially below the State average can be treated as educationally backward. On this point again, we do not propose to lay down any hard and fast rule, it is for the State to consider the matter and decide in it a manner which is consistent with the requirements of Article 15(4)."

9.2 Relevant observations of the Supreme Court in the case of *State of Andhra Pradesh v. U. S. V. Balaram*,³ in which the case of *Balaji* has been referred to, are : "The Commission has given very good reasons as to why it had to take into account the population figures based upon the 1921 and 1931 censuses. It was also justified in taking the average student population of Classes X and XI, especially as the said procedure has been accepted by the Committee appointed by the Jammu & Kashmir Government, presided by Dr. P. B. Gajendra-gadkar, former Chief Justice of India. That Committee took into account IX and X standards average. The decided cases have laid down the principles for ascertaining the social and educational backwardness of a class. The Backward Classes Commission in this case has taken considerable pains in collecting data regarding the various aspects before including a particular group as Backward Class in the list."

1. AIR 1963 S.C. 649 (660)

2. *Ibid.*, p 661

3. AIR 1972 S.C. 1375 (1399)

9.3 The Supreme Court has considered the question of relevant tests for determining educational backwardness also in the case of *Kum. K. S. Jayasree v. State of Kerala*.¹ relevant observations in the above case are : "As regards educational backwardness of classes of citizens, the Commission found that the State average of the students in the of the High School classes can safely be taken as one of the elements of the composite for ascertaining educational backwardness. The Commission created as backward the communities which have an abnormal fall-out. In such cases if their educational backwardness established by the total absence of any student from the community, the lower income group is including among the socially and educationally backward classes on being satisfied of the social backwardness. Social backwardness can contribute to educational backwardness as educational backwardness may perpetuate social backwardness. Both are often no more than the inevitable corollaries of the extremes of poverty and the deadening weight of custom and tradition."

Tests adopted by other Commissions—Andhra Pradesh.

9.4 At this stage, we may refer to the tests adopted by other Commissions for the purpose of determining educational backwardness amongst classes of citizens. In this connection, the Andhra Pradesh Backward Classes Commission has observed in its report² : "The question now arises what test should be adopted so far as this State is concerned as the criteria for determining educational backwardness. Having regard to the observations of the Supreme Court neither literacy test (which is inadequate) nor the primary standard which is too low a test) nor the S. S. L. C. or P. U. C. standard (which is unrealistic) can be accepted as the criterion for determining educational backwardness. It is a matter of common knowledge that during the past 10 years the State Government have introduced many measures for the general educational advancement of the people in the State. The Government have introduced compulsory primary education for children in the age-group of 6-11 years and free education for boys up to VIII class and for girls up to XII class. In the year 1968-69, free education for boys was also extended up to high school stage. A large number of primary schools, middle schools, and high schools, have been opened to meet the demand. These measures have contributed to increase the literacy and educational advancement of many sections of the people. Having regard to this literacy and educational advancement and the fact that a pass in the school final class (XI class) is the minimum qualification for appointment in public service and also the qualification for admission in University and technical education and as the Government have provided free education up to the high school stage, we are of the opinion that for the present it is proper to take the last two classes X and XI as the standard for ascertaining educational backwardness. In fact very soon a degree of a University may become the minimum qualification even for small posts."

Jammu and Kashmir.

9.5 The Backward Classes Committee appointed by Jammu and Kashmir Government took the view that,³ "... in order to arrive at a realistic estimate of actually literate persons in each occupational class and group, the number of students borne on the rolls of 9th and 10th classes should be ascertained."

Karnataka Commission.

9.6 While adopting the test for determining educational backwardness, the Karnataka Backward Classes Commission has observed:⁴ "In 1955, when the Free and Compulsory Primary Education scheme conceived of by Article 45 was not yet introduced, the President appointed Commission suggested that at least the elementary stage of education should be the criterion for deciding educational backwardness. Now that compulsory and free education at the primary level is introduced and large number of drop-outs is from the backward castes and communities, who later lapse into illiteracy, the proper level is pass in the SSLC examination. For entry in to Government service of the last grade in the non-gazetted cadres, and for admission to various courses of study preparatory to University degree the minimum qualifying examination required is a pass in the SSLC examination. Therefore, the Commission took the stage of SSLC examination for determining educational backwardness."

1. AIR 1976 SC 2381 (2384)

2. Para 91 at p 57 of Chapter IX of the Report.

3. Para 72 at p 28 of Chapter VI of the Report.

4. Para 34 at p 315 of Chapter XXV of the Report.

Bakshi Commission-Gujarat.

9.7 As regards the tests adopted by the First Socially and Educationally Backward Class Commission appointed by the State of Gujarat, it is pointed out in its report,¹ "As already stated, one of the determinants of social backwardness is illiteracy. In this connection reference may again be made to Article 15(4) which refers to the advancement of socially and educationally backward classes of citizens. Generally speaking, the percentage of literacy in India is low when we compare with the literacy standards in other advanced countries. Educational backwardness could be measured by the percentage of literacy prevailing in a community or a group and while considering the literacy level of a particular group or community, Indian as well as local conditions as regards the literacy level, have also to be borne in mind. Evidence indicates that on the whole the literacy level is low among castes, communities and groups having social backwardness or lower status in society,"

"The progress of literacy in the country as a whole from 1911 to 1971 is given below :—

*Year	Percentage of literacy			
1911	..	..	..	5.9
1921	..	..	..	7.2
1931	..	..	..	8.0
1941	..	..	..	Not Available
1951	..	..	..	16.6
1961	..	..	..	24.0
1971	..	..	..	29.46

The literacy rate in India has gone up from 16.6 per cent in 1951 to 29.46 per cent in 1971. Primary education is now free in all the States. There were about 8.26 crores students in schools in 1972 as against 2.35 crores in 1950-51. At the university stage the number of students increased more than 8 times, and that of colleges more than 5 times.**

9.8 In the State of Gujarat the percentage of literacy in 1961 was 30.45 and in 1971 it was 35.79. So far as the Scheduled Castes are concerned, the percentage of literacy in 1961 was 22.46 and 27.74 in 1971. As regards the Scheduled Tribes, the literacy percentage among them in Gujarat in 1961 was 11.69 and 14.12 in 1971. In Gujarat, in the Backward Classes, the literacy percentage would be much lower than the average percentage of the literacy of the whole State and may be slightly higher than that of the Scheduled Castes and the Scheduled Tribes. However, the educational level of educationally backward classes should normally be considered to be almost comparable with that prevailing among Scheduled Castes. It may be noted that the percentage of education in Scheduled Tribes is lower than in the Scheduled Castes. The percentage of secondary and higher education in Backward Classes is, however, very poor."

"The next question is what standard should be adopted for the determination of educational backwardness. Generally speaking the facts that may be considered for this purpose are :—

1. General level of literacy in the State.
2. Level and percentage of literacy in the Scheduled Castes and Scheduled Tribes in the State.
3. Level and percentage of literacy in the particular class/caste/group under consideration.
4. Level of education as regards secondary and higher education in the particular class/caste/group under consideration.

1. Paras 23, 24, and 27 at p. 33-34 of Chapter II of the Report. (Vol. I)

* The Indian Constitution—A case Study of Backward Classes by Ratna G. Revankar, p. 216

** 'India 1975', p. 47.

5. Position as regards literacy and education amongst females in the particular class/caste/group under consideration.

Having regard to these facts and giving due consideration to several variables, it appears that a reasonable and workable measure for the determination of educational backwardness would be from 25% to 30% regards literacy level with due regard to the low level of secondary and higher education in the particular class where a little higher percentage of literacy is shown."

Mandal Commission.

9.9 Mandal Commission has followed a peculiar method for determining social and educational backwardness. It evolved eleven 'Indicators' or 'criteria' for determining social and educational backwardness. Indicators for determining educational backwardness were:

"(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 student drop-out in the age group of 5-15 years is at least 25% above the State average.

(vii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average."

No hard and fast rule to determine educational backwardness.

9.10 In the case of Balaji,² while laying down certain guidelines in regard to tests for determining educational backwardness of classes of citizens, the Supreme Court has made it clear that, it does not propose to lay down any hard and fast rule in the matter, as it is for the State to consider the question and decide it in a manner, which is consistent with the requirements of Article 15(4). As pointed out by the Supreme Court in the above case, mere literacy test is not adequate for determining educational backwardness. In the State of Gujarat, education is free upto 11th standard. Merely from the above circumstance, however, it cannot be said that, all the boys and girls in the State study upto the above standard.

Poverty, one of the main causes of educational backwardness.

9.11 We have already referred to the causes of educational backwardness, and the factors which impede educational progress. One of the main causes which leads to educational backwardness is poverty. We have found that, children of those who are poor are required to be employed at young age in various occupations to augment the family income, and that services of many of them are required to be utilised to look after their younger brothers and sisters, as a result of which, they are prevented either from joining schools or continuing their studies beyond a particular level. Because of the above reasons, poor sections of the society are unable to take the full advantage of the scheme providing for free education to children.

Tests applied by this Commission.

9.12 We have referred to the causes, which act as a damper on the desire for higher education. We have found that, children after studying upto a particular standard, leave the schools due to some or the other compelling circumstances referred to above. We have also noticed that, in rural areas no proper attention is being paid to education. While evolving the test, it should be borne in mind that, it is intended to determine, who are educationally backward classes. Considering all the above circumstances, we feel that, the average of student population in the last three classes in all the secondary schools in the State in relation to a thousand citizens of that class, would be an adequate test together with other educational aspects, for the purpose of determining educational backwardness amongst different classes of citizens. We are conscious of the observations of the Supreme Court in the case of Balaji, in regard to tests adopted by the Nagan Gowda Committee, which had taken into consideration the average of student population in the last three high school classes of all high schools in the State in relation to a thousand citizens of a particular community. The relevant observations of the Supreme Court are³: "Having regard to the fact that the

1. Para 23, p. 52 of Chapter XI of the Report.

2. AIR 1963 SC 649

3. AIR 1963 SC 619 (620)

test is intended to determine who are educationally backward classes, it may not be necessary or proper to put the test as high as has been done by the Committee." It should, however, be borne in mind that, there has been considerable progress in the education after the above observations were made by the Supreme Court in the year 1962. The following information in regard to the number of pupils in educational institutions in the State of Gujarat in different years shows the educational progress in this State :

***PUPILS**

(In '000)

Sr. No.	Catagory	1970-71	1980-81	1981-82(P)
1.	Primary	3439	5105	5277
2.	Secondary	786	1027	1009
3.	Higher	154	180	187
4.	Others	118	258	265
TOTAL ..		4497	6570	6738

9.13 Under these circumstances, the above observations of the Supreme Court in the case of Balaji need not be rigidly followed, while deciding the question of educational backwardness, after such a lapse of time especially when, the Supreme Court had made it clear that, it did not want to lay down any hard and fast rule in the matter. It should, further, be remembered that, the Supreme Court did not hold in the above case that, the tests applied by the Nagan Gowda Committee were invalid.

9.14 At this stage, we may point out that, according to the evidence available to us, there are certain castes/communities or classes, in which substantial number of students do not study even upto 7th or 8th standard. We have, therefore, taken into consideration the above circumstance as well as other relevant factors, in addition to the test based on average student population in the last three standards in the secondary schools, for the purpose of determining educational backwardness amongst various castes/communities or classes.

9.15 On the basis of the information furnished to us by the Directorate of Higher Education, we find that, the State average of student population in 8th, 9th and 10th standards of all the secondary schools in the State is 24.08 per thousand population of citizens (See, Appendix-XX) It is, however, difficult to ascertain with any degree of accuracy the average of student population in the aforesaid three standards in relation to a thousand citizens of different castes/communities or classes, as the exact information in regard to their population is not available (See, Appendices—XX, XXI) and on going through the materials and evidence on the point, we find that, no representative of any caste/community or class has been able to state even on an approximate basis the population of caste/community or class to which he belongs. Some of them for want of adequate information or due to some other reasons best known to them have given exaggerated figures in regard to their population. Under these circumstances, while comparing the averages of student population of different castes/communities or classes with the state averages the margin of error will have to be borne in mind. Considering all these circumstances, we have decided to take into consideration all the relevant circumstances, to which we have already referred as well as other relevant information gathered from the evidence on the record, while applying the above test, for the purpose of determining educational backwardness amongst different castes communities or classes of people.

*Socio-Economic Review, Gujarat State 1982-83, Bureau of Economics and Statistics, p. 117 (P)=Provisional.

CHAPTER—X

IDENTIFICATION OF SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES WITHOUT REFERENCE TO CASTES IS QUITE ACCORDING TO LAW

Relevant decisions of the Supreme Court.

10.1 As observed above, we have to specify classes who are socially and educationally backward. It is well settled by the decisions of the Supreme Court that, it is social and educational backwardness of a class, which is material for the purpose of both Articles 15(4) and 16(4) of the Constitution. Most of the memorialists before us represent some castes/sub-castes or the communities. It is also well settled by the decisions of the Supreme Court that, though the caste of a group of citizens is a relevant circumstance of factor in ascertaining their social backwardness, it cannot be the sole or dominant test in that behalf. In the case of *Chitralekha*,¹ there is a reference to the classification of socially and educationally backward classes made by the Government of Mysore under Article 15(4) of the Constitution. It appears that, though the High Court did not quash the order of the Government making the above classification, it held that, it was not a perfect classification and indicated its mind that the Government should have adopted the caste test as well as the residence test in making the classification. It was submitted before the Supreme Court that, if the above observations of the High Court were not corrected, the State would be bound by such observations in the matter when it finally prescribed the criteria for ascertaining the backward classes under Article 15(4) of the Constitution; "The Government laid down that classification of socially and educationally backward classes should be made on the following basis : (1) economic condition; and (2) occupation. According to that under a family whose income is Rs. 1,200 per annum or less and persons or classes following occupations of agriculture, petty business, inferior services, crafts, or other occupations involving manual labour, are, in general, socially, economically and educationally backward. The Government lists the following occupations as contributing to social backwardness (1) actual cultivator; (2) artisan; (3) petty businessmen; (4) inferior services (i. e. Class IV in Government services and corresponding class or service in private employment) including casual labour; and (5) any other occupation involving manual labour."

10.2 While dealing with the above submission, K. Subba Rao, (as he then was) speaking for the majority observed² : "As the said observations made by the High Court may lead to some confusion in the mind of the authority concerned who may be entrusted with the duty of prescribing the rules for ascertaining the backwardness of classes of citizens within the meaning of Article 15(4) of the Constitution, we would hasten to make it clear that caste is only a relevant circumstance in ascertaining the backwardness of a class and there is nothing in the judgment of this court which precludes the authority concerned from determining the social backwardness of a group of citizens if it can do so *without reference to caste*. (Emphasis added). While this Court has not excluded caste from ascertaining the backwardness of a class of citizens, it has not made it one of the compelling circumstances affording a basis for the ascertainment of backwardness of a class. To put it differently, the authority concerned may take caste into consideration in ascertaining the backwardness of a group of persons; but if it does not, its order will not be bad on that account if it can ascertain the backwardness of a group of persons on the basis of other relevant criteria." The Supreme Court has also observed³ : "The important factor to be noticed in Article 15(4) is that it does not speak of caste, but only speaks of classes. If the makers of the Constitution intended to take castes also as units of social and educational backwardness, they would have said so as they have said in the case of the Scheduled Castes and the Scheduled Tribes. Though, it may be suggested that the wider expression 'classes' is used in clause (4) of Article 15 as there are communities without castes, if the intention was to equate classes with castes, nothing prevented the makers of the Constitution to use the expression 'Backward classes or caste'. The juxtaposition of the expression 'Backward Classes' and 'Scheduled Castes' in Article 15(4) also leads to a reasonable inference that, the expression 'classes' is not synonymous with castes. It may be for ascertaining whether a particular citizen or a group of citizens belong to a backward class.

1. AIR 1964 SC 1833 (1832)

2. Ibid, p. 1833

3. Ibid, p. 1833-1834

or not, his or their caste may have some relevance, but it cannot be either the sole or the dominant criterion for ascertaining the class to which he or they belong.

"This interpretation will carry out the intention of the Constitution expressed in the aforesaid Articles. It helps the really Backward Classes instead of promoting the interests of individuals or groups who, though belong to a particular caste a majority whereof is socially and educationally backward, really belong to a class which is socially and educationally advanced. To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward and effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression "classes", as "castes", the object of the Constitution will be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really deserve. This anomaly will not arise if, without equating caste with class, caste is taken as only one of the considerations to ascertain whether a person belongs to a backward class or not. On the other hand, if the entire sub-caste, by and large, is backward, it may be included in the Scheduled Castes by following the appropriate procedure laid down by the Constitution."

10.3. "We do not intend to lay down any inflexible rule for the Government to follow. The laying down of criteria for ascertainment of social and educational backwardness of a class is a complex problem depending upon many circumstances which may vary from State to State and even from place to place in a State. But what we intend to emphasize is that under no circumstance a "class" can be equated to a "caste" though the caste of an individual or a group of individuals may be considered alongwith other relevant factors in putting him in a particular class. We would also like to make it clear that if in a given situation caste is excluded in ascertaining a class within the meaning of Article 15(4) of the Constitution, it does not vitiate the classification if it satisfied other tests." As observed by the Supreme Court in the case of *Janki Prasad*¹: ".... A class can be identified on the basis of traditional occupation. A traditional occupation means an occupation followed in a family in which it is handed down by an ancestor to his posterity. If there is a section of the population following an occupation of that description that section can be regarded as a class...."

Basis of classification by other Commissions.

10.4. It is interesting to note that, even though, the Supreme Court has made it clear in the above decisions that, a socially and educationally backward class can be identified without reference to caste, except the Backward Classes Committee appointed by the Government of Jammu & Kashmir no other Committee or Commission seems to have identified any socially and educationally backward class on an occupational or any other basis without reference to any caste at all. The Karnataka Backward Classes Commission (Havanur Commission) has assessed with considerable emphasis in its report that,² "So far as our Commission is concerned, we have ignored the principle of caste—the principle of status—the principle of high and low—in deciding social backwardness." "We have gone on multiple tests such as economic, residential and occupational, in deciding social backwardness of castes and communities. In the social hierarchy, some of the castes and communities specified by us as backward classes occupied higher status in the conventional sense known to Hindu society. And yet, eschewing the principle of status—principle of caste—we have determined their backwardness on criteria other than caste." In spite of the above categorical statements in regard to adoption of tests for deciding social backwardness, the Havanur Commission has ultimately specified social and educational backward classes in terms of caste only. In this connection, we may hasten to add that, while referring to the above position in the report, it is not our intention to suggest for a moment that, the classification of social and educational backward classes made by the Havanur Commission was not according to law. We have already pointed out that, the Kirti Kalelkar Commission has specified social and educational backward classes only in terms of castes. The same is the case with the Mandal Commission appointed by the Central Government and other Commissions appointed in different States except the Backward Classes Committee appointed by the Government of Jammu & Kashmir.

1. AIR 1973 S.C. 970 (979)

2. Karnataka Backward Classes Commission (Havanur), p. 307.

Report of Jammu & Kashmir Committee considered by the Supreme Court.

10.5 The report of the above Committee appointed by the Government of Jammu & Kashmir has been considered by the Supreme Court in the case of *Janki Prasad v. State of Jammu & Kashmir*,¹ to which we shall refer again at a subsequent stage. We have found on the basis of the evidence recorded by us and other materials at our disposal that, some classes of citizens each of which contains within its fold different castes/sub-castes or communities are socially and educationally backward and that, it is possible to identify or specify them without reference to any caste at all. As observed above, the Supreme Court has also held that, it is quite according to law to determine the backwardness of a class without reference to any caste. It is needless to add that, once socially and educationally backward class of citizens is identified on the basis of relevant criteria, but without reference to any caste, that class can be specified as a socially and educationally backward class in an appropriate manner without reference to any caste. As the Supreme Court has held in the case of *Janki Prasad* that identification of some of the classes as socially and educationally backward by the Backward Classes Committee of Jammu & Kashmir was not according to law, it is necessary to refer to the above decision. As regards the circumstances in which the above Committee was appointed by the Government of Jammu & Kashmir, it is stated in the above case² : "It must be stated here that in 1967 the Government of Jammu & Kashmir had appointed the Jammu & Kashmir Commission of Inquiry under the Chairmanship of Dr. P. B. Gajendragadkar. Its report was submitted in November, 1963 and one of the recommendations of the Commission was to appoint a high powered Committee to draw up a list of backward classes in the State of Jammu & Kashmir. Accordingly, the Backward Classes Committee was appointed under the Chairmanship of Shri J. N. Wazir, Retired Chief Justice of Jammu & Kashmir High Court, on February 3, 1969. This Committee made its report in November, 1969 recommending several classes of citizens who deserved to be described as socially and educationally backward."

10.6. The Committee had identified above 62 occupations as traditional. It was contended before the Supreme Court that though 62 occupations had been mentioned as traditional occupations, a good many of them were not really traditional occupations, while dealing with the above contention, the Supreme Court has observed³ : "There is no doubt that a large number of occupations mentioned in the list is capable of being followed traditional occupations. But some of them, at least, do not deserve to be called traditional occupations. Take for example an "agricultural labourer". We have grave doubts if agricultural labour can be regarded as a traditional occupation. The occupation is seasonal and, as is well-known, it is the last refuge of the landless unskilled labourer who has no other source of employment in the rural community. Indeed, if any one deserves special consideration it is the agricultural labourer, but the objection is to its identification as a traditional occupation. An agricultural labourer is just a labourer whose services are utilised wherever unskilled labour is required. In fact he is the source material for hamals and the like-occupations which merely require physical strength and capacity to work. Similarly it would be difficult to say that the following occupations are traditional occupations :

- (5) Bearer, boy, waiter.
- (7) Book binders.
- (11) Cook.
- (20) Grass seller.
- (21) Hawkers, pedlars.
- (23) Load carriers.
- (29) Old garment sellers.
- (48) Watch repairers.
- (51) Grocers in rural areas.
- (53) Milk-sellers in rural areas.
- (58) Vegetable sellers in rural areas.
- (62) Drivers of Tongas, and other animal driven vehicles.

1. AIR 1973 S.C. 930

2. Ibid, p 932

3. Ibid, p. 939

All these occupations do not require special skills developed by tradition and can be resorted to by anybody with the requisite resources. Then again at serial Nos. 34 and 56 we have a category of priestly classes who, though following a traditional profession can hardly be regarded as socially and educationally backward. We, therefore, think that there must be a proper revision of the traditional occupations to fall properly under rule 4." In the above case the Supreme Court merely upheld the objection to identification of "agricultural labourer" as a traditional occupation and there is nothing in its decision to show that, it is not permissible to identify agricultural labourers as a socially and educationally backward class even if it is found on the basis of the materials at the disposal of the Commission that, they are socially and educationally backward. The Supreme Court has also expressed its deep concern and sympathy for agricultural labourers by observing "Indeed, if anyone deserves special consideration it is the agricultural labourer."

10.7 The view that, it is lawful to identify a class of citizens as socially and educationally backward without reference to any caste is further strengthened in view of the fact that, the Supreme Court has upheld the finding of the Committee that, the residents of the bad pockets and the cease-fire areas constitute a socially and educationally backward class. The above bad pockets and cease-fire areas consisted of 696 and 179 villages respectively and the total population of those areas was 4,39,078. The importance of the Supreme Court upholding the above classification, amongst other things, lies in the fact that, even though, the residents of the bad pockets and cease-fire areas belong to different castes and religions, they have been treated as one class of socially and educationally backward citizens without reference to their castes as contemplated by Articles 15(4) and 16(4) of the Constitution. The relevant observations of the Supreme Court on the point are: "Chapter—V & VI of the Rules identify residents of certain areas as backward. In Chapter—V the residents of certain villages mentioned in Appendix—II are considered as backward, these villages being within five miles of the cease-fire line. In Chapter—VI some areas in the State are regarded as "bad pockets" and all the residents of those areas are stated to be backward. These two Chapters incorporate the recommendations made by the Committee in Chapters—X and IX respectively of the report. Chapter—IX relates to "bad pockets", 10 such bad pockets have been identified by the Committee and cover 696 villages in certain Districts and Tehsils far away in the interior. The population of these areas according to 1961 census was about three lakhs. The Committee reports as follows: "There are, for instance well known rather notorious backward areas which have to be treated differently from the rest of the State. There are other which because of difficult terrain, inaccessibility and absence of vehicular communications still retain their primitive character. There are still some others which suffer from deficient production on account of soil being rocky and sandy irrigation facilities being scanty and inadequate. Besides these, there are areas where due to non-availability of electric power, industrial development even on the scale of cottage industry has yet to come into existence. There are certain areas which combine all or some of these characteristics."

"Ten such pockets were then examined in detail and the Committee came to the conclusion that owing to lack of communication, inaccessibility, lack of material resources and the like the residents of these areas are living in almost primitive conditions and they are all socially and educationally backward. The civilizing influence of modern life is yet to reach them. These areas are carefully mapped. They are situated in the recesses of inaccessible mountains which have primarily led to the residents therein being almost in a primitive state. The population is about 8% of the total population of Jammu & Kashmir and, in our opinion, there is no serious difficulty in regarding the residents of those areas as being backward. Similar considerations apply to areas adjoining the cease-fire line. They comprise about 179 villages with a population of about a lakh. The difficulties of their situation near the cease-fire line for the last 25 years seem to have contributed to this area being cut off from the main stream of life. The Committee noticed that the difficulties inherent in the living conditions in these areas had inevitably lead the inhabitants of these areas living in economic and educational backwardness. There are restrictions on their free movement and they have to remain indoors after sun set. The male members cannot leave their villages in search of livelihood elsewhere for fear of their wives and children being left behind unprotected. The land is unproductive, no investments could be made in the land because of the nearness of the cease-fire line. Raids accompanied by cattle lifting and damage to property are not uncommon. Loss of life also takes place occasionally. The inhabitants find it equally

difficult to pursue their traditional arts and crafts. The effect of all these contributory factors have kept these areas, in so far as social and educational progress is concerned very much behind the rest of the State. We thus find that special reasons have given by the Committee why it considered these areas socially and educationally backward, and since the classification is not made merely on the ground of place of birth, we do not think that there is any serious objection to regard the residents of the bad pockets and the cease-fire areas as socially and educationally backward."

The hill and Uttarakhand areas in Uttar Pradesh held socially and educationally backward.

10.8 The view that socially and educationally backward classes can be identified on the basis of relevant criteria but without reference to caste is also supported by the decision of the Supreme Court in the case of *State of U. P. v. Pradip Tandon*, the relevant observations in which are¹ :

"The hill and Uttarakhand areas in Uttar Pradesh are instances of socially and educationally backward classes of citizens for these reasons. Backwardness is judged by economic basis that each region has its own measurable possibilities for the maintenance of human numbers, standards of living and fixed property. From an economic point of view the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain a sparse, disorderly and illiterate population whose property is small and negligible the element of social backwardness is observed. When effective territorial specialisation is not possible in the absence of means of communication and technical processes as in the hill and Uttarakhand areas the people are socially backward classes of citizens. Neglected opportunities and people in remote place raise walls of social backwardness of people."

"Educational backwardness is ascertained with reference to these factors. Where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttarakhand areas illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant and they have neither meaning and values nor awareness for education."

Occupations of citizens may contribute to social backwardness.

10.9 As observed by the Supreme Court in the case of *Balaji*² : "The occupations of citizens may, also contribute to make classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward. The place of habitation also plays not a minor part in determining the backwardness of a community of persons. In a sense, the problem of social backwardness is the problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Article 15(4). The problem, of determining who are socially backward classes is undoubtedly very complex. Sociological, social and economic considerations come into play in solving the problem, and evolving proper criteria for determining which classes are socially backward is obviously a very difficult task, it will need an elaborate investigation and collection of data examining the said data in a rational and scientific way. That is the function of the State which purports to act under Article 15(4)."

10.10 As regards the meaning of the word 'class' in Article 15(4) of the Constitution, the Supreme Court has observed in the case of *A. P. v. P. Sagar*³ : "In the context in which it occurs the expression 'class' means a homogeneous section of the people grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race religion, and the like" The above observations have been considered by the Supreme Court while approving of the classification of the residents of bad pockets and the cease-fire areas as socially and educationally backward classes in the case of *Janki Prasad*,⁴ and also in the case of *State of U. P. v. Pradip Tandon*.⁵ It would, therefore, be proper to refer to the identification of socially and educationally backward classes approved by the Supreme Court in the aforesaid two cases for further elucidation of the meaning of the expression 'class' in Article 15(4).

1. AIR 1975 S.C. 563 (567). 2. AIR 1963 S.C. 649. 3. AIR 1968 S.C. 1379. 4. AIR 1973 S.C. 930. 5. AIR 1975 S.C. 563.

CHAPTER — XI

IDENTIFICATION OF SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES WITHOUT REFERENCE TO CASTE WOULD FACILITATE PROMOTION OF WELFARE AND EDUCATIONAL AND ECONOMIC INTERESTS OF THE WEAKER SECTIONS OF THE PEOPLE AND ACCELERATE THE PROCESS OF ESTABLISHING AN EGALITARIAN SOCIETY

Census - abolition of caste for the purpose of enumeration.

11.1 One of the main objectives of our Constitution is to establish casteless and classless society. Looking to the grave consequences resulting from caste rivalries, which come in the way of achieving the above object, one of the steps that the Government of India took to eradicate the above evil, was to issue instructions to drop references to caste from all the official documents. The arrangements for the 1951 Census, which was the first Census held under the orders of the Republic of Free India provide an instance on the point. It was, for the first time, decided to abolish caste for the purposes of enumeration. "The 1951 Census was not to concern itself with questions regarding races, castes and tribes, except in so far as the necessary statistical material relating to special groups was to be published, and certain other material relating to backward classes and made over to the Backward Classes Commission. On the other hand it was also enjoined that the maximum possible attention should be paid to economic data." Sardar Vallabhbhai Patel while dealing with the problem of caste in Census, has pointed out in his address to the Census conference in February, 1950¹ : "Formerly there used to be elaborate caste tables which were required in India partly to satisfy the theory that it was a caste-ridden country, and partly to meet the needs of administrative measures dependent upon caste division. In the forthcoming Census this will no longer be a prominent feature." The above change was considered as an indication of the firm determination of the Government to stamp-out caste.

Enumeration of caste for specifying socially and educationally backward classes is perpetuation of the evils of caste system.

11.2 We have pointed out in the earlier Chapter, as to now most the Commissions have determined socially and educationally backward classes in terms of castes only. It is thought that, it is more convenient or easier to specify socially and educationally backward classes in the above manner, than to identify them in any other way. Looking to the larger interests of the nation, which is a secular Democratic Republic, however, we feel that the object underlying the policy of omitting reference to caste from all official documents should not be overlooked while identifying socially and educationally backward classes. According to us, enumeration of caste for specifying socially and educationally backward classes is to a certain extent perpetuation of the evils of caste system. We would not, therefore, sacrifice the principle for the sake of expediency and we would proceed to determine socially and educationally backward classes as far as possible, without reference to any caste.

Connection between census reports prior to the year 1951 and desire for upward mobility.

11.3 In this connection, it is pertinent to note that, some of those castes, which are now clamouring for being considered as socially and educationally backward, were till recently claiming a higher place in the caste hierarchy. The above trend for upward mobility was to a certain extent, the result of mentioning castes in the census reports prior to the year 1941. According to Srinivas², "An indication of the widespread desire for mobility among the backward castes comes from an unusual source, namely, the census operations." He has also pointed out,⁴ "This tendency on the part of castes to take advantage of the census operations for achieving mobility became widespread with the census of 1901, when Sir Herbert Risley, the Census Commissioner, decided to provide in the census an accurate record of the ranking of *jatis* in the local hierarchy as well as the *varna* affiliation of each. The results could have been predicted by anyone who had a knowledge of the dynamics of caste system at the

1 Census of India, 1951, Vol I, Introduction, page X.

2. First Backward Classes Commission (Kaka Kalelkar), Vol. I, page 9.

3. 'Social Change in Modern India' — by M. N. Srinivas, p. 94.

4. Ibid, p. 93.

local level. In Ghurye's words,* "Various ambitious castes quickly perceived the chances of raising their status. They invited conferences of their members, and formed councils to take steps to see that, their status was recorded in the way they thought was honorable to them. Other castes that could not but resent this 'stealthy' procedure to advance, equally eagerly began to controvert their claims. Thus a campaign of mutual recrimination was set on foot. The leaders of all but the highest castes frankly looked upon the Census as an opportunity for pressing and perhaps obtaining some recognition of social claims which were denied by persons of castes higher than their own." "Over the years this tendency became so pronounced that at the 1941 census the British Census Commissioner eliminated the column about caste." There are references in the Census Reports for the year 1931,^{2,3} in respect of the castes in Gujarat, which also endeavoured to take the advantage of the census operations to fulfil their desire for upward mobility.

Method adopted by castes for raising status.

11.4 As regards the method adopted by various castes for raising their status, Srinivas observes⁴ : "The method of making a claim was more or less stereotyped. The occupation, style of life, or name of the caste group would be mentioned in support of the claim. The similarity of caste name to the historical name of a respectable caste or tribe would be pointed out, the myth regarding the origin of the caste would be described, and its linkage with an epic hero, or divine or semidivine figure, would be stressed." As pointed out by him,⁵ "In the beginning the demand for being recorded in the census as a high caste emanated from leaders of the caste groups concerned. This resulted in some cases in a certain amount of confusion, since different sections of a single caste claimed to be different *varnas* in different places, and the same caste changed its claim from census to census." "The caste sabhas articulated as well as organised the new urge to mobility. They represented to the census authorities the demand of individual castes to belong to a particular *varna* and not to a lower one. The Superintendent of the 1931 United Provinces Census, for instance, received 175 claims (13 from outside the United Provinces), of which 34 were made through caste sabhas. Second, the sabhas altered the style of life of their castes in the direction of Sanskritization. This often involved the giving up of the forbidden meat (chicken, pork, and carrion beef) and liquor, and the donning of the sacred thread and in Uttar Pradesh and Bihar, the shortening of the mourning period to correspond with that of the twiceborn castes. In the case of very 'low' castes it also involved the nonperformance of a traditional and degrading duty such as *carvee* or other free labor, or carrying palanquins, or beating the tom-tom on ceremonial occasions. The reactions of the dominant high castes to such efforts at reform on the part of the traditional inferiors varied from indifference, on the one hand, to the use of violence in order to enforce performance of duties, and keep the parvenus in their place. Thus the Rajputs and Bhumihar Brahmins of North Bihar used violence against the Ahirs (Cowherds) who claimed to be Kshatriyas and donned the sacred thread." "In short, the attempt to use the census to freeze the rank of castes had the opposite effect of stimulating mobility and also increased intercaste rivalry. It is small wonder, then, that nationalist Indians began to regard the recording of caste at the census as yet another manifestation of a sinister design on the part of the Imperialist British to keep alive if not to exacerbate the numerous divisions already present in Indian society. Their suspicions were further strengthened by the attempt to distinguish Untouchables from other Hindus in the 1911 census operations. Moreover, while the earlier census reports recorded caste divisions not only among Hindus but also among Muslims and Christians, the later reports recorded only the former; this confirmed the nationalists in their worst suspicions."

Process of Sanskritization.

11.5 Apart from the above tendency, to take advantage of Census operations for raising the status of castes, there had already begun a movement amongst the backward classes for casting off the label of 'lower castes' or 'backwardness' and achieving a higher place in the

* 'Caste and Race in India' — by G. S. Ghurye, p. 278.

1. Ibid, p. 96

2. Census Report of the Bombay Presidency, p. 398.

3. Census Report of the Baroda State, p. 119

4. 'Social Change in Modern India' — by M. N. Srinivas, p. 90.

5. Ibid, p. 96

6. Ibid, p. 98

7. Ibid, p. 100

society. While referring to the above aspect, Srinivas has observed¹ : "Sanskritization is the process by which a 'low' Hindu caste, or tribal or other group, changes its customs, ritual, ideology, and way of life in the direction of a high, and frequently, "twice-born" caste. Generally such changes are followed by a claim to a higher position in the caste hierarchy than that traditionally conceded to the claimant caste by the local community. The claim is usually made over a period of time, in fact, a generation or two, before the "arrival" is conceded. Occasionally a caste claims a position which its neighbours are not willing to concede. This type of disagreement between claimed and conceded status may be not only in the realm of opinion but also in the more important realm of institutionalized practice. Thus Harijan castes in Mysore will not accept cooked food and drinking water from the Smiths who are certainly one of the touchable castes and therefore superior to Harijans even if their claim to be Vishwakarma Brahmins is not accepted. Similarly Peasants (Okkaligas) and others such as Shepherds (Kurubas) do not accept cooked food and water from Marka Brahmins, who are certainly included among Brahmins. I remember talking to a Lingayat in north, Coorg who referred to the Coorgs as 'jungle people' (kadu jana) and this contrasted with the Coorg claim to be true Kshatriyas, and even "Aryans". The above instances are all from Mysore State, but parallels can be cited from every part of India.

Sanskritization is generally accompanied by, and often results in, upward mobility for the caste in question, but mobility may also occur without Sanskritization and *vice versa*. However, the mobility associated with Sanskritization results only in *positional changes* in the system and does not lead to any *structural change*. That is, a caste moves up, above its neighbours, and another comes down, but all this takes place in an essentially stable hierarchical order. The system itself does not change."

11.6 As regards the conscious efforts of various castes for upward mobility, it may be pointed out that, the giving of girls in marriage to boys from higher caste, was considered as a factor adding to the prestige of the caste to which the girls belonged. As pointed out by Srinivas,² "Hypergamy was significant for mobility in yet another way. A caste or section of a caste would Sanskritize its way of life and then claim to be superior to its structural neighbours or to the parent section." It is because of the urge for upward mobility that, "A variety of castes in modern Gujarat seek to be recognised as Kshatriyats."

Westernisation.

11.7 As regards the effect of Westernization on the caste system, Srinivas has observed : "As far as the bulk of the people were concerned, Westernisation began to occur indirectly and gradually; the process has become greatly intensified, in many ways since 1947 when India became independent." "In a word, the political and administrative integration of India—a process continuing well into the sixties of the twentieth century—involving as it did the development of communications, the beginnings of industrialisation, and agricultural development, increased spatial and social mobility not only for the elite but also for the rural poor, and laid the foundation for subsequent nation-wide Westernisation. According to him, "As far as Hindus are concerned, there was—and to a very limited extent still is—a very broad and general correlation between traditional caste hierarchy and the new Western occupational hierarchy. Thus the members of the higher castes dominated the professions, the higher level posts in the government—in fact, all white-collar jobs—while the lower castes provided certain essential services and goods. A traditional modern continuum did exist; Brahmins, Baidyas, Kayasthas, and Banias sought western education and reaped its rewards, whereas members of the low artisan, servicing, and landless labour castes became launderers, barbers, domestic servants, peons, basket makers, oilmen, potters, and sellers of vegetable, milk and fruits. I would like to caution, however, that it is only too easy to exaggerate the scope of this continuum. There were breaches in it from the beginning, and as the years passed the breaches became wider and more significant."

1. 'Social change in Modern India' —by M. N. Srinivas, P. 6.

2. Ibid, p. 30

3. Ibid, p. 22

4. Ibid, p. 61

5. Ibid, p. 62

6 Ibid, p. 65

Movement for upward mobility.

11.8 As pointed out by him,¹ "The desire for social mobility was articulated through caste groups. The increase in horizontal solidarity which occurred with improvement in communications enabled allied jatis living over a wide region to be drawn into the mobility process. Caste associations came into existence in different parts of the country and each association had as its aim the improvement of the social and economic standing of its caste. Many published journals devoted to caste welfare collected funds for endowing scholarships and building hostels for students from their respective castes, and undertook programmes of reform of caste customs. These reforms were generally aimed at Sanskritizing the style of life and ritual, and occasionally at reducing the expenditure on weddings and funerals.

"Mobility aspirations became interwoven with pre-existing rivalries between local castes, this had the effect of further intensifying the rivalries. In this context, the urge to be a step ahead of one's structural neighbours must be distinguished from a general movement toward equality. While a caste struggled for a higher position for itself in the local hierarchy it resented the efforts of others, in particular lower castes, to move up. Its attitude may be summed up as, "I am equal to those who think of themselves as my betters, I am better than those who regard themselves as my equals, and how dare my inferiors claim equality with me?" G. Berreman's account of the situation in the Himalayan village of Sirkanda is probably true of large areas of India: "In Sirkanda those low caste people who spoke most piously against high-caste abuses were likely to be equally abusive to their caste inferiors. However, no low caste was encountered whose members did not seriously question its place in the hierarchy." ²"Sanskritization, as mentioned earlier, enabled low castes which had acquired wealth or political power to shed their low ritual status and be included among the high castes. We may recall, however, that while the traditional system allowed individual castes to move up or down, the system itself remained unaltered. In other words, there was only positional change, not structural change."

Backward Classes movement in Gujarat.

11.9 As regards the backward classes movement in Gujarat, Srinivas has, amongst other things, pointed out. ³"The Patidars, the great landed caste of Gujarat, have been moving up in caste and class hierarchy in the last two hundred fifty years or so, and in particular since the closing years of the nineteenth century. In the years since 1947, the 'low' but populous Koli Baria castes have shown much dynamism, and are seeking mobility through the acquisition of political power. This is accompanied by much hostility toward their traditional masters, the Patidars."

Forces that had started weakening the rigid caste system.

11.10 As regards, the forces that had started weakening the rigid caste system, he has observed,⁴ "It is true that political forces—much wider, however, than party politics—have played a part in stimulating horizontal solidarity, but they are not the only ones. Urbanisation, increased spatial mobility, Westernized style of life, and modern ideology have also played their part. With specific reference to endogamy, so crucial to the identification of a caste, the institution of dowry has forced people to look for bridegrooms beyond the traditional unit. The huge sums demanded as dowry and in many cases, the institution itself, are a product of increased monetization, and Western education and the job opportunities which it has opened the door to. The "matrimonial" advertisements in Indian newspapers show how urban, westernized Indians are willing to overlook traditional barriers in their anxious search for a suitable spouse." ⁵"The emergence of the big and powerful castes, the great occupational heterogeneity within each of them, the keen competition between castes for political and economic power, the spread of equalitarian ideology, and increasing political and social mobilization—all suggest that changes of a fundamental kind are occurring."

1. Ibid, p. 92

2 Ibid, p 93

3 Ibid, p. 101

4 Ibid, p. 116

5. Ibid, p. 117

Evil of caste system still persists—Instances.

11.11 In order to achieve the object of ushering in a casteless society, the Government at the Centre as well as those in the States have taken certain steps after India became independent and yet the evil of casteism persists. According to Ghurye,¹ "This tendency for every large caste to live in isolation from other castes has been steadily growing. It will be observed that this desire is only the old caste practice of reserving special parts of the village for the different castes moulded to suit the changed conditions of city life. The inclination of the people were encouraged and aggravated by private charity expressing itself through the channels of caste. With the quickening of caste-consciousness and the fostering of caste-patriotism philanthropic persons have been building houses and chawls to be rented only to their caste-members at moderate rents. Charity intending to further the educational interests of a caste has found expression also in providing free hostels to the student members of the caste. As a result in those areas of Bombay which are largely inhabited by the middle classes, we find today whole chawls which are occupied by members of one or two castes with close affinity whole buildings rented at moderate or even nominal rents only to the members of a particular caste and hostels giving free accommodation to the students of a particular caste. Buildings meant for members of a particular caste generally bear prominent boards blatantly announcing the fact of their reservation and where it is a case of individual endowment also the name of the philanthropic donor. Even the colleges and the university are infested with endowments from which scholarships are to be paid to students of certain specified castes."

Co-operative schemes and caste solidarity.

11.12 "The introduction of co-operative schemes of amelioration have afforded another opportunity for caste-solidarity to manifest itself. Co-operative housing more than any other aspect of co-operative undertaking, has appealed to the caste-spirit, though credit societies of individual castes, like that of the Reddis, are not altogether unknown. In fact, it would be true to remark that only those co-operative housing societies have succeeded most which have restricted their membership to their caste-fellows. Even in business this tendency to restrict the holding of shares to the members of a particular caste is sometimes apparent. Recently, the Brahmins of Madras started a fund called the 'Triplicane Fund', shares in which could be held only by Brahmins. Those responsible for starting it included gentlemen of "culture, education, and learning." "Such being the case, we regret that one of the rules of the Fund is so narrowly conceived as to exclude all that are not Brahmins from the right of holding shares. It is just this type of exclusiveness that furnishes interested parties like the 'ministerialists' their best nutrient. Those who decry the excesses of communalism should themselves first set the example of a healthy, wholesome, non-communal outlook in the practical affairs of life".... "The community aspect of caste has thus been made more comprehensive, extensive, and permanent. More and more of an individual's interests are being catered for by caste, and the needy who are helped by their caste funds naturally owe much to their caste and later in life look upon it with feelings of gratitude and pride. They feel it their proud duty to strengthen the caste-organisation, remembering their obligations to it. Thus a vicious circle has been created. The feeling of caste-solidarity is now so strong that it is truly described as caste-patriotism."

Caste loyalties prominent in political relations.

11.13. "Caste loyalties are said to be prominent in political relations. Politicians aim at securing votes by winning the caste loyalties. Critics have charged that "caste forms the strongest party in India."... A. R. Wadia observes: "The democratic method of voting has given a new lease of life to castes, for our democracy is still immature, political parties have yet to take roots, and so the masses of our illiterate voters find a safe guide in voting on the basis of caste and religion and community." The tangle of casteism in politics has been explained by Myron Weiner as follows. "For most Indians, the great competi-

1. 'Caste and Race in India' — by G. S. Ghurye, p. 297-298.

2. Ibid, p. 298-299

3. Ibid, p. 300

4. 'The Indian Constitution' — by Ratna Revankar, p. 317-318

5. A. R. Wadia, Democracy and Society, 1966, p. 84.

6. Myron Weiner, The Politics of Scarcity, 1963, p. 71.

tion is not Between India and the West or even India and China, but between social groups within India."... ¹"The role played by caste in elections is recorded by many case studies. These studies point out that the numerical strength of castes plays a deciding role in politics."... ²"The role of caste in the elections in Poona can be understood from three independent sources—the reactions of voters to the propaganda campaigns of various parties, the press and the polling figures at certain booths."... ³"These case studies also point out that in the arena of politics it is possible to expect intercaste alignments. Small caste groups align with each other to offer competition to numerically dominant castes. But some election studies reveal that political organisation and leadership cut across caste loyalties."... ⁴"Thus the role played by caste affinities and caste loyalties in the political field and their influence on the conduct of the major political parties are advanced in support of the caste set-up in politics."... ⁵"...that caste is continuing to be the dominant unit of social action." Myron Weiner is of the view that, ⁶"social changes accompanying modernisation are facilitating the development and not the diminution of community interests in Indian politics."

Organized efforts for being considered socially and educationally backward—cautious approach necessary while identifying such classes.

11.14 In view of what is stated above, as regards the inroads made by the rigid caste system in our social and national life, one has to be very cautious, even while dealing with the question of proposing or taking measures for the uplift of the backward classes. It cannot be denied that, the evil of casteism persists even in our State. The manner in which representatives of some of the castes, who appeared before us, had submitted their cases for treating the caste to which they belonged, as socially and educationally backward, shows that organized efforts have been made to set the clock back by attaching various types of labels of backwardness to their castes. We feel sad to find that, the very castes which were at one time, claiming for higher ranks in caste hierarchy and showing progressive trends, have now reversed the process and submitted before us that, they are socially and educationally backward. The reasons for the above sudden change in the attitude of the people require to be considered very carefully. We have already pointed out, as to how till the year 1931, because of the practice of mentioning castes in the Census Reports, different castes were putting forward their claims for higher status. Even after the practice of mentioning castes in census reports was discontinued, many castes continued their efforts for upward mobility. We have dealt with the above aspect in an elaborate manner in the earlier paragraphs. It is, therefore, necessary to find out the reasons which have impelled various castes to change their outlook and clamour for being considered as socially and educationally backward. It appears that, the roots of the above change in their outlook can be traced to the report of the first Backward Classes Commission headed by late Shri Kaka Saheb Kalekar, which prepared a list of 2399 backward castes for the whole of India in the year 1955. Government of some of the States have also, subsequently, appointed Commissions to identify socially and educationally backward classes and propose the measures that should be taken for their upliftment. In our State also, as pointed out earlier, the first Socially and Educationally Backward Class Commission (Bakshi Commission) was appointed in the year 1972, and it has submitted its report to the Government on 27th October, 1976. After the acceptance of the above report by the Government in the year 1978, representations were made to it by several castes that, they should also be considered as socially and educationally backward. We have already pointed out the circumstances in which, the present Commission has been set-up. It appears that, in view of various types of concessions and adventitious aids which include reservation of seats in educational institutions and of posts in services under the State, that are being given to socially and educationally backward classes specified by the Bakshi Commission, there has been total change in the outlook of a large majority of castes in Gujarat and they have made organised efforts for being considered as socially and educationally backward, in order to acquire eligibility for receiving various benefits that are being given to socially and educationally backward classes by the State. Even late Shri Kaka Saheb Kalelkar realised though only after, he had signed the report that, "the remedies suggested by us were worse than the evils we were out to combat."

1 'The Indian Constitution' — by Ratna Revankar, p. 318.

2 V M Sirjkar, Political Behaviour in India, 1965, p. 248.

3 Modasa Constituency in Gujarat — Indian Voting Behaviour, (eds.), Myron Weiner and Raju Kothari, 1965.

4 'The Indian Constitution' — by Ratna Revankar, p. 318.

5 Ibid p 319

6 M/ on Weiner, The Politics of Scarcity p. 78

Identification of socially and educationally backward classes in terms of caste, will perpetuate the evils of caste system.

11.15 We are firmly of the view that, caste-system has been hindering our progress towards an egalitarian society and that, identification of backward classes in terms of caste will perpetuate the above evil. It is, therefore, advisable as far as possible, to identify socially and educationally backward classes, in such a manner that, those falling within such classes, need not have any cause to temptation for humiliating their castes by attributing various types of shortcomings and vices to them, in their anxiety to ensure that, the label of backwardness sticks firmly to their caste. One of the advantages of specifying the backward classes in the above manner would be that, the label of backwardness on an occupational basis could be cast off by a person at his will, by hardwork and dealing with the problems of occupation and life in an intelligent and practical manner; whereas the label of caste and the stigma of backwardness that may attach to a person, in case, the caste to which he belongs is identified as socially and educationally backward would stick to him till his death. Thus, the method of identifying socially and educationally backward classes without reference to caste would provide an incentive to those belonging to castes which are considered inferior to caste off the stigma attached to their castes without any delay.

How some castes degraded themselves.

11.16 We have found that, some of the castes just for the sake of being considered as socially and educationally backward, have degraded themselves to such an extent that, they had no hesitation in attributing different types of vices to and associating other factors indicative of backwardness, with their castes. The above malaise requires to be remedied in an expeditious manner. During our visits to various places in the State, we found that, a large number of persons belonging to various castes appeared before us and submitted their cases in an exaggerated manner. Representatives of several castes stated before us that, the evil of drinking was widespread amongst the members of their castes and that inspite of prohibition, they could easily obtain liquor. It was their version that, after day's hardwork, it was absolutely necessary for them to drink to order to get rid of the feeling of tiredness. It is extremely doubtful whether, but for the temptation of being considered as socially and educationally backward, they would have attributed above blemishes to their castes.

Identification of socially and educationally backward classes in terms of caste not a possible in the cases of non-Hindu Communities.

11.17 It also appears that, if socially and educationally backward classes are determined in terms of caste, it would rather be difficult to identify all such classes amongst non-Hindu communities, which do not recognise caste in the conventional sense known to Hindu society. We feel that, all such groups amongst the above communities as are found to be socially and educationally backward can be taken care of in a satisfactory manner by identifying socially and educationally backward classes without reference to caste.

Method of determining socially and educationally backward classes without reference to caste beneficial to all sections of people irrespective of the castes to which they belong.

11.18 It should, further, be remembered that, as pointed out by the Supreme Court in the case of Balaji,¹ "Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The class of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat.".. We have found on evidence that, most of those who are following occupations which are treated as inferior are poor and that, the large number of persons belonging to castes or communities, which were at one time considered to be high, have now been reduced to the position of marginal or small farmers and that, many of them are for various reasons, required to work as labourers or agricultural labourers or to do some such manual work to earn their livelihood. The above groups of people because of their poverty and following occupations which are treated as inferior, do not enjoy any status in the society, as a result of which they have become socially backward. There is sufficient evidence to show that, they are also educationally backward. On the basis of relevant criteria to which we have already referred, they fall in the category of socially and educationally backward classes. It would, therefore, be just and fair to give them adventitious aids. The above groups comprise

1. AIR 1963 SC 649 (659)

of people of different castes and yet for the reasons mentioned above, they deserve to be classified as socially and educationally backward classes.

11.19 Under these circumstances, we feel that many of such groups as stated above are likely to be left out and denied the benefit of adventitious aids as contemplated by Articles 15(4) and 16(4) of the Constitution, if socially and educationally backward classes are identified in terms of caste alone. In order to help the above sections of the people, it is all the more necessary to identify socially and educationally backward classes without reference to caste especially when, the above method of classification is not likely to adversely affect the interests of those castes which are found to be socially and educationally backward.

Opportunity to promote the educational and economic interests of weaker sections. Urgency of getting rid of the caste system.

11.20 Thus, according to us, by determining socially and educationally backward classes without reference to caste, interests of all those groups of people who are socially and educationally backward irrespective of the caste to which they belong, would be safeguarded and adventitious aids as contemplated by Articles 15(4) and 16(4) of the Constitution would reach all those classes who need them most. This would, further, afford an opportunity to and enable the State to discharge its obligation to promote in obedience to Article 46 of the Constitution, the educational and economic interests of the weaker sections of the people and to protect them from exploitation. One more distinct advantage of identification of socially and educationally backward classes in the above manner would be that, it would go a long way in accelerating the process of establishing casteless and egalitarian society by eliminating main causes of antagonism and rivalries between different castes and communities. We have already pointed out as to now, the rigid caste system has divided the people into several stratas or grades. Even some of the well-educated people are found to have drunk deep into the poison of casteism. As pointed out by Pandit Jawaharlal Nehru, the caste system carries with it seeds of destruction. Stressing the urgency of getting rid of the caste system, he has observed:¹ "In our own period have arisen numerous movements to break the tyranny of caste among the middle classes and they have made a difference, but not a vital one, so far as the masses are concerned. Their method was usually one of direct attack. Then Gandhi came and tackled the problem after the immemorial Indian fashion, in an indirect way. He has been direct enough, aggressive enough, persistent enough, but without challenging the original basic functional theory underlying the four main castes. He has already shaken the foundations of caste and the masses have been powerfully affected. But an even greater power than Gandhi is at work; the conditions of modern life--and it seems that at last this hoary and tenebrous relic of past times must die." The sooner we get rid of the caste system the better for the nation.² "The caste system as we know," said Mahatma Gandhi: "is an anachronism. It must go if both Hinduism and India are to live and grow from day to day." Any further delay in following the above words of caution of the Father of the nation would be disastrous for the nation.

Inherent defects in the system of identifying socially and educationally backward classes in terms of caste.

11.21. It is found that there are several castes or sub-castes each of which is further divided into a large number of sub-castes or "gols" with distinct denominations. For want of exact and complete information in regard to the above castes, sub-castes or gols, it is rather difficult to prepare the accurate and exhaustive list of such castes, sub-castes, gols, or communities as the case may be. Under these circumstances, if socially and educationally backward classes are specified in terms of caste, there is every possibility of some castes, sub-castes, gols, or communities being excluded from the list of such classes even though, they may be socially and educationally backward. In this connection, we may incidentally point out that, as a result of identification of socially and educationally backward classes by the Bakshi Commission in the above manner, some castes and sub-castes though forming part of or linked up in some way or the other with some of the castes or sub-castes identified as socially and educationally backward by the above Commission, are left out from being included in the list of socially and educationally backward classes, prepared by it. They have now made representations to this Commission that, they may be included or deemed

1. *Discovery of India* by Shri Jawaharlal Nehru, Chapter VI, p. 234 (3rd Edition).
2. *Karnatak Backward Classes Commission's Report*, p. 32.

to have been included in the above list on the basis of the report of the Bakshi Commission. The above contingency could be avoided by identifying socially and educationally backward classes without reference to caste.

11.22. It may also be pointed out that, the list of Socially and Educationally Backward Classes prepared by the Backward Classes Commission (Mandal Commission) appointed by the President of India includes almost all the castes and or communities identified as socially and educationally backward by the Socially and Educationally Backward Class Commission (Bakshi Commission). We find that in the list of backward classes prepared by the Bakshi Commission, "Bharwad" caste alone is shown at Sr. No. 10 (page 55, Vol. I). In the report of the Mandal Commission, however, names of some sub-castes/groups etc. have been shown alongwith the caste Bharwad at Sr. No. 11 (page 180, Second Part, Vol. VI) of the list. The above entry reads as under : Bharwad, Mota Bhai Bharwad, Nana Bhai Bharwad, Kabari, Baria Mota Bhai, Chosla, Janapada (where they are not Scheduled Tribes). Entry at Sr. No. 58 in list of backward classes prepared by the Bakshi Commission (page 57, Vol. I), reads as under : "Rabari, Bhopa-Kodiator." The corresponding entry in regard to Rabaris at Sr. No. 72 in the list of Mandal Commission reads as under : "Rabari, Sorthua, Charlia, Charmta, Luni, Kushar, Tank, Muchhal Kadiya-Kumbhar (where they are not Scheduled Tribes). The above variations in regard to caste nomenclature in the entries, which relates to one and the same castes, clearly show that identification of socially and educationally backward classes in terms of caste is in some cases incomplete and inaccurate and that there is always some possibility of some castes and or sub-castes being left-out. There are some more instances of the above types in the lists prepared by both the aforesaid Commissions, but we have referred to only two of such instances, in order to emphasise that, the method of identifying socially and educationally backward classes in terms of caste is not satisfactory.

11.23 Even the Mandal Commission has realised the drawbacks of the method of preparing a caste-wise list of socially and educationally backward classes as would be evident from its observations in paragraph 10 of Chapter XII, Vol. I at page 55 of its report, the relevant part whereof reads as under : "Whereas the Commission has tried to make the State-wise lists of OBCs as comprehensive as possible, it is quite likely that several synonyms of the castes listed as backward have been left out. Certain castes are known by a number of synonyms which vary from one region to the other and their complete coverage is almost impossible." In order to get over the above difficulty, "... the Commission recommends that if a particular caste has been listed as backward then all its synonyms whether mentioned in the State lists or not should also be treated as backward." Its above recommendation is, however, fraught with several difficulties which could not have been anticipated by the Commission. In support of our above view, we may point out that, after the acceptance of the report of the Bakshi Commission by the Government of Gujarat, the concerned departments were flooded with representations seeking inclusion in the list of backward classes, from those whose sub-caste or gol was not included in the list prepared by the Commission. Moreover, in some cases, it is rather difficult to find out with accuracy whether, castes or sub-castes requesting to be considered as backward are synonyms of the particular castes or sub-castes included in the list of backward classes. As observed above, some of them have now made representations to this Commission. We, therefore, feel from our own experience that, the remedy suggested by the Mandal Commission fails to cure the fundamental defect inherent in the method of preparing list of socially and educationally backward classes in terms of caste.

CHAPTER—XII

ONLY THE LOWER INCOME GROUPS IN CERTAIN CASTES/COMMUNITIES/CLASSES CONSTITUTE SOCIALLY AND EDUCATIONALLY BACKWARD CLASS

Only lower income groups are socially and educationally backward.

12.1 We have found on applying relevant tests and criteria and on the basis of the evidence on record that, there are certain castes/communities or classes of people which are backward, but, only lower income groups amongst them are socially and educationally backward. In order to ensure that, no ambiguity remains in regard to the above aspect, we may add that, the above observations hold good even in respect of those classes which are identified as socially and educationally backward without reference to any caste.

Benefits of reservation are snatched away by the top creamy layer of the backward caste or class.

12.2 In this connection, we may refer to the following observations of the Full Bench of the Kerala High Court in the State of Kerala & Others. v. K. S. Krishna Kumari,¹ "The real question is should a social and educational backwardness of the castes resulting from historical reasons be perpetual and the caste as a whole treated as socially and educationally backward even if there be a group of persons in the castes who are not socially and educationally backward. Should all the members of such a community always remain backward? The idea in making the reservation is to give the members of such caste or community an equal opportunity with those who are treated as socially and economically advanced classes of the society. If a group in those castes/communities were able to advance socially and educationally and economically, to make reservations for them would be to deprive the chances of the really, socially and educationally backward classes of people in those communities/castes." We have also kept in mind the following observations of the Supreme Court in the case of State of Kerala v. N. M. Thomas,² "A word of sociological caution, In the light of experience, here and elsewhere, the danger of 'reservation', it seems to me, is three-fold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake. Secondly, this claim is over-played extravagantly in democracy by large and vocal groups whose burden of backwardness has been substantially lightened by the march of time and measures of better education and more opportunities of employment, but wish to weak the 'weaker section' label as a means to score over their near-equals formally categorised as the upper brackets."

12.3 We may also refer to the following observations of the Supreme Court in R. Chitalekha v State of Mysore³ : "This interpretation will carry out the intention of the Constitution expressed in the aforesaid Articles. It helps the really backward classes instead of promoting the interests of individuals or groups who, though they belong to a particular caste a majority whereof is socially and educationally backward, really belong to a class which is socially and educationally advanced. To illustrate, take a caste in a State which is numerically the largest therein. It may be that though a majority of the people in that caste are socially and educationally backward, an effective minority may be socially and educationally far more advanced than another small sub-caste the total number of which is far less than the said minority. If we interpret the expression 'classes' as 'castes', the object of the Constitution will be frustrated and the people who do not deserve any adventitious aid may get it to the exclusion of those who really deserve. This anomaly will not arise if, without equating caste with class, caste is taken as only one of the considerations to ascertain whether a person belongs to a backward class or not. On the other hand, if the entire sub-caste, by and large, is backward, it may be included in the Scheduled Castes by following the appropriate procedures laid down by the Constitution." As pointed out by the Supreme Court in the case of Janki Prasad⁴ : "In identifying backward classes, therefore, one has to guard oneself against

1. AIR 1966 KER 54 (60)

2. AIR 1976 SC 490 (531)

3. AIR 1964 SC 1823.

4. AIR 1973 S.C. 930 (939)

"including therein sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated."

Kerala Backward Classes Commission fixes income limit for identifying socially and educationally backward classes.

12.4 In this connection, we may point out that the Commission appointed by the Government of Kerala to specify socially and educationally backward class of citizens has, in its report submitted on December 31, 1965 recommended that, "....only citizens who are members of families which have an aggregate income of less than Rupees 4,200 per annum and which belong to the castes and communities mentioned in Appendix—VIII constitute socially and educationally backward classes for purposes of Article 15(4)." In the order passed by the Government on May 2, 1966 on the basis of the above recommendation, it is observed² "After the Commission collected data for its report, the cost of living has risen further, and the income-tax exemption limit has been raised. Having regard to the current cost of maintenance of a student in a professional or technical institution, Government consider that the income limit of Rs. 4,200 suggested by the Commission should appropriately be raised to Rs. 6,000 per annum." The above income limit was further raised to Rs. 10,000 per annum with effect from the academic year 1975-76 by Government of Kerala Order, dated September 2, 1975. While approving of the above classification of socially and educationally backward classes, the Supreme Court has observed in the case of *Jayasree*³ : "The different castes that have been described in Appendix—VIII to the Commission Report have not been accepted by the Commission as embodying the group of socially and educationally backward classes of people. Only those among the members of the castes mentioned in Appendix—VIII whose economic means was below that stated by the Commission were treated as socially and educationally backward. The educational backwardness is reflected to a certain extent by the economic conditions of the group." It is also interesting to note that the Government of Karnataka while accepting the report of the Karnataka Backward Class Commission made it clear in its order, dated 22-2-1977, that only such citizens of the backward classes whose family income per annum from all sources did not exceed Rs. 8,000 shall be entitled to special treatment under Articles 15(4) and 16(4) of the Constitution. (Appendix-XXVI). The above income limit has been raised to Rs. 10,000 in November, 1977.

Social or educational backwardness does not exist in the cases of well-to-do sections.

12.5 We have enough material at our disposal to show that, the social backwardness does not exist in the cases of well-to-do sections or families amongst some of the castes/sub-castes or communities which are considered backward or inferior in caste hierarchy. It is found that, with the improvement in economic standards, social backwardness disappears. Generally, those who are well-to-do do not feel handicapped by the backwardness of the castes/sub-castes or the communities to which they belong. Because of their higher income and consequent improvement in their social status, label of inferiority or social backwardness associated with the castes/communities to which they belong does not adversely affect their social position, nor does it come in the way of their advancement. They, therefore, cannot be considered to be socially backward. Because of the above reasons, they have also been able to improve their educational standards. It is, therefore, difficult to consider them even educationally backward. Now, for the purposes of Articles 15(4) and 16(4) of the Constitution, backwardness must be both social and educational. Under these circumstances, even if they are educationally backward, they cannot be identified as socially and educationally backward class of citizens as contemplated by Articles 15(4) and 16(4). We have found that, what is stated above equally applies to socially and educationally backward classes determined on occupational basis or without reference to caste.

Income limit fixed by this Commission.

12.6 The next question that arises for our consideration is as regards fixing the income limit for the purpose of identifying socially and educationally backward class of citizens. We have already pointed out as to how, the income limit of Rs. 4,200 per annum fixed for the above purpose by the Government of Kerala in the year 1966, was raised to Rs. 10,000 in the year 1975. We have also pointed out that, the Government of Karnataka has fixed the

1. AIR 1976 S.C. 2381 (2383)

2. Ibid, para 7A.

3. AIR 1976 S.C. 2381 (2386)

income limit of Rs. 10,000 per annum for the purpose of identifying socially and educationally backward classes in the year 1977.

12.7 The Bakshi Commission appointed by the Government of Gujarat had recommended the payment of scholarships to those students whose parents, or guardians, income from all sources did not exceed Rs. 4,800 per annum. While laying down the above income limit, the Commission had made it clear that it was fixed in view of economic conditions prevailing in the State at that time. The above limit has now been raised by the Government to Rs. 7,200 by Government of Gujarat, Social Welfare & Tribal Development Department, Resolution No. BCR-1081-KH-964-H, dated 23-7-1981. By the Government of Gujarat, Education Department, Resolution, dated 12-5-1976, the income limit of parents, or guardians, for awarding freships to the students was fixed at Rs. 3,600 per year. The above limit has now been raised to Rs. 8,400 per year by Government of Gujarat, Education Department, Resolution, dated 6-4-1983.

12.8 Looking to the abnormal rise in the cost of living and some increase in income level and other relevant circumstances, we feel that for the purpose of excluding those who are well-to-do, while identifying socially and educationally backward classes, income limit should be fixed at Rs. 10,000 (Rupees Ten Thousand Only) per annum. It would, however, be open to the Government to review the position from time to time and to suitably raise or adjust the above income limit.

Fixing of income limit cannot be challenged on the ground that it is fluctuating. Meaning of the term 'family'.

12.9 At this stage, we may refer to the case of *State of Kerala v. Krishna Kumari*¹ in which one of the advocates for the parties had submitted that, his client lost the chance of getting admitted into the Medical College by a narrow margin. He had also argued, "...that the chance depended on the fluctuations in the income of the parents of his client and he emphasized the uncertainty resulting from the adoption of an income of Rs. 6,000 per annum as the yardstick of the economic position." While dealing with the above points, the High Court has observed, "In all cases of classification there will be border-line cases. If the classification is permissible the fact that it may cause hardship to a few individuals by itself will not make the classification unjust, unfair or arbitrary or perverse. We quite see the hardships in the case of petitioners whose petitions have been allowed by the learned Judge and even in other cases that have been posted along with these writ appeals. We can only say that they have been unfortunate in not getting admission. Whatever be the level of income fixed there will be border-line cases."

12.10 The above decision clearly shows that, the fixing of income limit for the purpose of identifying socially and educationally backward classes cannot be challenged on the ground that, it may be fluctuating. For the reasons already mentioned, we have decided to identify socially and educationally backward classes subject to the income limit of Rs. 10,000 (Ten thousand only). Thus, according to us, only those citizens in this State who are members of families the aggregate income of all the members of which from all sources does not exceed Rs. 10,000 (Ten thousand only) per annum and which belong to classes mentioned in Chapter-XV constitute socially and educationally backward classes for the purposes of Articles 15(4) and 16(4) of the Constitution of India. By the term 'family' we mean the citizen, his wife, sons, unmarried daughters, parents, brothers, and unmarried sisters living with him.

¹ AIR 1976 KER 54 (60)

CHAPTER—XIII

SUGGESTIONS TO MODIFY THE CLASSIFICATION OF SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES MADE BY THE BAKSHI COMMISSION, IN ORDER TO PROVIDE UNIFORMITY.

Decision to identify socially and educationally backward classes without reference to caste, inspite of the fact that the Bakshi Commission has identified them in terms of caste.

13.1 While taking the decision to identify socially and educationally backward classes without reference to caste, we are conscious of the identification of such classes made by the Bakshi Commission in terms of caste. We have pointed out in Chapter-XI as to how necessary: it is, to identify socially and educationally backward classes without reference to caste, in order to establish an egalitarian society. We may reiterate that, to identify socially and educationally backward classes in terms of caste is nothing, but to perpetuate the evils of caste system. For the reasons mentioned above, it would be not only against our own conscience, but also against the interest of the nation, to adopt classification on caste basis. Considering all these circumstances, we have thought fit to identify socially and educationally backward classes without reference to caste inspite of the fact that, the Bakshi Commission has identified them in terms of caste.

Sufficient justification to fix income limit proposed by us also in regard to socially and educationally backward classes identified by the Bakshi Commission.

13.2 It is true that, once our report is accepted by the Government, there would be two sets of socially and educationally backward classes indentified in two different ways in this State. It should, further be remembered that, the Bakshi Commission has not fixed any income limit for the purpose of identifying socially and educationally backward classes and according to it entire castes are socially and educationally backward. We have already pointed out in Chapter—XII that, in order to ensure that, adventitious aids, as contemplated by articles 15(4) and 16(4) of the Constitution reach those sections of the society, who really need them, income limit should be fixed as stated in that Chapter. We have found that, no caste in its entirety is socially and educationally backward. It is, therefore, necessary while identifying socially and educationally backward classes to ensure that, no sections of people which are socially and educationally advanced are included in it. If that is not done, the whole object of identifying socially and educationally backward classes would be frustrated. In this connection, it should be borne in mind that, the resources of the State are not unlimited. We have found that, the benefit of the present system of reservation on caste or community basis is to a considerable extent being enjoyed by the wealthy sections to the prejudice of the poorer sections of that caste/community. Considering all these circumstances, it is necessary to ensure that, the funds earmarked for the uplift of socially and educationally backward classes are utilised only for the benefit of those who are genuinely in need of them, and that no part thereof is snatched away by the top layers of the backward castes or classes.

13.3. In this connection, we may incidentally point out that, the Commission for reservation of seats in educational institutions in Kerala, while indentifying socially and educationally backward classes in the year 1965, has made it clear in no uncertain terms that, (1) "Members of families in the State which have an "aggregate income" of Rs. 4,200/- and above per annum from all sources put together, cannot be considered to belong to any socially backward class whatever may be the caste or community to which they belong." We have pointed out in Chapter—XII as to how the Government of Karnataka while accepting the report of the Karnataka Backward Classes Commission has clarified that, only such citizens of the backward classes whose family income per annum from all sources did not exceed Rs. 8,000/- shall be entitled to special treatment under Articles 15(4) and 16(4) of the Constitution. It does not appear from the report of the Bakshi Commission that, question of fixing income limit for the purpose of identifying socially and educationally backward classes was considered by it. As the above question has not been raised before or considered by it, it treated all the members of different castes referred to in the report as socially and

1. Report of Commission for reservation of seats in educational institutions, Kerala, p. 36.

Criteria adopted by the Mandal Commission for identification of socially and educationally backward classes among non-Hindu communities is neither logical nor just. Criterion should be such as can be uniformly applied to Hindu castes and non-Hindu communities.

14.4 It should, further, be remembered that, as pointed out in Chapter—V, identification of socially and educationally backward classes in terms of caste is not possible in the cases of non-Hindu communities. The Mandal Commission has also considered the above aspect in paragraph 16 of Chapter—XII of its report which reads as under : "But despite the prevalence of caste system among non-Hindu communities in varying degrees, the fact of the matter is that all these religions are totally egalitarian in their outlook, they proclaim absolute equality of all their co-religionists and any social differentiation based on caste is anathema to them. In view of this, caste cannot be made the basis for identifying socially and educationally backward classes among non-Hindu communities. We, therefore, shall have to evolve some other rough and ready criteria for identifying non-Hindu OBCs." It is because of the above reasons that, the Mandal Commission¹ has evolved the following rough and ready criteria for identifying non-Hindu OBCs. "After giving a good deal of thought to these difficulties the Commission has evolved the following *rough and ready* (emphasis added) criteria for identifying non-Hindu OBCs. :—

- (i) All untouchables converted to any non-Hindu religion; and
- (ii) Such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list of Hindu OBCs. (examples : Dhobi, Teli, Dheemmar, Nai, Gujar, Kumhar, Lohar, Darji, Badhai, etc.)

14.5 According to the criterion No. 2, only those occupational communities amongst non-Hindus, which are known by the name of their traditional hereditary occupations, and whose Hindu counter-parts have been identified as socially and educationally backward, can be treated as socially and educationally backward. This shows that, even if any non-Hindu occupational community is socially and educationally backward, it cannot be treated as such, unless its Hindu counter-part has been included in the list of Hindu OBCs. Moreover, according to the above criterion only an occupational non-Hindu community which is known by the name of its traditional hereditary occupation can be treated as socially and educationally backward, provided it fulfils the requirements of the above criterion. In the case of Hindus, however, in the above report, there is no condition that only hereditary occupational caste is eligible for being considered as socially and educationally backward. We find that, if socially and educationally backward classes from amongst non-Hindu communities are to be identified only on the basis of the aforesaid criterion evolved by the Mandal Commission, some non-Hindu communities who are socially and educationally backward are likely to be left out. In clarification of the above position, we may point out that, in the list of OBCs for the State of Gujarat, in the report of the Mandal Commission, Galiaras, Khatki or Kasai and Pinjaras, all of whom are Muslims are at Sr. Nos. 28, 42 and 70 respectively and for them there are no Hindu counter-parts. This shows that, according to the criterion evolved by the Mandal Commission, they could not have been included in the list of OBCs. It can, therefore, be reasonably inferred that, as the above communities have been identified as "socially and educationally backward classes" by the Bakshi Commission, they have also been included by the Mandal Commission in the list of OBCs for the State of Gujarat. We may also point out that, one non-Hindu community who has submitted a representation to this Commission, is following the occupation of grave digging, where as in the case of one other non-Hindu community its traditional occupation is of preparing strings from the intestines (guts) of animals. Now, the above occupational communities have no Hindu counter-parts, as a result of which they cannot be considered as socially and educationally backward, on the basis of the aforesaid criterion evolved by the Mandal Commission. For the reasons mentioned above, we feel that, the above criterion is neither logical nor equitable for the purpose of identifying socially and educationally backward classes from amongst non-Hindu. Moreover, it is not desirable to identify socially and educationally backward classes from amongst Hindus in terms of caste and to identify such classes from amongst non-Hindu communities on occupational basis. We have, therefore, adopted such criteria for the purpose of identifying socially and educationally backward classes as can be uniformly applied to Hindu castes as well as non-Hindu communities.

1. Report of the Backward Classes Commission (Mandal Commission), Vol. I, Chapter XII, para 12.16, p. 56.

Feeling of high and low on caste basis disappearing.

14.6 Some more reasons why we have adopted the above type of criterion are that, even though caste rivalries for acquiring material benefits are still there, feeling of high and low on caste/basis is disappearing due to several reasons. As pointed out by R. Jayaraman¹ : "The Indian caste system is undergoing many changes. The relatively 'closed' status group are increasingly becoming 'open'² ... "Class mobility is slowly gaining the upper hand over caste rigidities."³ ... "Independence accelerated the process of change. The Indian constitution sought to base the new social order on an egalitarian principle, and to remove every trace of inequality. Many changes are taking place in the caste system today. The 'closed' status group are increasingly becoming 'open', and the rigidity of the system is being reduced. The exclusiveness of castes is lessening each day, and more and more activities are bringing together members of different castes. In short, the structural distances between the castes are being reduced. An individual is a member of various non-traditional groups and organizations which have no relation to his caste. The caste system is no longer a clearly demarcated system of hierarchically-ordered caste groups. Boundaries between caste groups are tending to blur or break down. There is greater circulation of personnel and an increasing degree of interpenetration between different groups, classes and categories. This process makes it increasingly difficult to locate and define the boundaries of caste groups. There has been a gradual lessening of the congruence between caste, class and power."

14.7 In this connection, it is significant to note that, representatives of several castes admitted before us that, no caste was considered as inferior these days, and that, members of different castes associate with each other on equal terms. It is, therefore, difficult to decide the exact order of hierarchy between different castes. This makes the identification of social backwardness on caste basis difficult and unrealistic. The evidence to the above effect shows that, there is substance in the version of R. Jayaraman, when he observes⁴ : "...the structural distances between different castes and between subdivisions of the same caste are being reduced. Religious and ritual barriers which traditionally separated the castes are breaking down, and rules about commensality, purity and pollution are being relaxed. Difference between the life styles of castes are gradually being eliminated and there is a marked tendency towards the evolution of a common style. The forces behind this standardization of life styles are the twin processes of Sanskritization and Westernization."⁵ ... "There has been a considerable decline in the importance attached to ideas about purity and pollution in inter-caste relations."⁶ ... "Some scholars maintain that in urban areas class is slowly replacing caste, and that caste values are being discarded by those urban classes which now look toward the West for new ideas and values."

Several sections of certain castes resent the label of backwardness.

14.8 It is further interesting to note that, several sections of certain castes have opposed the representations made by their counterparts to us, for being treated as socially and educationally backward. They have submitted before us that, the castes to which they belong are not socially and educationally backward, and that, the stigma of backwardness should not be attached to their castes. Considering all these circumstances, we feel that, the determination of social backwardness on caste basis would neither be relevant nor realistic, in regard to several castes. It is, therefore, all the more necessary to evolve some criterion, which can be uniformly applied to all the castes and non-Hindu communities.

Transition from a caste to a class.

14.9 As observed by the Supreme Court in the case of Balaji,⁷ "... The occupation of citizens may, also contribute to make the classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward." ... As pointed out by the Supreme Court in the above case, "In a sense, the problem of social backwardness is the

1. 'Caste and Class : Dynamics of Social Inequality in Indian Society' — by R. Jayaraman, p. 10.

2. Ibid, p. 11

3. Ibid, p. 27

4. Ibid, p. 30—31

5. Ibid, p. 31

6. Ibid, p. 31—32

7. AIR 1963 S.C. 649 (659)

problem of Rural India and in that behalf, classes of citizens occupying a socially backward position in rural area fall within the purview of Article 15(4).” “.....backwardness, social and educational is ultimately and primarily due to poverty.” ¹ “India’s transition from a caste to a class society bears some resemblance to the process that changed Europe’s system of feudal estates into a capitalists class society.” ² “The dimension of caste was traditionally more important in social stratification; other dimensions are now becoming increasingly more important. New dimensions of education and occupation and the general development of class have come to play significant roles in social stratification.” ³ “Sociologists use different labels to distinguish strata. A familiar classificatory system resembles Marx’s model of classes, and specifies an ‘upper’ class, consisting of the owners of capital, a ‘middle’ class of professional people and white-collar employees; and a ‘lower’ class of manual workers.”... W. Lloyd Warner, an American sociologist who has made a valuable contribution to stratification studies, defines classes as follows : ⁴ “By class is meant two or more orders of people who are believed to be, and are accordingly ranked by the members of the community, in socially superior and inferior positions.” According to R. Jayaraman, ⁵ “... status may be defined as the social standing esteem and prestige a person or group possesses in a stratified system. Status can be achieved or ascribed. In an ascriptive system, a person acquire social standing by birth, as in the Indian caste hierarchy, or in a society in which an aristocracy is distinguished from commoners. In an achievement-oriented system, a person acquires status by his own efforts, as through education or through acquisition of economic or political power. He is born into a particular status group, but may move into a higher group through success in business or games or through marriage. Conversely, a person may ‘lose status’ by becoming poor, taking an inferior job, or generally having less prestige than that attached to his family of origin.” As regards the profile of the urban poor, he has observed ⁶ : “In the urban setting, the poorest section would consist of those who have drifted from villages, to cities in search of work but who have not been able to find any. To these may be added workers employed in some service sectors such as hotels and domestic work, most unskilled workers working for big or small firms, and workers in private-sector enterprises. Again, among people working for modern bureaucracies of all sorts, those who are most likely to belong to the poor section are the so-called ‘classes IV employees’, that is chaprasis, peons and attendants, and those who perform the so-called menial functions such as cleaning streets and public utilities.” The concept of dignity of labour has not been sufficiently realised not put into practice in India. Under these circumstances, there is no scope for saying that, there is no feeling of high and low in regard to different occupations.

The concept of social equality is never fully practiced, even in England and America.

14.10 In this connection, we may point out that, even in England and America, the concept of social equality has merely remained an ideal, and it is never fully practiced. “Status and esteem”, observes Kenneth Roberts, ⁷ “...are such nebulous commodities that their importance is easily dismissed. Who cares whether others look up or down ? In practice we all do, and all the research shows that manual work is held in low esteem. There is some overlap between the prestige attached to skilled manual and the more routine white-collar jobs, but non-skilled blue-collar occupations are unambiguously at the bottom of the heap”. He has also observed : ⁸ “This matters because an individual’s job is part of his social persona. As Everet Hughes has observed, “...a man’s work is one of the things by which he is judged, and certainly one of the more significant things by which he judges himself. ...A man’s work is one of the more important parts of his social identity, of his self; indeed, of his fate in the one life he has to live, for there is something almost as irrevocable about choice of occupation as there is about choice of a mate. We place each other with reference to our occupations. The getting acquainted question, ‘What do you do’ ? is ordinarily taken to mean ‘What work’ ? and we treat our fellows differently depending on their jobs. Controlled research in street situations, where actors dressed to represent different classes ask passers-by the time, shows that responses vary.

1 ‘Caste and Class . Dynamics of Social Inequality in Indian Society’—by R. Jayaraman, p 11

2. Ibid, p. 32.

3. Ibid, p 16

4. Ibid, p 18.

5 Ibid, p. 18-19

6 Ibid, p. 42.

7 ‘The Working Class’ — by Kenneth Roberts, p 36

8. Ibid p 36—37.

"People learn who they are. Doctors are not constantly surprised at the respect with which they are treated. Likewise manual workers feel little affront at their repeated denial of status. This fact of working class life only makes its full impact upon a stranger such as Martin Leighton, who spent a spell as a roadsweeper during his working class journey. 'As for myself,' I was all too keenly aware of the social status my job conferred on me. I had become a non-person. People simply did not see me any longer; I felt that, but for the physical problem of mass, they would have walked through me. This is one of the 'hidden injuries of class' that Sennett and Cobb deplore. Their long interviews with working people in Boston U.S.A. yielded plentiful evidence of how menial jobs devalue the worker. In our society people are judged by their jobs, by what they produce, and the value of their labour is crudely measured in the market place. This is what a person essentially 'is'. Hence the ability of low-status jobs to devalue workers selves. Kohn and Schooler have shown that the psychological effects of work are anything but trivial. Qualities associated with jobs are carried into non-working life".

14.11. As regards the internal stratification of the working class, he observes :
 1" "This theory about the internal stratification of the working class has won most favour amongst American sociologists. Following a comparative study of automobile workers in the U.S.A. Italy, Argentina and India, W. H. Form has concluded that as industrial development progresses, the skilled stratas become increasingly differentiated from other manual workers."
 2" "The Affluent Worker enquiry, which was discussed in the previous chapter, has encouraged doubts as to whether 'advanced' sections of the manual strata are being socially assimilated into the middle classes. The workers interviewed had few middle class friends, compared with the white-collar sample they were less likely to be members of non-workbased associations, and remained more dependent upon family and kin for social intercourse."
 3" "Young people from all social backgrounds may wear different clothes and favour different types of music from their parents, but scratch a little under the surface and the classless facade quickly evaporates. Although, it may well sound similar to some elders, young people do not even possess uniform musical tastes, and these variations correspond to social class differences. Young people themselves are well aware of social class. Although many university students extent statements of comradeship towards the working class, they more rarely marry or even mix with them socially. Students have their own sports facilities, societies, and parties."
 4" "D. G. McKinley's Social Class and Family Life starts with the observation that manual employees are denied status at work. They are constantly on the receiving end of authority and their work is menial rather than prestigious. Unlike the middle class husband, the bluecollar employee cannot carry esteem and eminence from work into his home."
 5" "Proposition number four observes that in education working class children are relatively unsuccessful, under-represented in secondary schools, top streams and higher education."

Position of manual workers and other low income groups in India.

14.12 We have found from evidence, and our own experience and knowledge that, the position of manual workers and other low income groups in our State, (and 'this position is not likely to be different in other parts of the country') is still worse. Certain occupations are looked down upon and those following such occupations or whose income is low have no status in society and they are required to take a backward seat in the social hierarchy. As pointed out by the Supreme Court in the case of Balaji, 6 "Social backwardness is on the ultimate analysis the result of poverty to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society." We have also found that, as a result of poverty or low income, their children are unable to take advantage of educational facilities offered by the State and consequently they remain educationally backward. We can, therefore, say without the least hesitation that, the persons following certain occupations or whose income is low, details whereof shall be given hereafter in this report are both socially and educationally backward.

1. Ibid, p. 55

2. Ibid p 79.

3. Ibid, p. 81.

4. Ibid, p. 86

5 Ibid, p. 162

6. AIR 1963 SC 649 (659)

Observations in the Sixth Five Year Plan in regard to manual workers.

14.13 Certain observations in the Sixth Five Year Plan also support the above view. As regards the organisation of rural workers, it is observed : ¹ "Involvement of rural workers' organisations is relevant not only for the better implementation of the minimum wage provisions but also for generally ensuring the benefits intended for rural workers under the various development programmes. It is well known that even in the organised sectors, the growth of trade union movement has not been significant in terms of strength of membership, or its even spread. The problem in the case of rural workers is further aggravated due to their lower level of awareness and other disabilities. As it would take time for voluntary trade unions to make a dent among these sections, it is considered necessary for the State machinery to facilitate the process in the initial stages."

² "It may also be noted that the Government of India has already ratified I. L. O. Convention No. 141 which enjoins that it shall be an objective of the national policy concerning rural development to facilitate the establishment and growth of strong and independent organisations of rural workers, including agricultural labourers, artisans, share croppers, tenants, and small farmers so that they get their due share in the benefits of economic and social development. As in the case of trade unions of industrial workers, organisation of the rural poor needs to be sponsored by the workers themselves or voluntary organisations including political organisations interested in the welfare of the rural poor. The Government may take some measures to facilitate the process. These would include suitable legislation for conferment of specific rights to the rural poor to set up unions for safeguarding their interests, registration of such unions of the rural poor, specific immunity to office-bearers and members of such unions from certain criminal and civil suits and setting up machinery for settlement of disputes, training and education of the cadre and some form of financial support of meeting organisational expenses, etc."

14.14 One of the classes, which according to us is socially and educationally backward comprises of labourers engaged in construction work, in regard to whom in the above report, it is observed : ³ "A large part of the unorganised labour force in the country consists of unskilled labour, both male and female employed in various forms of building and construction activity. They are mostly rural migrant either landless or share-croppers and marginal/small land holders who come to the cities in search of work, being drawn from the same pool as the unorganised agricultural labour in the rural areas. This is not only migrant in the conventional sense of having moved from their original place of residence due to economic pressure but also extremely mobile due to the conditions and problems of employment in the construction industry which is characterized by high turnover, use of contract labour, irregular employment, seasonal variability, dependence on supplies of raw materials etc. Some of the characteristics of this category are :

(i) high economic vulnerability due to the double combination of irregular and unstable employment and consequent high mobility on the one hand and their utilisation only in the lowest grade of job on the other ;

(ii) high proportion of female labour and frequent employment of whole family or couples ;

(iii) low capacity to utilise, existing services, because of high mobility; ignorance resulting from migrancy, lack of responsibility of civic agencies towards them as well as poverty, illiteracy, etc.

(iv) low health status, particularly harmful to children resulting from hazardous, insanitary and inadequate working conditions;

(v) lack of unionisation due to mobility and other reasons mentioned above; and

(vi) lack of opportunity for training, skills upgrading or literacy for older people and of basic education for the children due to above conditions."

¹ 'Sixth Five Year Plan — Govt of India, para 24.38 p. 437

² Ibid, para 24.39 p. 407

³ Ibid, para 24.49, p. 409

In the introduction to the plan, it is pointed out : ¹ "It is well known that the hard core of poverty is to be found in rural areas. The poorest sections belong to the families of landless labour, small and marginal farmers, rural artisans, scheduled castes, scheduled tribes, and socially and economically backward classes. The household will remain the basic unit of poverty eradication in target group oriented programmes. Families differ in such vital respects as dependency ratios, asset holding, skills and even the ability of perform manual labour on public works. Hence each household below the poverty line will have to be assisted through an appropriate package of technologies, services, and asset transfer programmes. Even for those who are already employed as wage-earners the problem may be one of low wages, which makes strict enforcement of minimum wages legislation all the more essential." As regards the landless labour, it is pointed out in the introduction : ² "Agricultural labour constitutes about one-fifth of the rural work force and fifty per cent of the agricultural labour households are landless and have as such no asset base. The landless labourers are the most under-privileged and malnourished sections of the population and for them, it is a compounded problem of unemployment, low and uncertain income and nutritional deficiencies." One of the objectives of education development, according to the above Plan is, ³ "... (iii) to promote the values of secularism, democracy, national integration and dignity of labour through out the educational system;" We are firmly of the view that, identification of socially and educationally backward classes in terms of caste, would result in the perpetuation of the evils of caste system, and consequently, it would prove to be an hindrance in the way of achieving the above objective.

Progressive steps taken by the erstwhile State of Bombay to get rid of classification of backward classes on caste basis.

14.15 In further justification of the method of identificaion of socially and educationally backward classes adopted by us, we may refer to the progressive steps taken by the erstwhile State of Bombay to get rid of the classification of backward classes on caste basis, and to provide adventitious aids to the weaker sections of the people as contemplated by Article 46 of the Constitution of India. The relevant parts of the Government of Bombay. Labour & Social Welfare Department. Resolution No. OBC-1759-E, dated 18th May, 1959, by which the decision to the above effect was taken read as under : (Appendix—XXVII).

"2. Finally, when the declared policy of Government is to establish a casteless society, it has to be considered whether it would be appropriate to adopt caste as the basis for preparing unified list.

3. In view of the difficulties indicated in the foregoing paragraph, the question of laying down a more suitable basis for classification of Other Backward Classes was engaging the attention of Government for sometime past. Article 46 of the Constitution requires the State Government to promote with special care the educational and economic interests of the weaker sections of the prople. Hitherto the practice was to equate the weaker sections of the people with the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes. While there can be no doubt that the Scheduled Castes and Scheduled Tribes constitute the weaker section of the people, it cannot be said that the castes now known as the Other Backward Classes alone constitute such weaker sections. Poverty generally results in Backwardness of every kind and there are classes like landless labourers, village artisans, petty land holders, etc, who are equally backward and who, consequently equally need assistance from the State funds for their advancement. Logically speaking, therefore, all people who are economically weak will have to be classified as the weaker sections of the people and the State will have to take special care to promote their educational and economic interests. In other words, to give full effect to the directive principle embodied in Article 46 of the Constitution, income and not caste will have to be accepted as the basis for giving State aid under that Article.

So far no attempt, with the possible exception of Vidarbha has been made to give effect to the provisions of Article 46. Government has come to the conclusion that time has now come to give effect to these provisions and to adopt income instead of caste as the basis for determining the classes to be included in the new list of the Other Backward Classes.

1. Ibid, para 30, p. 446.

2. Ibid, para 44(c), p. 449.

3. Ibid, para 82, p. 457.

4. Government is, therefore, pleased to direct that the existing classification of Other Backward Classes based on caste should be abolished with effect from the current financial year and it should be replaced by a new classification based on income. From the current year onwards, all persons whose annual income from all sources does not exceed Rs. 900 should, irrespective of religion, caste or community to which they belong, be treated as belonging to the Other Backward Classes. Government is further pleased to direct that pupils belonging to this new class should receive free education at all stages i. e. primary, secondary, collegiate, professional, technical, etc. as the case may be. Government is also pleased to approve of the rules appended to this Resolution for the purpose."

Progressive steps have been continued in the State of Gujarat.

14.16 Even after, the bifurcation of the State of Bombay, the above Resolution continued to remain in force in the State of Gujarat, which came into existence on 1st May, 1960 (*vide* Govt. of Gujarat, Education & Labour Department, Resolution No. OBC-1260-G, dated 23rd June, 1960, Appendix-XXVIII). The income limit for granting freeships, etc. was raised from time to time. The Government of Gujarat has also framed elaborate rules which give effect to the orders contained in the aforesaid Resolutions, *vide* Govt. of Gujarat, Resolution No. OBC-1260-G, dated 19th July, 1960 (Appendix-XXIX). The above income limit has now been raised to Rs. 8,400/- per annum by the Govt. of Gujarat, Education Department, Resolution No. EBC-1183-2111-CH, dated 6th April, 1983 (Appendix-XXX).

While making provisions for the educational and economic advancement of socially and educationally backward classes of citizens under Articles 15(4) and 16(4), the State is giving effect to the directive principles enshrined in Article 46 of the Constitution.

14.17 The aforesaid Resolution, dated 18th May, 1959 read with the relevant Resolutions passed by the Govt. of Gujarat show that, for the purpose of granting freeships and other educational facilities, Government of Bombay and Gujarat have taken a specific view that, in order to give full effect to the directive principles enshrined in Article 46 of the Constitution and also in view of the declared policy of the Government to establish a casteless society, it is necessary to adopt income instead of caste as the basis for preparing a new list of backward classes for the purpose of giving adventitious aids as stated above, and that policy is continuing in this State even after the acceptance of the report of the Bakshi Commission by the Govt. of Gujarat on 1st April, 1978. In this connection, it is pertinent to note that, while making provisions for the educational and economic advancement of socially and educationally backward classes of citizens as contemplated by Articles 15(4) and 16(4) of the Constitution, the State is giving effect to the directive principles enshrined in Article 46 of the Constitution, which reads as under : "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." It would therefore, be fallacious to say that, socially and educationally backward classes referred to in Articles 15(4) and 16(4) are different from the weaker sections of the people referred to in Article 46 of the Constitution. As observed by Shri Justice Krishna Iyer in the case of *N. M. Thomas v. State of Kerala* : "The Scheduled Castes and Scheduled Tribes have earned special mention in Article 46 and other 'weaker sections', in this context, means not every 'backward class' but those dismally depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes."

14.18. We have already pointed out that, in order to get rid of the evils of caste system, it is necessary to identify socially and educationally backward classes without reference to caste and that if identification of such classes is made in terms of caste, certain weaker section of the people who are found to be socially and educationally backward would be denied the benefit of the adventitious aids as contemplated by Articles 15(4), 16(4) and 46 of the Constitution, and that would amount to violation of Article 14 of the Constitution. As observed by the Supreme Court in the case of *Balaji*, ² "In taking executive action to implement the policy of Article 15(4), it is necessary for the State to remember that the policy which is intended to be implemented is the policy which has been declared by Article 46 and the preamble of the Constitution. It is for the attainment of social and economic justice that Article 15(4) authorises the making of special provisions for the advancement of the communities there contemplated even if such provisions may be inconsistent with the fundamental rights guaranteed under Article 15 or 29(2). The context, therefore, requires

1 AIR 1976 SC 490 (532)

2. AIR 1963 SC 649 (664)

that the executive action taken by the State must be based on an objective approach free from all extraneous pressures. The said action is intended to do social and economic justice and must be taken in a manner that justice is and should be done."

Existing schemes for giving adventitious aids to weaker sections of the people in Gujarat.

14.19. Even in the State of Gujarat, there are specific schemes for giving adventitious aids to weaker sections of the people. One of such schemes relates to granting of freeship and other educational facilities to which we have already referred above. Orders in regard to other schemes are contained in the Government of Gujarat, Labour, Social Welfare & Tribal Development Department, Resolution dated : 1st April, 1978, by which amongst other things the report of the Bakshi Commission was accepted. According to the above resolution various concessions mentioned in the Annexure—II to the Resolution were granted to the socially and educationally backward classes (82 castes) identified by the Bakshi Commission. Paragraph 4 of the above resolution reads : "Government is also pleased to direct that the agricultural labourers, rural artisans, marginal farmers, unorganised and unprotected urban casual labourers and other persons belonging to Economically Backward Classes who are self-employed, such as hand-cart pullers, drivers of pedal rickshaws and auto rickshaws (and not owners of these rickshaws), drivers of horse or camel drawn vehicles and of cattle drawn carts, cattle breeders, fishermen, and small shopkeepers whose family's income from all sources does not exceed Rs. 4,800 per annum, should be considered as members of the Economically Backward Classes and they should be granted various benefits as shown in the accompanying Annexure—III within the limit of available State Resources." In this connection, it is significant to note that, only difference in the benefits that are being granted to "82 castes/classes/groups" and "Economically Backward Classes" by the above Resolution is that, the latter classes are not given the benefit of reservation of seats in educational institutions and of posts in the services under the State and for the purpose of other benefits all the above classes are uniformly treated. No attempt was made before the above Resolution was passed to find out, whether any of those referred to as Economically Backward in the above Resolution, dated 1st April, 1978 were socially and educationally backward. We have however, found on the basis of the evidence on record that, all the categories of citizens referred to in the above Resolution, except small shopkeepers are socially and educationally backward. Under these circumstances, they should also be given all the adventitious aids as contemplated by Articles 15(4) and 16(4) of the Constitution. It is needless to add that, once the classification of socially and educationally backward classes made by us is accepted, it may not be necessary for the Government to maintain separate lists of backward classes for the above categories of citizens, and there would be uniformity in all respects in the matter of granting adventitious aids as contemplated by Articles 15(4) and 16(4) of the Constitution.

No difficulty will be felt in ascertaining and certifying citizens belonging to socially and educationally backward classes identified on occupational basis.

14.20 As observed above, according to Government of Gujarat, Resolution, dated 1st April, 1978, economically backward classes includes; agricultural labourers, rural artisans, marginal farmers, unorganised and unprotected urban casual labourers and other persons belonging to Economically Backward Classes who are self-employed, such as hand-cart pullers, drivers of pedal rickshaws and auto rickshaws (and not owners of these rickshaws), drivers of horse or camel drawn vehicles and of cattle drawn carts, cattle breeders, fishermen, and small shopkeepers whose family's income from all sources does not exceed Rs. 4,800 per annum. The wording of the Resolution clearly shows that, the above list is not exhaustive but only illustrative. By Government of Gujarat, Labour, Social Welfare & Tribal Development Department, Resolution, dated 15th June, 1978 elaborate rules have been made to regulate the granting of various benefits to socially and educationally backward classes and economically backward classes envisaged in Resolution, dated 1st April, 1978. Forms have also been prescribed for granting certificate of income etc. to the aforesaid classes. We find from the information received (Appendix—XXXI) from the Director of Social Welfare, Gujarat State, Ahmedabad, that all the aforesaid classes are taking substantial advantage of the various scheme introduced by the Government for their benefit. Looking to the manner in which the order contained in the aforesaid Resolution are executed and the extent to which advantage of various schemes is being taken by the aforesaid classes, it appears that no difficulty is being experienced by the authorities concerned in ascertaining and certifying citizens belonging to 'economically backward classes' referred to in the Resolution, dated 1st April, 1978. This shows that, there will be no difficulty in ascertaining or certifying citizens belonging to socially and educationally backward classes identified by us on the lines indicated above consistent with the requirement and for the purposes of Articles 15(4) and 16(4) of the Constitution.

CHAPTER—XV

SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES SPECIFIED

Socially and educationally backward classes of citizens.

15.1 For the reasons mentioned in the forgoing Chapters, and on consideration of the evidence and all other relevant materials at our disposal, we find that, subject to the income limit as stated in Chapter—XII, all those citizens who follow any of the occupations or as the case may be, belong to any of the categories of people mentioned below constitute socially and educationally backward classes of citizens for the purpose of Articles 15(4) and 16(4) of the Constitution of India.

(A) Agriculture and Cattle rearing.

- (1) Agricultural labourers.
- (2) Marginal and Small Farmers.
- (3) Share croppers.
- (4) Cattle including goats and sheep rearing.

*Note (i).—*The word 'farmers' includes those who grow water-melons, musk-melons (Tarbuch, Tadbuch or Sakarteti) of cucumber (Chibhada) and shignoda.

(B) Occupation involving manual work or labour.

- (5) Casual or unorganised or unprotected manual workers or labourers.
- (6) Employment as a labourer or manual worker, such as mason, carpenter, plumber, welder, etc. on the construction or maintenance of roads or buildings.
- (7) Employment as a labourer in a mine or a quarry.
- (8) Workmen employed on daily wages.
- (9) Citizens working as (a) hand-cart pullers, (b) drivers of pedal rickshaws, (c) drivers of horse, camel, or cattle drawn vehicles, (d) drivers of power driven vehicles in an employment of a casual or temporary nature. Owners of power driven vehicles are not included in this category.
- (10) Scavanging or sweeping.
- (11) Porters or coolies (hamals)
- (12) Dholi—(one who plays a drum)
- (13) Doli carriers
- (14) Water carriers (carrying water in an utensil, a pakhal, etc.)
- (15) Acrobats such as rope dancers etc. performing their feats or tricks on the street.
- (16) Bhavai.
- (17) Madari.
- (18) Domestic servants, manual workers or menials in private establishments or employment.
- (19) Those working as boys, bearers, waiters of doing any other manual work in a household, a club or a hotel, etc.
- (20) Those who work as watchmen to guard crops in the fields (Sim Rakhas).
- (21) Grain cleaning and those doing similar type of work such as; cotton pod husking.
- (22) Spice pounding manually i. e. without the use of power driven machinery or appliances.

(23) Beedi Workers.

(24) Unprotected worker or worker as defined in sub-sections 12 and 13 respectively of Section-2 of the Gujarat Unprotected Manual Workers (Regulation of Employment and Welfare) Act, 1979.

(25) Grave digging.

(26) Cooks.

(27) Gardeners, i. e. persons employed to tend a garden.

(28) Wood-cutters.

(29) Farriers (Nalbandh).

(C) Occupations involving manual labour and some element of trade or business.

(30) Manual workers employed or engaged in the occupation of manufacturing bricks. This category includes also those who manufacture bricks with their own labour and/or with the assistance of the members of their families.

(31) Earthenware making (occupation of a potter).

(32) Carpentry.

(33) Occupations of blacksmiths and coppersmiths.

(34) Manufacturing lime with the aid of manually operated appliances.

(35) Those engaged manually in (a) bamboo work, such as, mat and basket making, and (b) cane work.

(36) Rope making.

(37) Making or mending grinding stones.

(38) Tailoring.

(39) Darning or embroidering.

(40) Jari worker.

(41) Tinning i. e. the work of applying kalai-tin to pots or utensils.

(42) Occupation of a barber or hair-dresser.

(43) Washing and/or ironing clothes.

(44) Shoe making or repairing.

(45) Leather curing or tanning.

(46) Making strings from the intestines (gutes) of animals.

(47) Fishermen.

(48) Cotton or wool carding.

(49) Spinning with the aid of manually operated spinning-wheel (charkha).

(50) Weaving with the aid of manually operated appliances such as hathshal (handloom), and not with the aid of powerlooms.

(51) Dyeing and printing cloth with the aid of manually operated machinery or appliances.

(52) Oil crushing with the aid of bullock drawn crusher (ghani).

(53) Grain parching (occupation of a bhad-bhunja).

(54) Ferry.

(55) Occupation of a butcher.

(56) Howkers or pedlars and street vendors, i. e. those selling goods in open or in larigallas.

- (57) Knife grinding with the aid of manually-operated appliances.
- (58) Those engaged in the occupation of making various kinds of articles or toys etc. for sale, with their own manual work or that of the members of their families.
- (59) Repairing sundry articles such as cycles, stoves, umbrellas, etc.
- (60) Collecting old or discarded articles such as papers, newspapers, books, tins, bottles, etc. from house to house.
- (D) Victims of adverse circumstances or adversity.
 - (61) Inmates or those who have been inmates of an orphanage.
 - (62) Destitute persons.
 - (63) Mendicants.

Note (ii).—Only those who manually work in these occupations and not those who merely sell finished products are included in these categories. This applies to occupations/categories at Sr. Nos. 22, 23, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 44, 45, 46, 48, 50, 51, 53, 55 and 58.

Note (iii).—Those who carry on or follow this work or occupation with the help of servants or piece-rate workers are not included in these categories. This applies to occupations/categories at Sr. Nos. 4, 22, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 50, 51, 52, 53, 54, 55, 57, 58, 59 and 60.

The above list is only illustrative and not exhaustive. It is, therefore, made clear that, all those persons whose occupations are similar to any of the occupations mentioned above should be deemed to have been included in this list of socially and educationally backward classes of citizens. The above suggestion applies *mutatis mutandis* also to the various categories of citizens referred to above.

Overlap is intended to facilitate the process of identifying as to which citizens follow a particular occupation or belong to a particular category.

15.2 It will appear from the above list of occupations and categories of citizens that, there is certain amount of overlap in the specification of occupations and categories. In this connection, we may point out that, while preparing a list of the above type, overlapping cannot be avoided altogether, but certain degree of overlap in the matter, has been deliberately introduced by us, in order to facilitate the process of identifying as to which citizens follow a particular occupation or belong to a particular category in the above list. In elucidation of the above point, we may state that, where a particular occupation or a category specified separately also appears to have been included in one or the other occupation or category mentioned or described in general terms in the list, the former should be treated as an illustration on the point, so that, the authorities entrusted with the duty of issuing certificates specifying the occupation followed by a citizen or the category to which he belongs, may not find any difficulty in identifying a citizen on the basis of the occupation or the category as the case may be. It is because of the above reasons that, we have clarified at the end of the list, that, it is only illustrative and not exhaustive and made consequential suggestions.

Occupation which is considered inferior and low income are the main causes of social and educational backwardness.

15.3 At this stage, we may repeat the observations of the Supreme Court in the case of *Balaji* that, "....The occupations of citizens may, also contribute to make the classes of citizens socially backward. There are some occupations which are treated as inferior according to conventional beliefs and classes of citizens who follow these occupations are apt to become socially backward." It is interesting to note that, the above observations are fully borne out by the evidence recorded by us. As pointed out in paragraphs 6 and 7 of the Chapter—XIV feeling of high and low on caste basis has disappeared to a considerable extent, and that the representatives of several castes have admitted before us that, no caste was considered as inferior these days, and that members of different castes associate with each other on equal

terms. In fact, many of them felt amused and perplexed when questions as regards caste hierarchy were put to them. This is the result of the processes of sanskritization and westernisation providing an eloquent proof of the appearance of a silver lining around the clouds of the evils of the caste system hovering over our country. Under these circumstances, it will be not only totally unrealistic, but also unpatriotic to make any attempt to assess social backwardness on the basis of castes. The representatives of various castes have asserted in their evidence that, they are considered inferior or backward not because of the castes to which they belong, but because of their low income and the occupations they follow. They have, thus, laid considerable stress on low income and occupational stigma as the causes of their social backwardness. We have found on the basis of the evidence on record that, a large majority of citizens belonging to different castes, which have made representations to us follow one or the other occupations or belong to some or the other category of citizens listed above, as a result of which their income is very low, and consequently, they are not in a position to provide any educational facilities to their children. Those who follow any of the occupations referred to in group-A of the list or work as labourers in coal mines, quarries, etc. are required to reside at a long distance from towns or villages. It is needless to add that, their children also reside with them. Under these circumstances, their children are denied the benefit of educational facilities granted by the State. The above observations also apply to various other categories of occupations. This shows that, the nature of the occupation which they follow, and the low income are the main causes of their social as well as educational backwardness. We have elaborately discussed the topic of transition from a caste to a class in paragraph 14.9 above, in which amongst other things, we have pointed out as to how, it is the occupation that decides the social status of a person. Observations in subsequent paragraphs show as to how the persons following certain occupations or whose income is low are both socially and educationally backward.

GROUP—A

Agricultural Labourers

15.4 We shall now deal with the salient features of some of the occupations and categories of citizens referred to above "Agricultural labourers," according to the booklet 'Minimum Wages for Agricultural labour' based on a paper issued by the Research & Reference Division, Ministry of Information and Broadcasting, Government of India, "forms one of the largest constituents of the unorganised sector of employment in the country. The problems of agricultural workers are enormous because of their being unorganised and partly as they come from the weaker sections, which are at the bottom of the social strata. This leads to their economic exploitation. Agricultural labour, therefore, suffers acutely from both social and economic handicaps." Agricultural workers in India, according to the 1981 census, number 5.4 crores. "The proportion of landless agriculture labourers to the total workers was 22.8 per cent for the whole State in 1981, almost the same as in 1971." As regards the conditions of agricultural labour, National Commission on Labour has observed in its report (1969) that,² agricultural labour is basically unskilled and unorganised and has little for its livelihood other than personal labour, and that it occupies the lowest rung of the rural ladder. Their employment is seasonal and its intensity varies according to seasons. "Agricultural labour as a class also consists of a substantial portion of small cultivators who own petty holdings of their own and who directly or indirectly work as share-croppers." In paragraph 14.14 above, we have reproduced the observations in the Sixth Five Year Plan in regard to agricultural labour which constitutes about one-fifth of the rural work force. As pointed out in the above report 50 per cent of the agricultural labour households are landless and have as such no asset base, and that the landless labourers are the most under privileged and malnourished sections of the population. "According to Bureau study, 66 per cent of the agricultural labour households were living below the desirable level of minimum capita expenditure. Therefore, special efforts will have to be made by the State to improve their lot." They are required to work in the fields at a long distance from their houses, as a result of which some of their children are required to remain in the house to look after their younger brothers and sisters. As their income from the above source is very low

1 Revised Paper on Perspective Plan, Government of Gujarat, March '83, p. 33

2 Report of National Commission on Labour, Chapter 28, para 28.2, p. 392-393

3 Ibid, para 28.58, p. 406

4 Revised Paper on Perspective Plan, Government of Gujarat, March '83, p. 33.

they are often required to employ their children to augment the family income. Because of the above circumstances, their children are unable to join any schools and some of them who join schools have to give up studies for the reasons already mentioned. Representatives of several castes have stated before us that, large sections of people from their caste are working as agricultural labourers. We have found from the evidence on record that, their education level is substantially below the state average to which we have already referred elsewhere in the report. In view of what is stated above, it becomes evident that, agricultural labourers are both socially and educationally backward. We have also found that, it is not difficult to identify the citizens working as agricultural labourers. As pointed out in paragraph 6 of Chapter—X there is nothing in the decision of the Supreme Court in the case of *Triloki Nath*¹ to show that, it is not permissible to identify agricultural labourers as a socially and educationally backward class. On the contrary, as regards agricultural labourers the Supreme Court has observed in the above case : "Indeed, if any one deserves special consideration it is the agricultural labourers." According to Census, 1981, the number of agricultural labourers in this State comes to 24,88,300.

Small farmers, marginal farmers, and share-croppers.

15.5. According to paragraph 1 of Chapter—II of the Manual on Integrated Rural Development Programme hereinafter referred to as the IRD programme : "Under the IRD programme the accent is on the weaker sections of society consisting of small and marginal farmers, share-croppers, agricultural and non-agricultural labourers, rural artisans and families belonging to the Scheduled Castes and Scheduled Tribes who are below poverty line." The definitions of small farmer and marginal farmer, according to the above manual are as under : *Small Farmer* : "A cultivator with a land holding of 5 acres or below is a small farmer. Where a farmer has Class I irrigated land, as defined in the State Land Ceilings Legislation with 2.5 acres or less will also be considered as small farmer. Where the land is irrigated but not of the Class I variety, a suitable conversion ratio may be adopted by the State Governments with a ceiling of 5 acres". *Marginal Farmer* : "A person with a land holding of 2.5 acres or below is a marginal farmer. In the case of Class I irrigated land, the ceiling will be 1.25 acres." They are bracketed with agricultural labourers and non-agricultural labourers for the purpose of granting aid² under the above programme. This shows how poor even the small farmers and marginal farmers are. "There are 2.7 million cultivators in the State operating about 101 lakh hectares of land as per 1976-77 agricultural census. The small and marginal farmers i. e. with the holdings less than 2 hectares accounts for almost 44 per cent of the total holders but operate only about 11 per cent of the total area. As a matter of fact number of small and marginal farmers has increased significantly between 1971 and 1976 census. To make small and marginal farming viable, concerted efforts are called for by providing them required inputs. The basic objective of the agriculture planning is to raise the net income of the farmers. It will be also necessary to supplement their farm income through animal husbandry." According to Agriculture Census 1980-81, Gujarat State, the percentage of the small and marginal farmers to total holders comes to 45.9 per cent.

15.6. As observed above, agricultural labour as a class also consists of a substantial portion of small cultivators who directly or indirectly work as sharecroppers. It is found that, the condition of sharecroppers is as bad as that of small/marginal farmers or agricultural labourers. Evidence at our disposal shows that, as the income of small/marginal farmers and sharecroppers from agricultural is low, they are required to work as labourers to maintain their families. It is also found that, they are required to utilise the services of their children, in order to augment the family income or to do various other chores or to look after the younger children in the family, as a result of which education of their children is neglected, and they remain educationally backward. It is hardly necessary to add that, persons leading the above type of life are also socially backward. As regards identification of small/marginal farmers, we may adopt the definitions of the above terms mentioned in the Manual on Integrated Rural Development Programme, which have already been reproduced above. No difficulty is likely to be experienced in identifying sharecroppers, irrespective of the fact whether, they have recorded rights or not. At this stage, we may point out that, we have referred to certain aspects in the manual on IRD programme only for the purpose of utilising the definitions of small farmers and marginal farmers given in the above manual. As observed elsewhere in the report, income limit for identifying socially and educationally

1. AIR 1973 SC 930

2. Revised Paper on Perspective Plan, Govt. of Gujarat, March '83, p. 35.

backward classes has been fixed by us at Rs. 10,000 per year. Under these circumstances, we make it clear that, income limit prescribed in the above manual for the purpose of IRD programme has nothing to do with the identification of socially and educationally backward classes which are to be identified only in the manner indicated in this report.

Cattle, goats and sheep rearing.

15.7 Animal husbandry is an associated activity with crop husbandry. Those who carry on the above occupation separately have stated before us that, their occupation is not sufficiently remunerative and is considered inferior. They are required to move from place to place to feed their cattle and utilise the services of their children in their occupations. They have apathy for education, and they take little interest in the education of their children who are even otherwise, in view of the type of life they lead, are not in a position to join schools or find time to prepare their lessons. They are, thus, socially and educationally backward.

Occupations referred to in Groups--B and C.

Rural Artisans.

15.8 As observed above, Group-B relates to occupations involving manual work or labour, whereas Group-C to occupations involving manual labour and some element of trade or business. The above classifications are not mutually exclusive or water-tight in all cases, but occupations or categories of citizens are divided into two different groups as stated above, only with a view to facilitating the process of identification. It will appear from the occupations listed in the above Groups that, they include rural artisans also. ¹ "The poorest sections belong to the families of landless labour, small and marginal farmers, rural artisans, scheduled castes, scheduled tribes, and socially and economically backward classes." It becomes evident from what is stated above that, rural artisans are equated with landless labour, small and marginal farmers and other categories of citizens, who belong to the poorest sections in rural areas. We have found that, rural artisans are not only poor, but they are also socially and educationally backward. We have, however, not classified them separately as rural artisans, because we have also found that, those who follow traditional or other occupations mentioned above in urban areas are also socially and educationally backward.

'Jajmani' or 'Avat' system is fast disappearing. Unskilled blue-collar occupations involving manual labour and self-employed own account workers.

15.9 It appears from the evidence recorded by us that, 'jajmani' or 'avat' system is fast disappearing in the State, and artisans in rural areas are also remunerated in cash for the services rendered by them. The Backward Classes Commission Tamilnadu has observed in its report : ² "Regarding economic backwardness, it is interesting to note that most of the Backward Classes do fall under the occupational categories newly listed by the Mysore Government as socially backward :

- (i) Actual cultivator,
- (ii) artisan,
- (iii) petty businessmen,
- (iv) inferior services including casual labour, and
- (v) any other occupation involving manual labour.

The classification adopted by the Jammu and Kashmir Government recently, on a functional basis, would cover all the castes in our lists of Backward Classes and Most Backward Classes." Tamilnadu Commission has also found that : ³ "Excepting a small upper crust in some castes (and *not in all castes*), the castes in our lists would fall under one or the other of the five occupational divisions adopted by the Mysore Government." The occupational categories except that of actual cultivator adopted by the Mysore Government are common both to rural as well as urban areas. At this stage we may point out that, spatial mobility from villages to urban areas generally involves an occupational mobility and not upward social mobility. Persons following various occupations listed above in this State have stated in

1. Sixth Five Year Plan, Govt. of India, para 30, p. 446
 2. Report of the Commission, Vol I, para 75, p. 38.
 3. Ibid, para 76, p. 38

categorical terms before us that, their income is low, and that, they are not in a position to give proper education to their children. They have also pointed out, as to how because of the occupations, which are treated as inferior, they are considered socially backward. We have also found that, they have not been adequately represented in the services under the State. A glance at the occupations listed in paragraph 1 above clearly shows that, they are such as are considered inferior in social hierarchy. As observed elsewhere in the report, the concept of dignity of labour is still an ideal only. The above view is based on the evidence recorded by us. Most of the above occupations fall in the category of unskilled blue-collar occupations involving manual labour and even, in regard to other occupations such as carpentry, tailoring, smithery, etc. where skill is required, only those who are self-employed—own account workers in those occupations are included in the list of socially and educationally backward classes.

Several occupations are treated as inferior and those engaged in those occupations are found to be socially and educationally backward.

15.10 We have observed in Chapter—V of the Report on the basis of the decisions of the Supreme Court that, those classes of citizens who are deplorably poor automatically become socially and educationally backward, and that, they do not enjoy any status in the society. Social and educational backwardness is in the ultimate analysis the result of poverty to a very large extent. Apart from what is stated above by the Supreme Court, as regards the causes of social and educational backwardness, we have found on consideration of the evidence that, there are several occupations which are treated as inferior even at present, and that, the classes of citizens who follow those occupations are considered lower in status. They do not get adequate returns, as a result of which their economic condition is poor. Those engaged in the above occupations are found to be socially and educationally backward. We have elaborately discussed the topic of social inequality with reference to occupations in paragraphs 9 to 12 of Chapter—XIV of the Report.

15.11. In Chapter—VIII, we have referred to the factors which have more or less contributed to social and educational backwardness amongst various castes/communities or classes of citizens in the State. As pointed out in that Chapter, habitation in slums or in areas lacking in sanitary facilities also contribute to social and educational backwardness. A large majority of the people following the occupations mentioned above, have been found to be residing with their families in such areas. Evidence as regards the level of education amongst those following the above occupations clearly shows that, the average of students studying in 8th, 9th and 10th standards in high schools in their castes/communities or classes is well or substantially below the State average of 24.08 per thousand citizens in the State. In the cases of those castes/communities or classes in regard to whom, the information on the above point is not available or satisfactory, we have taken into consideration other relevant factors as stated in Chapter IX of the report. We are thus, fully convinced that, all those citizens who follow any of the occupations or as the case may be, belong to any of the categories of people mentioned above and whose family income does not exceed Rs. 10,000 per annum as stated above, are socially and educationally backward.

One more reason for fixing uniform income limit of Rs. 10,000 per annum.

15.12 We are conscious of the fact that, the income of those following certain occupations such as agricultural labour, small/marginal farmer, etc. is much lower than the above income limit. The income of some of these who follow certain other occupations such as carpentry, tailoring, smithery, etc. may, however, exceed Rs. 10,000 per annum. As pointed out by the Supreme Court in the case of *Balaji*,¹ there cannot be two categories of backward classes such as Backward classes and More Backward classes. Moreover, even in weaker sections of the people, there are bound to be some people who are more poor and others less poor. It is, therefore, necessary to prescribe an uniform income limit in regard to the followers of all the above occupations and the various categories of people who are found to be socially and educationally backward. It is hardly necessary to add that, as stated elsewhere in the report, the above income limit has been fixed on consideration of all the relevant factors. In this connection, it should be borne in mind that, because of high cost of living and an expensive education, a large majority of people in Groups—A and D and some persons in Groups—B and C would not be in a position to take the immediate advantage of the benefit of the policy of reservation of seats in higher categories of educational institutions and/or posts in higher services under the State. Under these circumstances, it would be in the fitness of things, that, such benefits should be available

of only by those who are also socially and educationally backward, but in a little better financial position than the former, till the time others in the above Group with the help of remaining categories of adventitious aids catch up with them for the purpose of availing themselves of the benefits of reservations. If that is not done, benefits of reservations would be snatched away by the creamy layers of the society to the detriment to the interests of those belonging to socially and educationally backward classes. This is one more reason why an uniform income limit of Rs. 10,000 per annum is fixed in regard to all those following the occupations or belonging to the categories mentioned in the aforesaid list.

Why small shopkeepers are not included in the list.

15.13. At this stage we may incidentally point out that, in the Government of Gujarat, Labour, Social Welfare & Tribal Development Department, Resolution dated ; 1st April, 1978 referred to above, small shopkeepers are also considered as members of economically backward class. We, however, feel that it is rather difficult to define or identify small shopkeepers with any degree of accuracy so as to ensure that, their family income does not exceed Rs. 10,000-per annum. Under these circumstances, if small shopkeepers are included in the list in Group C, those who do not fall in the above category are likely to take the advantage of the adventitious aids meant for socially and educationally backward classes. We have therefore not included "small shopkeepers" in the above list of occupations prepared by us and instead, we have included the categories of hawkers, or pedlars and street vendors in the above list. We may, however, hasten to add that, the circumstance, that the category of small shopkeepers does not find its place in the list prepared by us, does not in any way affect its position in the Government Resolution, dated 1st April, 1978 referred to above.

No difficulty in identifying citizens belonging to socially and educationally backward classes on the basis of the occupations mentioned in this Chapter.

15.14 It is pertinent to note that, Government of Karnataka while accepting the report of the Karnataka Backward Classes Commission, by its order dated 22nd February, 1977 created a special group of citizens for the purpose of special treatment under Articles 15(4) and 16(4) of the Constitution. The above group consists of :

- (i) an actual cultivator;
- (ii) an artisan;
- (iii) a petty businessman;
- (iv) one holding an appointment either in Government service or corresponding services under private employment including Casual Labour; and
- (v) any person self employed or engaged in any occupation involving manual labour.

Only those citizens who belong to any of the above categories and whose family income does not exceed Rs. 4,800 per annum are eligible for special treatment under the aforesaid articles. It appears from the Government of Karnataka, Social Welfare and Labour Department order dated 27th June, 1979 that, its aforesaid order dated 22nd February, 1977 was considered by the High Court of Karnataka in Writ Petition No. 4371/77. On the basis of the decision of the High Court, the above order was modified by order dated 1st May, 1979. It appears that, the validity of the Constitution of special group was not challenged, and that, no difficulty is being experienced in identifying socially and educationally backward classes of citizens on the basis of the occupations listed in the Government of Karnataka order dated 22nd February, 1977. We have already referred to the decision of the Supreme Court in the case of Chitralkha¹ in which, the observations of the High Court disapproving of the classification of socially and educationally backward classes on the above lines were corrected by the Supreme Court. We have pointed out in paragraph 20 of Chapter—XIV that, Economically Backward Classes referred to in Resolution dated 1st April, 1978 of the Government of Gujarat, are taking substantial advantage of the various schemes introduced by the Government for their benefit and that, no difficulty is being experienced by the authorities in identifying citizens belonging to those classes. Considering all these circumstances, we feel that, no difficulty is likely to be felt in identifying the citizens belonging to socially and educationally backward classes on the basis of the occupations mentioned in this Chapter.

1. AIR 1964 SC 1823 (1832)

15.15 At this stage, we may incidentally refer to the element of fluctuation, in case, any such point is raised while identifying a particular class of citizens. It cannot be denied that, the occupation of labourers is more often than not seasonal and it is well-known that, agricultural labourers are required to find out some other kind of work or occupation whenever the work of agricultural labour is not available to them. Similarly, casual labourers or workers employed in certain fields in rural or urban areas may have to seek employment as labourers in other fields. But one thing is certain in regard to the above types of occupations that, those changing their occupations in the above manner will be following even after such change, *only the occupations involving manual labour*. Rarely any manual worker would be fortunate to get an employment, which does not involve manual labour or the prospects in which are brighter. It, thus, becomes evident that, a change of occupation in their cases, merely means a change from one type of manual labour to the other type of such labour and not a change from a manual labour to a white-collar job. This shows that, even after the change of categories of work or labour, they would continue to belong to the same class of manual workers or labourers. It is common knowledge that, the problem of unemployment in the country is getting complicated. Under these circumstances, very few persons belonging to lower income groups and following the occupations mentioned above would be fortunate enough to secure white-collar jobs fetching higher income. All the above circumstances, will have to be borne in mind while considering the question whether, there is any real element of fluctuation in any of the occupations referred to above, creating difficulties in the process of identification of citizens belonging to socially and educationally backward classes. Once it is found that, those following any of the occupations specified in this Chapter and whose family income does not exceed Rs. 10,000 per year as stated above, are socially and educationally backward, the responsibility of providing adventitious aids to them as contemplated by articles 15(4) and 16(4) read with Article 46 of the Constitution of India cannot be avoided by raising a plea that, a particular occupation or a class is fluctuating.

15.16 In this connection, it should be borne in mind that, all those who are found to be socially and educationally backward are entitled to receive adventitious aids guaranteed under the relevant provisions of the Constitution to which we have referred elsewhere in the report. It appears that, large sections of people following the above types of occupations in this State and perhaps in some other parts of the country have not received adventitious aids meant for socially and educationally backward classes, as a result of classification of such classes on caste basis. We feel that, it is not open to the State more than 35 years after India became independent, to deny them the benefit of ameliorative measures guaranteed under the aforesaid provisions of the Constitution merely on the ground of difficulty in identifying such classes especially when, no such difficulty really exists. It should not be difficult for those charged with the duty of safeguarding the interests of weaker sections of the society to identify such of our brethren as belong to the above sections and are desperately in need of adventitious aids specially guaranteed to them under the Directive Principles of the Constitution. Even if it is assumed that, there is some difficulty in identifying them, such difficulty is under no circumstances insurmountable. As observed by the Prime Minister, Shrimati Indira Gandhi : "Mahatma Gandhi taught us to judge every Governmental decision, every policy or programme from the point of view of the poorest and the weakest. The law as a whole should keep in mind nationally accepted social imperatives, rather than rest merely on principles and interpretations evolved in societies where mass poverty has been overcome." For a nation that has achieved spectacular success in all branches of science and technology and especially in all advanced areas of science like atomic energy and space, it should not be difficult to identify those who are in need of adventitious aids as contemplated by Articles 15(4) and 16(4) read with Article 46 of the Constitution irrespective of the question whether, the classes to which they belong are fluctuating or not. It is gratifying to note that, our State has made some beginning in that respect by issuing orders on 1st April, 1978 to grant certain reliefs to economically backward classes as stated above, and observed above no difficulty is being experienced in identifying the persons covered by the above Government orders.

Only self-employed—own account workers engaged in certain occupations are included in the category of socially and educationally backward classes of citizens.

15.17. It will from various categories of occupations referred to in paragraph 1 of this Chapter that, some of them are such as can be carried on or followed with or without the

1. Speech of the Prime Minister, Smt. Indira Gandhi inaugurating a Seminar on 'Dynamics of Social Justice' in New Delhi, October 31, 1980.

help of servants or piece-rate workers, and that followers of some of the occupations are in a position to sell the articles made or prepared by them. So far as the above types of occupations are concerned, we may make it clear that, only those persons who are self-employed—own account workers engaged in the above occupations, are included in the category of socially and educationally backward classes of citizens. In order to emphasise the above point, it has been clarified in notes (ii) & (iii) above that, those who merely sell finished products or those who follow the occupations in question with the help of servants or piece-rate workers are not included in the relevant categories of occupations for the purpose of inclusion in the list of socially and educationally backward classes. For removal of doubt, we may add that, those who follow the above occupations with the help of members of their families are included in the category of socially and educationally backward classes. It may be that, there is some overlap in specifying categories of certain occupations. Under these circumstances, the possibility of some discrepancy creeping in while mentioning different categories of occupations against each note cannot be ruled out. We may, therefore, suggest that, while applying the above notes to various occupations the above aspect should be kept in mind and the spirit underlying the above notes and the specification of various occupations may be followed and the rigid approach should be avoided.

Clarifications to facilitate identification.

15.18. For the guidance of those, who would be entrusted with the duty of certifying, as to which citizens belong to socially and educationally backward classes on the basis of occupations referred to above, we may refer to the occupations at serial No. 5 in Group B which is as under : (5) Casual or unorganised or unprotected manual workers or labourers. In order to understand, as to which categories of manual workers or labourers are contemplated for the purpose of the above entry, it is necessary to refer to some of the observations in the Report of the Committee on Unprotected and Unorganised Labour appointed by Government of Gujarat. In regard to the terms "unorganised labour" and "unprotected labour" in paragraphs 2 and 3 of Chapter-II of the Report (pages 6, 7) it observed : "The term unorganised labour" is easy to comprehend. It means labour that is not organised in the form of unions as a result of which it has no bargaining capacity and is liable to be exploited."...."The term 'unprotected labour' has to be understood in proper perspective. In common parlance, unprotected labour would include labour that is not protected." The protection envisaged would extend to matters pertaining to wages and working conditions including health, safety, welfare, amenities, security of employment, protection required after ceasing to be in employment etc. The concept perhaps is not also a rigid one. It is flexible in the sense that there could be no rigidity in the aspects that need protection. Protection could be of varying degrees; there may be no protection at all, or there may be partial protection or there may be full protection which is the ideal one. Again protection is not solely dependent on being organised. There may be an organised section of workers who are not protected, the case of the loading and unloading workers in Bombay provides an illustration in point; then there may be unorganised section of workers who are protected even though partially; the employments under the Minimum Wages Act provide such an illustration." The description of categories of manual workers or labourers as given in the item 5 in Group—B is clear, in that, according to that item—a casual manual worker or labourer, an unorganised manual worker or a labourer even if he is protected or an unprotected but organised manual worker or labourer fall in the above categories. This shows that, those manual workers or labourers who are both organised and protected are not included in item No. 5.

15.19 There are certain occupations in the above list to which labels of inferiority are attached, because of the nature of work involved in such occupations. Some of those occupations are mentioned at Sr. Nos. 7, 10, 11, 18 and 24. Labels attached to the above occupations would continue to stick to those following such occupations, even after they are organised and protected. Under these circumstances, the question whether those following the above occupations are organised and protected is not of any importance, for the purpose of deciding the question whether they belong to socially and educationally backward class or not. Thus, according to us, all those people who follow any of the occupations referred to at Sr. Nos. 7, 10, 11, 18 and 24 in Group—B should be considered as socially and educationally backward, irrespective of the question, whether they are organised and protected or not. If there be any other occupations falling in the above category, the above observations would also apply to those following such occupations.

GROUP—D**Victims of adverse circumstances or adversity.**

15.20 As regards the victims of adverse circumstances or adversity referred to in Group—D, we may point out that, a representation was made to us suggesting that, orphans should be treated as socially and educationally backward. There is, however, no adequate material to define an orphan for the purpose of inclusion in the category of socially and educationally backward classes. We, however, find that, some sort of inferiority attaches to, those who are or have been inmates of an orphanage. Similarly, destitute persons and mendicants are also considered inferior and socially backward. They are generally poor and also educationally backward. As pointed out by the Supreme Court in various cases, social and educational backwardness is in the ultimate analysis the result of poverty and it would be more so in the cases of all the above categories, of citizens. It can, therefore, reasonably be presumed that all the above categories of citizens in Group—D are socially and educationally backward.

Physically handicapped persons.

15.21 It is possible to include some more categories of citizens such as disabled or physically handicapped persons in the above group, but in the absence of adequate information, in regard to all of them, we are not in a position to specify as to which other categories of citizens should be included in the above group. We, however, find that, the Government of Gujarat has already taken some ameliorative measures for the benefit of physically handicapped persons, as would be evident from General Administration Department, Resolution Nos. CRR-1063-6132-G, CRR-1177/6570-G, and CRR-1177/1079-G-G-2, dated 28th October, 1975, 9th December, 1977, and 9th November, 1979 respectively. We also find that, the benefits of the schemes referred to in the Government of India, Ministry of Education & Social Welfare (Department of Social Welfare) letter No. 8-13(7)78-CH, dated 9th May, 1977 are being given to children in need of care and protection in this State. Further details of the schemes for the welfare and rehabilitation of handicapped persons have been given in the booklet published by the Government of Gujarat during the International Year for Disabled Persons, 1981. In addition to all the benefits that are being given to physically handicapped persons under the aforesaid schemes and to orphaned, abandoned and other categories of children under the scheme mentioned in the Government of India letter referred to above, benefits of adventitious aid meant for socially and educationally backward classes as contemplated by Articles 15(4) and 16(4) may also be given to them as a special case under Article 46 of the Constitution of India.

Orphans.

15.22 As observed above, even though, it is difficult to define an orphan, it cannot be denied that, many of the orphans would be desperately in need of adventitious aids. Their cases may, therefore, be considered in the light of what is stated above, separately on merits, and adventitious aids of the types mentioned above may also be granted to them.

CHAPTER—XVI

TERMS OF REFERENCE—TERM No. (II)

Term No (ii).

16.1 We shall now deal with term No. (ii) of the terms of reference, which reads as under : "(ii) To make necessary inquiry and recommendations in regard to such of the sub-castes as are not included in the list of socially and educationally backward classes or in regard to which there is any ambiguity because of prevailing names of sub-castes." We have referred to inherent defects in the system of identifying socially and educationally backward classes in terms of caste elsewhere in the report. We have pointed out in paragraph 22 of Chapter—XI that, as a result of identification of socially and educationally backward classes by the Bakshi Commission in terms of castes some castes and sub-castes though forming part of or linked up in some way of the other with some of the castes or sub-castes identified as socially and educationally backward by the above Commission are left out from being included in the list of socially and educationally backward classes. Term no. (ii) is the direct result of the above circumstances.

We do not identify afresh a particular caste or sub-caste as socially and educationally backward.

16.2 We have made it clear in the preceding Chapters that, so far as this Commission is concerned, it has decided to identify socially and educationally backward classes without reference to caste. Those castes/sub-castes who were left out from the list of socially and educationally backward classes prepared by the Bakshi Commission have now made representations to this Commission. According to term no. (ii), we are expected to make suitable inquiry and recommendations to the Government as to which of them should be deemed or presumed to have been included in the list of socially and educationally backward classes on the basis of the report of the Bakshi Commission. In view of the wordings of term (ii), it becomes evident that, even though, this Commission has taken a decision to identify socially and educationally backward classes without reference to caste, it has no alternative but to take action in accordance with that term which relates *inter alia* to socially and educationally backward classes identified on caste basis. In this connection, we may make it clear, that while taking action as stated above, we do not identify afresh a particular caste or sub-caste as socially or educationally backward on the basis of the evidence recorded by us and all that we do in the matter is to find out, whether on the basis of the report of the Bakshi Commission a particular caste or sub-caste should be deemed or presumed to have been included in the list of socially and educationally backward classes prepared by that Commission.

Suggestion to seek redress under Government of Gujarat, Labour, Social Welfare & Tribal Development Circular No. BCR-1478-M-3297-H, dated 26th June, 1978.

16.3 It appears that, soon after the report of the Bakshi Commission was accepted by the Government, it was brought to its notice that some difficulties were being experienced in deciding whether a particular caste or sub-caste was included in the list of socially and educationally backward classes prepared by the Bakshi Commission. The Government, therefore, by its circular No. BCR-1478-M-3297-H, dated 26th June, 1978 issued certain instructions for the guidance of the competent authorities concerned while deciding the above points. We find that, on the basis of the above guidelines, it would be possible for the authorities concerned in some cases to decide whether a particular caste or sub-caste is included in the list of socially and educationally backward classes drawn up by the Bakshi Commission. Such of those castes/sub-castes as have failed to adduce sufficient evidence in support of their claim that they form part of some caste or the other held to be socially and educationally backward by the Bakshi Commission, should seek redress in the matter from the competent authority, who should decide the matter in the light of the guidelines issued by the Government by circular, dated 26th June, 1978 referred to above (Appendix-XXXII).

Suggestions to ensure uniform practice in the State.

16.4. We find that, the difficulty experienced by the members of a particular caste/sub-caste in obtaining certificates of backwardness in a particular district is not experienced by their counterparts in other districts. It appears that, most of the matters are decided at

district level by Social Welfare Officers concerned. We are of the view that, whenever such matters are decided at the above level, the Officers concerned should forward copies of their orders to the Director, Social Welfare Department, Gujarat State and to the Government, who if satisfied with the correctness of the above orders should issue circulars in the matter for the guidance of all concerned throughout the State. It is needless to add that, in case, the Director of Social Welfare and or the Government are not satisfied with the decision of a Social Welfare Officer at district level, they should pass proper orders in the matter and copies thereof should be circulated throughout the State in order to ensure uniformity of practice in all such matters.

Castes/sub-castes or communities whose cases have been considered by the Commission in pursuance of term no. (ii) Ajmeri Pinjara.

16.5. According to the Bakshi Commission : "Pinjaras are carders of cotton and they move about the streets of towns and villages with their handmade carding bow-like instrument. They are also known as Ghanchi-Pinjara and Mansuri-Pinjara." (Chapter IV. p. 90 of the report). Jamalbhai Gigabhai Ajmeri who belongs to Ajmeri Pinjara community is a Muslim. According to his evidence, hereditary occupation of Ajmeri Pinjara is cotton carding (occupation of Pinjaras). It is his grievance that, if students belonging to his community state their caste only as Ajmeri, it becomes difficult for them to get the certificate of backwardness. He has produced satisfactory documentary evidence to show that, Ajmeri Pinjaras are in no way different from Pinjaras considered as socially and educationally backward by the Bakshi Commission. Under these circumstances, Ajmeri Pinjaras should also be considered as socially and educationally backward. In regard to those who mention their caste only as Ajmeri, it would be necessary for them to take suitable steps as contemplated by the circular dated 26-6-78 referred to above for the removal of their grievance.

Ahir, Sorathiya Ahir, Panchali Ahir or Pancholi Ahir.

16.6. The Bakshi Commission has treated Ahir, Ayar-Boricha as socially and educationally backward. According to the representations received by us persons belonging to Ahir caste are also known as Sorathiya Ahir, Panchali Ahir or Pancholi Ahir, or only as Sorathiya or Pancholis. Their occupation is the same as that of Ahirs who are treated to be socially and educationally backward by the Bakshi Commission. It appears from the report of the above Commission that emphasis is laid on the term 'Ahir' or 'Ayar'. There is no reference to Boricha in the relevant note concerning Ahir or Ayar-Boricha. We, therefore, feel that, the caste in respect of which the term Ahir or Ayar is either prefixed or suffixed to some other caste name should be presumed or deemed to have been included in the list of socially and educationally backward classes prepared by the above Commission. As regards those who mention their caste only as Pancholi, Panchali or Sorathiya, there is no satisfactory evidence to show that, they are also Ahirs or Ayars as contemplated by the Bakshi Commission. In this connection, however, we make it clear that, it would be open to the persons whose caste is only Pancholi, Panchali, or Sorathiya to produce evidence in support of their version on the point before the competent authority as contemplated by circular dated 26-6-78 referred to above for seeking adequate relief.

Bariya-Baria Kshatriya.

16.7. We have received representations in the matter from Bariya-Baria Kshatriya. Now, according to the report of the Bakshi Commission, Barias are socially and educationally backward. Relevant observations in the report of the Bakshi Commission in regard to them are as under : "This class constitutes a large section in Hindu society and is known by different names in different areas. They are mainly known as Thakardas but at some places, they are also called Patanwadia, Dharalas, Thakores, Barias, which appear to be sub-sections of the main class of Kolis." (Chapter IV, p. 99 of the Report.). According to the Bakshi Commission they appear to be sub-sections of the main class of Kolis. According to Government of Gujarat, Labour, Social Welfare & Tribal Development Department, Circular No. BCR-1078/52010 dated, 26th July, 1979 those Barias or Baraiyas who are Kolis are treated as socially and educationally backward. But those Barias or Baraiyas who are Kshatriyas have not been included in the list of socially and educationally backward classes. Thus, according to the Government there are some Baraiyas who are Kolis and some are Kshatriyas. There is nothing in the report of the Bakshi Commission to show that, there are any Baraiyas who are Kshatriyas or there is any community or caste known as Baria Kshatriya or that those Barias who call themselves Kshatriyas are not to be treated as socially and educationally backward.

There is conclusive evidence to show that, there is no such caste as Baria Kshatriyas in the State or that there are any Bariyas who are Kshatriyas. It appears that, a few years ago some of the Bariyas started representing themselves as Baria Kshatriyas in order to have a higher status in caste hierarchy. According to Bakshi Commission, Bariyas "appear to be sub-section of the main class of Kolis." In the index of Hindu caste in the Bombay Presidency in the report of Census of India, 1931, Hindus are classified as : "Hindu advanced, Hindu Intermediate, Hindu backward, and Hindu depressed." According to the above index Bariyas as well as Kolis are included in "Hindu Backward" Class. Relevant entry at page 521 of the report in regard to Baria reads as under : "Baria-Broach, Kaira, Lunawada State-Cultivators and labourers." There is no reference any where in the census report to Baria Kshatriya. This shows that, there was no caste or community as Baria Kshatriya at that time.

16.8 We have pointed out elsewhere in the report as to how certain castes as a result of the process of sanskritisation and westernisation made attempts for upward mobility and Bariyas provide an instance on the point. According to Ghelabhai Jhaverbhai Baria, aged 65 years, who was a teacher, there is no distinction between Tarabda and Baria. He has produced a relevant record of the school in order to show that, during the period from 1923 to 1927, caste of those students who were admitted to the school has been mentioned as Tarabda, whereas children of some of the above students who were admitted into the school after the year 1951 have been shown as Bariyas in the register. According to Ramsinhbhai Rayasibhai Solanki, who is a teacher in the school at Pingali, taluka Kalol, till the year 1928 caste of students admitted into the school was mentioned as Dharala, but after the year 1928 students of that community started mentioning their caste as Baria Kshatriya. He has also produced relevant entries from the school register in support of the above version. According to the school leaving certificate (Exhibit 1144) Rajji Ranchhod who was the father of Ramsinh whose evidence has been recorded by us was born on 7-10-1871 and he was admitted into the Primary School at Pingali and he left the school on 10-5-1883. In the above certificate, his caste is shown to be Dharala whereas the caste of Ramsinh in the school leaving certificate vide Exhibit 1145 is shown to be Hindu Kshatriya Baria. He has made it clear in his evidence that, there is no such caste as Baria Kshatriya. His evidence is fully corroborated by the documentary evidence. Some more school leaving certificates have also been produced. It becomes evident from those certificates that, in the beginning only Dharala or Baria was mentioned as a caste and that at a later stage some of the Bariyas started referring to their caste as Baria Kshatriya.

16.9 According to Padamsinh Dalsinh Parmar, who is M. A. of Gujarat University and serving as a teacher in Vejalpur High School, there was no such caste as Baria Kshatriya before India became independent, and that subsequently some of the Bariyas started mentioning their caste as Baria Kshatriya. Evidence of Udesinha Mohanbhai is also to the above effect. Evidence of Jashwantsinh Dhirubhai Patel, who is a teacher in the school at Padardi in Panchmahal district shows that, when Sardar Pahadsingh Baria was admitted into the school his caste was mentioned as Koli Baria, but the caste of his children who were admitted to that school after the year 1944 was shown as Baria Kshatriya. Caste of Arat Pahadsinha who was admitted to that school on 21-2-1921 was shown as Hindu Koli, whereas castes of his sons and grand son is shown to be Hindu Bariya Kshatriya in the school register. His evidence is fully corroborated by the relevant entries in the school registers. The evidence of the aforesaid persons is supported by the entry in the Census 1931 referred to above. Under these circumstances, those who state their caste to be Baria Kshatriyas do not cease to belong to the caste of Baria or Bariya or the sub-sections mentioned in the report of the Bakshi Commission. For the reasons mentioned above, it can be safely held that Bariya Kshatriyas are in no way different from Bariyas who have been classified as socially and educationally backward classes by the above Commission, and consequently the aforesaid order, dated 26-7-1979 of the Government is liable to be set aside.

Bawa

16.10 According to the report of the Bakshi Commission : "The community is generally known as Bawa but it consists of several sub-sects known by such names as Dashnam Goswami, Atit Bawa, Goswami, Gosai, Dasnami Bawa, Ganga Jaha, etc. The community has other sub-sects such as Ramanandi, Giri, Puri, Bharti, Kapdi, Margi, etc. (Chapter IV, p. 62 of the report)." It is represented to us that, following sects or sub-sects are also Bawas :

(1) Acharya

(3) Agravat Bawa

(2) Acharya Sadhu

(4) Bawaji

- | | |
|---------------------------|---------------------|
| (5) Bawa Sadhu | (14) Ramanuj Sadhu |
| (6) Nanak | (15) Vaishnav |
| (7) Nanak Bawa | (16) Vaishnav Bawa |
| (8) Nanaksai Bawaji | (17) Vaishnav Sadhu |
| (9) Ramanandi Sadhu | (18) Sadhu |
| (10) Ramanandi Bawa Sadhu | (19) Atit Sadhu |
| (11) Ramanandi Maharaj | (20) Margi Sadhu |
| (12) Ramanandi Vaishnav | (21) Kapdi Sadhu |
| (13) Ramanuj Bawa | |

Sadhus have not been classified as socially and educationally backward. It appears from the report of the Bakshi Commission that, no reference has been made any where in it to Sadhus and that, stress has been laid on the term 'Bawas'. Under these circumstances, it is difficult to say whether all the above sub-sects fall within the category of Bawas referred to in the report of the Bakshi Commission. Unless there is conclusive evidence, it would not be proper to say that, particular sects referred to above should be deemed to have been included in the class of Bawas held to be socially and educationally backward by the Bakshi Commission. No documentary evidence has been produced before us in support of the claims made by various sects referred to above. Thus, according to us there is no definite evidence at this stage to decide the question whether all the above sects or any of them should be deemed to have been included in the class of Bawas held to be socially and educationally backward by the Bakshi Commission. It would, however, be open to the representatives of the above sects to take suitable action to prove their claims in accordance with circular dated 26-6-78 referred to above.

Brahmabhatta.

16.11 It is submitted on behalf of Brahmabhatts that, their caste is Barot, which has been classified as socially and educationally backward by the Bakshi Commission. According to them, their surnames are Brahmabhatta, Inamdar, Rao, Sharma, Bhatt, etc. They find it difficult to obtain certificate of backwardness, even though their caste is Barot. Now, according to the Census of India, 1931, Brahmabhatts have been included as a separate caste, and they have been classified as "Hindu advanced". According to the relevant entry, they reside in Gujarat. Their traditional or habitual occupation is stated to be zamindars and writers. In the remarks column, it is further stated : "A sub-division of Bhat. There are 10 subdivisions of this caste. They are :— (1) Devluk, (2) Harmani, (3) Kashiani, (4) Indrani, (5) Kundanpuria, (6) Messava, (7) Parvattani, (8) Rana, (9) Rao, (10) Sodani." According to the same Census report, Barots are also treated as a separate community and classified as 'Hindu backward', Barots are equated with Bhats. According to the relevant entry, they are found all over Bombay Presidency and their traditional or habitual occupation is "Genealogists and bards" (vide p. 522 of the report). It appears from the above entries in the Census of India, 1931 that, the caste of Brahmabhatta is separate from that of Barot. As observed above Barots have been classified as 'Hindu Backward' whereas Brahmabhatts have been classified as 'Hindu advanced'. Under these circumstances, it is difficult to say whether Bakshi Commission intended to equate Brahmabhatts with Barots. It would, however, be open to Brahmabhatts to seek suitable relief in the matter in accordance with the circular dated 26-6-78 referred to above. In this connection, however, we may make it clear that, those who merely state their surname as Brahmabhatta and whose caste is Barot can be treated as Barot referred to in the report of the above Commission. The authority dealing with the matter under the above circular should take into consideration the above aspect.

Chunara Waghari, Kamdiya Jagadiya Waghari, Patni Waghari

16.12 Wagharies have been classified as socially and educationally backward by the Bakshi Commission. The relevant observations in regard to the above community in the report are : "There are several sub-groups of Wagharies known by different names such as Dataniya, Vedu Waghari, Talpada Waghari, Gamachia Waghari, Godadia Waghari, Chibhadia Waghari, etc." "Wagharies are included in the list of Denotified Tribes in Gujarat State

and as Scheduled Tribes in Kutch. The Marwada or Marwada Waghari are also included in the list of Nomadic Tribes in Gujarat. (Chapter—IV, p. 104 of the report). The list of sub-groups of Waghari in the above report ends with the phrase etc. This shows that, the list of sub-groups in the report is not exhaustive but only illustrative. Under these circumstances, Chunara Waghari, Kamdiya Jagadiya Waghari and Patni Waghari should also be deemed to have been included in the list of socially and educationally backward classes prepared by the Bakshi Commission.

Khristi/Gujarati Christian.

16.13 According to the report of the Bakshi Commission : "Converts to Christianity are drawn from several different communities, but those who are Christian converts from Scheduled Castes are commonly called Gujarati Khristi." (Chapter IV, p. 80 of the report). It has been clearly stated in the report that, "Those members of this community who have become Christians and are converted from Scheduled Castes are called Gujarati Christian and should be considered as socially and educationally backward." It becomes evidence from the above report that, only Christian converts from Scheduled Castes who are known as Gujarati Khristi are treated as socially and educationally backward. It is the grievance of Gujarati Christians that, even though, their caste is Gujarati Khristi they are required to file affidavits stating that, their forefathers before conversion to Christianity belonged to Scheduled Castes. According to them, it is difficult for the young people to swear any such affidavits several years after their forefathers were converted to Christianity. According to Joseph Mackwan whose evidence has been recorded by us, if a suitable certificate in the matter is obtained from a priest and produced before the authorities concerned, filing of an affidavit is not insisted upto in Kheda. Practice in the matter is, however, not uniform in other districts. According to William Joseph, besides Gujarati Khristis there are other Khristis such as Deshi Khristis or Indian Christians and their forefathers were also converted from Harijans. He, however, did not produce any documentary evidence in support of his above version, even though, he was given an opportunity to do so. Moreover, we have to take decision only on the basis of the report of the Bakshi Commission, according to which only *Gujarati Khristis* whose forefathers belonged to Scheduled Castes before their conversion to Christianity are socially and educationally backward. One of the ways in which their grievance as regards the requirement of filing an affidavit stating that, their forefathers were converts from Scheduled Castes, can be removed is that, those whose community is mentioned as Gujarat Khristi in the registers of schools or in the records of the Government or the Church should be treated as socially and educationally backward, and the production of affidavit of the type mentioned above need not be insisted upon in their cases. So far as Christians of other categories are concerned, it would be necessary for them to take suitable action for the removal of their grievance if any in the matter on the lines indicated in the circular dated 26-6-78 referred to above.

Mansuri.

16.14 It is represented to us that, Mansuri-Pinjaras have been classified as socially and educationally backward by the Bakshi Commission, but as the name of the community of the students belonging to the above community is stated to be only Mansuri in school registers, they find it difficult to obtain certificate of backwardness. In the report of the Bakshi Commission, it has not been stated that, Mansuri-Pinjaras are also known as Mansuris. Moreover, there is no satisfactory evidence to show that, all those who mention their community as Mansuri are necessarily Mansuri-Pinjaras. Under these circumstances, it is difficult to say that, those who describe their community as Mansuris, are also Mansuri-Pinjaras held to be socially and educationally backward by the Bakshi Commission. It is, however, open to them to approach the competent authority to seek redress in the matter in accordance with circular dated 26-6-78 referred to above.

Nhayi-Nhavi-Navi-Hajam.

16.15 Relevant entry in regard to those whose occupation is hair-cutting, in the report of the Bakshi Commission is as under : "This community is known by its hereditary occupation of hair-cutting and amongst the Hindus is generally known as Valand, Nayi, Babar and amongst Mohammedans as Hajams. They are also generally known by another name Barbar or Babar." (Chapter—IV, p. 101 of the report). According to the above Commission, the hereditary occupation of those belonging to the above caste is hair-cutting. It is common knowledge that, those whose hereditary occupation is as stated above, are also known as Nhayi,

Nhavi, Navi or Hajam. So far as the caste Hajam is concerned, the Bakshi Commission seems to have included only Muslim Hajams in the list of socially and educationally backward classes. There are 'Hajams' also among Hindus. It appears from the report of the above Commission that, it was its intention to include all those whose hereditary occupation was hair-cutting in the list of socially and educationally backward classes. Under these circumstances, Nhavi, Nhavi, Navi and even those amongst Hindus who call themselves as Hajams should be deemed to have been included in the above list.

Ahira Hajam/Aayara Hajam/Matka.

16.16 It is submitted on behalf of those who belong to the above castes that, their hereditary occupation is that of hair-cutting. It is clear that, those whose castes are known as Ahira Hajam or Aayara Hajam fall within the category of Hajams and that, they are in no way different from those who have been considered as socially and educationally backward on the basis of their hereditary occupation. They should, therefore, be deemed to have been included in the list of socially and educationally backward classes prepared by the Bakshi Commission. So far as those castes which are known as only Ahira, Aayara or Matka, it would be proper to direct them to seek redress for their alleged grievances in accordance with directions issued by the Government under the circular, dated 26-6-1978 referred to above.

Rajput Bhoi, Raj Bhoi,

16.17 Bhois have been classified as socially and educationally backward by the Bakshi Commission. Its observations in regard to that community are : "The Bhoi is a big community spread over almost all over the State. Their sub-castes are Bhoiraj, Dhimar, Zinga Bhoi, Kevat Bhoi, Bhanara Bhoi, Machhindra Bhoi, Palewar Bhoi, Kirat Bhoi, Kabar Bhoi, Pardeshi Bhoi, and Shrimali Bhoi." (Chapter—IV, p. 67 of the report). As regards their occupation it is observed in the report of the Commission : "Their ancestral occupation was that of carriers of palanquins and also of water. Since palanquins became out of date as means of transport, this community had to resort to different kinds of occupations such as fishing, sale of fish, tailoring, miscellaneous labour work and plantation of "Shingoda" and "Kamals" (Lotuses) and white-washing." It appears from the evidence of Purshotham Nanji Hatiya, Ramanbhai Dulabhai Mahera, and Premchand Atma-ram Mahera that, hereditary occupation of Rajput Bhois and Raj Bhois is similar to those of other categories of Bhois who have been classified as socially and educationally backward by the Bakshi Commission. It appears from the report that, the main emphasis is laid on the term 'Bhoi' and the nature of hereditary occupation while classifying the above caste as socially and educationally backward. On going through the evidence of the aforesaid witnesses, we find that, communities of Rajput Bhoi and Raj Bhoi are in no way different from various categories of Bhois referred to in the report of the Bakshi Commission. They should, therefore, be deemed to have been included in the list of socially and educationally backward classes.

Suryavanshi Koli.

16.18 Those who belong to the caste of Kolis and its sub-castes have been classified as socially and educationally backward by the Bakshi Commission. Relevant observations of the Commission in regard to Kolis at page 80 of the Report are as under : "The Kolis is a large community spread over the whole of the State. It comprise of several sub-castes such as Talpada Koli, Chuwalia Koli, Shedia Koli, Divecha Koli, whom we have dealt with separately. There are also other sub-castes such as Dhebaria Koli, Rathwa Koli, Baria Koli, Kharwa Koli and Idaria Koli, who also have similar characteristics and are socially and educationally backward." Looking to the observations in the report in regard to Kolis and their sub-castes it appears that, the emphasis is laid on the term 'Kolis' in the report. Damanbhai Chottabhai Koli has stated before us that, formerly their caste was known as 'Koli', but some of them mentioned Suryavanshi Koli as their caste as a result of which they are not given the certificate of backwardness. According to him, there are marriage relations between those who belong to Suryavanshi Koli caste and those belonging to various categories of Kolis held to be socially and educationally backward by the Bakshi Commission. Under these circumstances, Suryavanshi Kolis can be safely held to have been included in the list of Kolis considered to be socially and educationally backward by the above Commission.

Tarbada Koli.

16.19 Talpada Koli caste has been classified as socially and educationally backward by the Bakshi Commission. The relevant observations in regard to the above community in

the report are : "Talpada Koli is a sub-sect of the Koli community. They are spread over the whole of Gujarat. They usually reside in kuchcha mud houses and some of them have roofs covered with hay or local tiles. In some of the areas their huts are located on the fringe of village amidst unhygienic surroundings. In cities they mostly live in slums." (Chapter—IV, p. 97 of the report). According to the Sarpanch of Jetpur Gram Panchayat, District Baroda in certain villages in Sankheda, Naswadi, and Jetpur, Kolis are known as Tarbada, as a result of which, they experience difficulty in obtaining certificate of backwardness on the basis of the report of the Bakshi Commission. It is clarified by the Deputy Director, Directorate of Social Welfare, Gujarat State, Ahmedabad that, there is no distinction between Talpada Koli and Tarbada Koli. Under these circumstances, it can be safely held that, Tarbada Kolis fall in the same category as Talpada Koli. They should, therefore, be deemed to have been included in the list of socially and educationally backward classes prepared by the Bakshi Commission.

CHAPTER—XVII

RESERVATION OF SEATS/POSTS IN EDUCATIONAL INSTITUTIONS AND SERVICES UNDER THE STATE FOR SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES IN PROPORTION TO THEIR POPULATION AND RELAXATION IN THE UPPER AGE LIMIT FOR ENTRY INTO THE SERVICE

Terms of reference—Terms (iii) and (iv).

17.1 We shall now deal with terms nos. (iii) and (iv) of the terms of reference, which read as under : “(iii) To make suitable recommendations after necessary inquiry into the questions whether certain number of seats/posts should be reserved for socially and educationally backward classes in educational institutions and public services in proportion to their population in the manner in which they are reserved for Scheduled Castes and Scheduled Tribes in educational institutions and public services in proportion to their population or whether some other standard or basis should be adopted in the matter” . . .“(iv) To make inquiry and suitable recommendations into the questions whether there should be relaxation in the age limit for socially and educationally backward classes for the purpose of recruitment in public services, and if so, in what manner.”

It is necessary to give adventitious to the under-privileged people in order to give them equal opportunities with the more advanced people.

17.2 We have already pointed out as to how necessary it is to give adventitious aids to socially and educationally backward classes in order to provide them with equal opportunities with the more advanced people. As observed elsewhere in the report, the object of Articles 14, 15(4) and 16(4) read with Article 46 of the Constitution of India is to enable the State to make special provisions for the educational and economic advancement of socially and educationally backward classes of citizens and for the Scheduled Castes and the Scheduled Tribes. Article 15(4) provides that : “Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes,” whereas Article 16(4) enables the State to make “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 under the State.” The object of Articles 15(4) and 16(4) is to achieve equality by removing inequality between advanced classes and those weaker sections of the society which have remained backward because of social, cultural, educational and economic deprivations for hundreds of years. As pointed out by Shri Justice K. Subba Rao,¹ “..unless adventitious aids are given to the under privileged people, it would be impossible to suggest that they have equal opportunities with the more advanced people.” In this connection, we may repeat that, Article 15(4) enables the State to discriminate in favour of backward classes by taking suitable steps to secure their educational advancement, whereas Article 16(4) aims at increasing their opportunities of employment in the services of the State. We have already pointed out in Chapter—I of the report that, in a society where people differ physically, intellectually, educationally, socially and economically, the object of Article 14 can be achieved only by giving adventitious aid to the weaker sections of the society to face boldly the competition of life. This is the justification for preferential treatment to backward classes as contemplated by Articles 15(4) and 16(4) of the Constitution which are intended to enable the State to take suitable steps for educational and economic advancement of socially and educationally backward classes. We have dealt with Articles 14, 15(4), 16(4) and 46 of the Constitution and also referred to the relevant decisions of the Supreme Court on the point elsewhere in the report. Under these circumstances, it is hardly necessary to repeat them at this stage while dealing with the points involved in the above terms of reference. As observed by the Supreme Court in the case of Balaji :² “There can be no doubt that the object of making a special provision for the advancement of the castes or communities, there specified, is to carry out the

¹ Social Justice and Law—by Shri Justice K. Subba Rao, National, New Delhi

² AIR 1963 SC 649 (661)

directive principles enshrined in Article 46. It is obvious that unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of establishing social and economic equality will not be attained, and so, there can be no doubt that Article 15(4) authorises the State to take adequate steps to achieve the object which it has in view. No one can dispute the proposition that political freedom and even fundamental rights can have very little meaning or significance for the Backward Classes and the Scheduled Castes and Scheduled Tribes unless the backwardness and inequality from which they suffer are immediately redressed."

Economic interests of a group as also social justice to it are tied up with its place in the services under the State.

17.3 As observed by the Supreme Court in the case of *State of Kerala v. N. M. Thomas*: "Articles 14, 15 and 16 form part of a string of constitutional guaranteed rights. These rights supplement each other. Article 16, which ensures to all citizens equality of opportunity in matters relating to employment is an incident of guarantee of equality contained in Article 14. Article 16(1) gives effect to Article 14. Both Articles 14 and 16(4) permit reasonable classification having a nexus to the objects to be achieved. Under Article 16 there can be a reasonable classification of the employees in matters relating to employment or appointment" ...² "Our constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and Tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Articles 15(4) and 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15(1) and 16(1). The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only mean aggravation of inequality. Equality of opportunity admits discrimination with reason and prohibits discrimination without reason. Discrimination with reasons means rational classification for differential treatment having nexus to the constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are a rational classification recognised by our Constitution. Therefore, differential treatment in standards of selection are within the concept of equality." As pointed out by Shri Justice Krishna Iyer in the case of *State of Kerala v. N. M. Thomas*: "The Directive Principles of State Policy, fundamental in the governance of the country, enjoin on the State the promotion *"With special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes—and protect them from social injustice."* To neglect this obligation is to play truant with Article 46. Undoubtedly, economic interests of a group—as also social justice to it—are tied up with its place in the services under the State. Our history, unlike that of some other countries, has found a zealous pursuit of Government jobs as a mark of share in State power and economic position. Moreover, to biggest—and expanding, with considerable State undertakings,—employer is Government, Central and State, so much so appointments in the public services matter increasingly in the prosperity of backward segments. The Scheduled Castes and Scheduled Tribes have earned special mention in Article 46 and other 'weaker sections', in this context, means not every 'backward class', but those dimly depressed categories comparable economically and educationally to Scheduled Castes and Scheduled Tribes."

In order to achieve the object of Article 38 of the Constitution, benefit of reservation of seats, posts should be given to socially and educationally backward classes of citizens.

17.4 It cannot be disputed that, all the above socially and educationally backward classes of people belong to the category of under privileged people and that, they are not only socially

1. AIR 1976 SC 493 (497)

2. Ibid, p. 501

3. Ibid, p. 532

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and educationally backward but also poor. Under these circumstances, unless adventitious aids are given to them, it cannot be said that, they have equal opportunities with more advanced people to fight the battle of life and achieve progress. We have clearly pointed out the causes of their social as well as educational backwardness and poverty is one of them. There is a wide gap between the above backward classes and the advanced classes, which have dominated them all these years. It should, further be remembered that, the State as well as the society have neglected them for a long time. Having regard to the causes of their backwardness, and all the above circumstances, we feel that, a mere provision for free education or economic aids would not be sufficient for their uplift, and that, the least further delay in taking adequate steps for improving their lot would further widen the gulf between the advanced sections of the society and the down-trodden people. Remedy should be in keeping with the seriousness of the malady. Any half-hearted implementation of the directive principles and the relevant provisions of the Constitution would be a fraud on the Constitution. Most of the witnesses, who gave evidence before us have stated that mere freeship in educational institutions or economic aid is not sufficient for improving their conditions. Their main grievance was that, the students belonging to their castes/communities or classes are unable to get admissions in the medical and engineering colleges and other technical institutions. According to them, unless the benefit of reservation of seats in educational institutions and of posts in services under the State is given to them, there would not be any educational or economic advancement in their castes/communities or classes in near future. We also feel that, their grievance is genuine. We find that, they have not been adequately represented in the services under the State. According to Article 38 of the Constitution : "(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." "(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities, and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." In order to achieve the object of Article 38 of the Constitution, the benefit of reservation of seats/posts should be given to socially and educationally backward classes of citizens. As pointed out by Shri Justice V. R. Krishna Iyer : "Undoubtedly, economic interests of a group—as also social justice to it—are tied up with its place in the services under the State. Our history, unlike that of some other countries, has found a zealous pursuit of Government jobs as mark of share in State power and economic position. Moreover, the biggest—and expanding with considerable State undertakings—employer is Government, Central and State, so much so appointments in the public services matter increasingly in the prosperity of backward segments."

Reservation of posts should be made at all the stages.

17.5 Looking to the injustice suffered by the socially and educationally backward classes so far and the great disparity between their conditions and those of advanced classes, we feel that, in order to quicken the pace of their educational as well as economic advancement, it is absolutely necessary to reserve certain proportion of seats in educational institutions and of posts in services under the State. In this connection, we make it clear that, reservation of certain number of posts merely at the initial stage of appointment would not serve the purpose, and reservation should also be made at promotional stages. ²As early as in 1961, the Supreme Court has taken the view that, promotion to selection posts is included both under Article 16(1) and (2). The above decision has been followed by the Supreme Court in subsequent cases. As observed by the Supreme Court in the case of *Balaji* : ³"Whilst we are dealing this question it would be relevant to add that the provisions of Article 15(4) are similar to those of Article 16(4) which fell to be considered in the case of *General Manager, Southern Railway v. Rangachari*, AIR 1962 S. C. 36. In that case, the majority decision of this Court held that the power of reservation which is conferred on the State under Article 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments, but also by providing for reservation of *selections* posts (See also *State of Kerala v. N. M. Thomas* AIR 1976 S. C. 490 (498))." The question of reservation of posts at promotional stage has been further clarified by the Supreme Court in the case of *A. B. S. K. Singh (Rly.) v. Union of India*,⁴ the relevant observations in which are as under : "Government moved further because

1. AIR 1966 SC 490 (532)

2. AIR 1962 SC 36

3. AIR 1963 SC 649 (664)

4. 1980 LAB L C 1325 (1340)

real power could be shared by the weakest sections only if the doors of the higher decks were opened to them. The higher echelons are the real controllers, not the menial levels, hierarchically structured as our society is. Obviously, Article 16(4) was not designed to get more *harridans* into Government as scavengers and sweepers but as 'officers' and 'bosses', so that administrative power may become the common property of the high and low, homogenised and integrated into one community. Social stratification, the bane of the caste system, could be undone and vertical mobility won not by hortative exercises but by experience of *share power*." "No debate is needed to uphold reservation in promotions as such. Not only has Rangachari (AIR 1962 S. C. 36) sustained it in regard to selection posts, Thomas's case (AIR 1976 S. C. 490) decided by a Bench of seven Judges, has expressly approved Rangachari. The only question bearing on reservation *vis-à-vis* promotion is as to whether it is unconstitutional if it is extended to non-selection posts while it is constitutional in regard to selection posts." "Far more serious is the criticism of Annexure 'K' on the basis of which reservations were introduced even to promotion posts filled by the 'seniority-cum-suitability' rule. Some other relaxations and concessions also are granted under it to SC & ST candidates. But the maximum mayhem inflicted by Annexure-K is in the extension of the operation of promotional reservation to non-selection posts. It was urged that Rangachari (AIR 1962 S. C. 36) (*supra*) did not cover non-selection posts and, therefore, could not be an authority to sustain its validity. There is no force in this submission." "The sting of the argument against reservation is that it promotes inefficiency in administration by choosing sub-standard candidates in preference to those with better mettle. Competitive skill is more relevant in higher posts, especially those where selection is made by competitive examinations. Lesser classes of posts, where promotion is secured mechanically by virtue of seniority except where the candidate is unfit, do not require a high degree of skill as in the case of selection posts. (*See* (1968) 1 SCR 721 at 734) (AIR 1968 S. C. 507). It is obvious that as between selection and non-selection posts is an *a fortiori* case. If, in selecting top officers you may reserve posts for SC/ST with lesser merit, how can you, rationally argue that for the posts of peons or lower division clerks reservation will spell calamity? The part that efficiency plays is far more in the case of higher posts than in the appointments to the lower posts. On this approach Annexure-K is beyond reproach."

Seats/posts should be reserved for socially and educationally backward classes in educational institutions and services under the State in proportion to their population in the same manner in which they are reserved for Scheduled Castes and Scheduled Tribes.

17.6. As observed elsewhere in the report, backward classes are in the matter of their backwardness comparable to scheduled castes and scheduled tribes. It is, however, not necessary that, their social and educational backwardness must be exactly similar in all respects to that of scheduled castes and scheduled tribes. The above criteria have been applied by us together with other relevant criteria for the purpose of identifying socially and educationally backward classes. We have found from the evidence on the record that, socially and educationally backward classes of citizens referred to above are in many respects comparable to scheduled castes and scheduled tribes. Many of them are even educationally more backward than those belonging to scheduled castes. Moreover, we have already pointed out as to how necessary it is, to give the benefit of reservation of seats and of posts to socially and educationally backward classes of citizens, in order to quicken the pace of their educational and economic advancement. Considering all these circumstances, we feel that, it would be just and fair to reserve certain number of seats/posts for them in educational institutions and public services in proportion to their population in the same manner in which they are reserved for Scheduled Castes and Scheduled Tribes in proportion to their population. As pointed out in the note at Appendix-XXXIII the population of socially and educationally backward classes of citizens is 35.16 per cent of the total population of Gujarat. Population of Scheduled Castes and Scheduled Tribes comes to 21.38 per cent. Now, as held by the Supreme Court in the case of *Balaji*³ and some other cases, the reservation of seats in educational institutions and of posts in services under the provisions of articles 15(4) and 16(4) respectively of the Constitution should be less than 50 per cent. 21 per cent of seats and posts as the case may be are reserved for Scheduled Castes and Scheduled Tribes. Under these circumstances, even though the population of socially and educationally backward classes comes to 35.16 per cent, only 28% of posts and seats can be reserved for them. In this connection, it may be clarified

1. *Ibid.* p 1352

2. *Ibid.*, paras 91-92, p. 1354

3. AIR 1963, SC 649

that, the population of socially and educationally backward classes as stated above includes also that of such classes identified by the Bakshi Commission. As pointed out elsewhere in the report, all the castes and communities identified as socially and educationally backward by the above Commission have already been included in the socially and educationally backward classes identified by us. Under these circumstances, even if the list of socially and educationally backward classes prepared by the Bakshi Commission is set aside as suggested by us, the above percentage of population of socially and educationally backward classes would remain unaffected.

While giving the benefit of the above recommendations to socially and educationally backward classes identified by the Bakshi Commission the income limit of Rs. 10,000 per year should be prescribed.

17.7 As stated elsewhere in the report, we have prescribed family income limit for identifying socially and educationally backward classes. The Bakshi Commission has, however, not prescribed any such income limit. Under these circumstances, if the benefit of the above recommendations in regard to reservation of seats and posts is given to all socially and educationally backward classes identified by Bakshi Commission, the advantage of the above recommendations would be taken mainly by the higher income groups among those classes, as a result of which, those in the lower income groups in the above classes as well as most of the socially and educationally backward classes identified by us on occupational basis would be denied the benefit of the above recommendations, even though, they are intended only for the two latter categories of classes, we, therefore, suggest that, while giving the benefit of the above recommendations to socially and educationally backward classes identified by the Bakshi Commission, the income limit of Rs. 10,000 per year should be prescribed as in the cases of socially and educationally backward classes identified by us. It is needless to add that, as suggested elsewhere in the report, if the list of socially and educationally backward classes prepared by the Bakshi Commission is rescinded all the above anomalies and complications would come to an end.

Recommendations of the Bakshi Commission.

17.8. The relevant part of the recommendations of the Bakshi Commission in regard to reservation of seats in educational institutions are as under : "We suggest reservation of seats in the medical, engineering, technical, agriculture, and veterinary colleges. The reservation of seats available to pupils belonging to Nomadic Tribes and Denotified Tribes at present, will remain unaffected. For students belonging to the other Backward Classes, we propose the following scheme for reservation in Medical, Engineering, Dental, Pre-medical, Technical, Agriculture and Veterinary colleges. 10% seats should be reserved for the other Backward Classes other than Nomadic Tribes and Denotified Tribes for whom separate reservation already exists along with Scheduled Tribes. The minimum number of marks at the qualifying examination obtained by the student in any of these colleges, should not be less than 55% and secondly admission in the reserved seats will be available to those students only who have obtained marks 5% less than the percentage of marks where the admission in the non-reserved seats has stopped." It appears that, on the date on which the above recommendation was made Nomadic Tribes and Denotified Tribes were grouped with Scheduled Tribes for the purpose of reservation of seats in educational institutions. The relevant part of the recommendations of the Bakshi Commission in regard to reservation of posts in Government services reads as under : "We, therefore, propose that 10% reservation in posts of Class III and Class IV Government services should be reserved for the Backward Classes including Nomadic Tribes and Denotified Tribes and 5% in Class I and Class II Government services to these classes." "The above recommendation clearly shows that, on the dates of the report Nomadic Tribes and Denotified Tribes were bracketed with Backward classes for the purpose of reservation of posts in Government services. It is rather strange that, for the purpose of reservation of seats in educational institutions Nomadic Tribes and Denotified Tribes are bracketed with Scheduled Tribes, whereas for the purpose of reservation of posts, they are bracketed with socially and educationally backward classes. The relevant orders passed by the Government in the current year show that, the above position continues till today (*vide* Government of Gujarat, Health & Family Welfare Department, Resolution No. MCG-1083-2345-J, dated 25th May, 1983 read with Addendum No. MCG-1083-517-G, dated 2nd February, 1983 and Government of Gujarat, Education Department, Resolution No. GEC-1083-24879-GH, dated 28th July, 1983).

1. Report of the Commission, para 5.7, p 114.

2. Report of the Commission, para 5.21, p. 116.

Securing of certain percent of marks in the examination not to be a condition precedent for reservation of seats. Relaxation in the upper age limit. Reservation of posts at all stages in proportion to the population of socially and educationally backward classes

17.9 Looking to the object of reservation of seats in educational institutions, we feel that, it is not necessary to lay down any condition of securing certain percent of marks in the examination, as recommended by the Bakshi Commission, and that, the benefit of reservation of seats in educational institutions should be given to the extent mentioned above without laying down any such condition. The Bakshi Commission has recommended reservation of only 10 per cent of posts in class III and IV Government services for socially and educationally backward classes including Nomadic Tribes and Denotified Tribes, and only to the extent of 5 per cent in class-I and Class-II services for the above classes. The Bakshi Commission has not proposed any reservation of posts at the promotional stage. As regards relaxation in the age limit it is observed in the report of the above Commission. ¹ "No relaxation in age limit has been proposed, as this would be an inducement to start study in proper time and get through the examination every year." Looking to the poor conditions of the socially and educationally backward classes and the handicaps from which they have been suffering all these years, we are with great respect to the Bakshi Commission, unable to agree with the above reasoning of the Commission for not relaxing the age limit. The upper age limit for entry into the services under the State for socially and educationally backward classes has been relaxed by 5 years in the following State : Uttar Pradesh, Maharashtra, Haryana, Tamilnadu Himachal Pradesh, and Punjab. Upper age limit for the above purpose has been raised by 5 years in the case of Scheduled Castes and Scheduled Tribes not only in the State of Gujarat, but in other States also. For the reasons already mentioned, we are of the view that, the upper age limit for the purpose of recruitment to various categories of services, should be raised by 5 years in the case of socially and educationally backward classes subject to the condition that, as provided in Government of Gujarat, General Administration Department, Resolution No. PVS/1183/825-G-3, dated 22nd April, 1983 where maximum age limit for recruitment is 40 years or higher, age limit for Socially and Educationally Backward classes should be increased by 3 years. We have already suggested that, the benefit of reservation of seats and of posts etc. should be given to socially and educationally backward classes, in the same manner in which, it has been granted to Scheduled Castes and Scheduled Tribes. We, therefore, recommend that, the reservation of posts should be made for socially and educationally backward classes in proportion to their population in the services under the State, not only at the stage of initial appointment, but also at the stages of promotion, in the same manner in which the posts are reserved at various stages for Scheduled Castes and Scheduled Tribes in this State.

The Commission agrees with certain relevant recommendations of the Mandal Commission.

17.10 In this connection, we may incidentally refer to the recommendations of the Mandal Commission in this respect. The relevant observations in its report are² :

"13.11 As stated in the last Chapter (para 12.22) the population of OBCs, both Hindus and non-Hindu, is around 52% of the total population of India. Accordingly, 52% of all posts under the Central Government should be reserved for them. But this provision may go against the law laid down in a number of Supreme Court judgements wherein it has been held that the total quantum of reservation under Articles 15(4) and 16(4) of the Constitution should be below 50%. In view of this legal constraint, the Commission is obliged to recommend a reservation of 27% only, even though their population is almost twice this figure.

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

"13.13 With the above general recommendation regarding the quantum of reservation, the Commission proposes the following over-all schemes of reservation for OBCs :—

(1) Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quote of 27%.

1. Report of the Commission p. 116.

2. Report of the Commission Vol. I, p. 58.

(2) The above reservation should also be made applicable to promotion quota at all levels.

(3) Reserved quota remaining unfilled should be carried forward for a period of three years and dereserved thereafter.

(4) Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner as done in the case of SCs and STs.

(5) A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of SC and ST candidates.

"13.14 The above scheme of reservation in its *toto* should also be made applicable to all recruitment to public sector undertakings both under the Central and State Governments, as also to nationalised banks.

"13.15 All private sector undertakings which have received financial assistance from the Government in one form or the other should also be obliged to recruit personnel on the aforesaid basis.

"13.16 All universities and affiliated colleges should also be covered by the above scheme of reservation."

With great respect to the Mandal Commission, we entirely agree with its above recommendations, subject to what we have stated about the percentage of reservation of posts and seats for socially and educationally backward classes in this State.

Percentage of reservation of posts in favour of physically handicapped persons to be taken into consideration, while fixing the percentage of reservation of posts in favour of socially educationally backward classes.

17.11 As stated above 28% of seats and posts can be reserved for socially and educationally backward classes. While considering the above quantum of reservation of seats and posts, it is necessary to bear in mind that, according to Government of Gujarat, General Administration Department, Resolution No. PVS/1183/825-G-3, dated 22-4-1983, 4 per cent of posts in Class III and IV services have been reserved for physically handicapped persons. According to Gujarat Civil Services (Reservation of vacancies for ex-servicemen in Class III and Class IV posts and service) Rules, 1975 : hereinafter referred to as the Rules, "Ten percent of the vacancies in each of the categories of Class III posts and of such posts in each Class III service and Twenty per cent of the vacancies in each of the categories of Class IV posts and of such posts in each class IV services including permanent vacancies filled initially on a temporary basis and temporary vacancies which are likely to be made permanent and/or are likely to continue for three months and more, to be filled in by direct recruitment in any year shall be reserved for being filled by ex-servicemen." Looking to the decisions of the Supreme Court referred to above, percentage of reservation of posts in favour of physically handicapped persons will have to be taken into consideration while fixing the percentage of reservation of posts for socially and educationally backward classes in order to ensure that, total percentage of reservations for all the above categories is less than 50 per cent. Under these circumstances, percentage of reservation of posts in favour of socially and educationally backward classes will have to be proportionately reduced so far as Class III and IV services are concerned, and this would come to 24 per cent. This shows that, 28% of posts can be reserved for socially and educationally backward classes in Class I & II services under the State, whereas in Class III & IV only 24% of posts can be reserved. As regards reservation of vacancies for ex-servicemen, it is clarified in the proviso (1) to rule 4 of the Rules : "Provided the percentage of reservation so specified for ex-servicemen in a category of posts shall be increased or decreased in any one recruitment year to the extent to which the total number of vacancies reserved for ex-servicemen, scheduled castes and scheduled tribes (including the carried forward reservations for scheduled castes and scheduled tribes) and for any other categories taken together falls short or is in excess, as the case may be, of fifty per cent of the vacancies in that category of posts filled in that year :"

In view of the above proviso, percentage of reservation of Class III and Class IV posts and

in Class III and IV services would be proportionately reduced in the circumstances mentioned in proviso (1) so far as ex-servicemen are concerned. As a result of the above proviso, reservation of 24 per cent posts for socially and educationally backward classes in Class III and IV services would remain unaffected, in spite of the above Rules providing for reservation of posts for ex-servicemen.

Seats to be reserved for socially and educationally backward classes in all the categories of educational institutions in the State.

17.12. The Mandal Commission has also recommended reservation of 27% of seats in all scientific, technical and professional institutions run by the Central as well as the State Government. We find that, difficulty is likely to be experienced by socially and educationally backward classes in future in securing admission, not only in medical colleges, engineering colleges, and other technical institutions but also, in other colleges and institutions. It may be that, there is no rush of students for securing admission to a college or any other educational institutions imparting education in a particular faculty or subjects in any particular year, but it is likely that, there would be such rush for admission in future in such institutions and in that case, socially and educationally backward classes may find difficulty in securing admission to such colleges. Considering all these circumstances, we recommend that, reservation of seats in proportion to the population of socially and educationally backward classes should be made in all the categories of educational institutions in the State, in order to safeguard their interest.

Position of Nomadic Tribes and Denotified Tribes in regard to the reservation of seats and posts.

17.13. Looking to the orders of the Government referred to above to regulate the admission of students belonging to Nomadic Tribes and Denotified Tribes, and also reservation of posts for them, we suggest that, as long as the arrangement envisaged in the aforesaid Government orders continues, Nomadic Tribes and Denotified Tribes may be grouped with Scheduled Tribes for the purpose of reservation of seats in educational institutions, and they may be grouped with socially and educationally backward classes for the purpose of reservation of posts in services under the State. In case, the practice of equating Nomadic Tribes and Denotified Tribes with Scheduled Tribes for the purpose of reservation of seats in educational institutions is discontinued, they should be grouped with socially and educationally backward classes for all purposes.

Government of Gujarat, General Administration Department, Resolution No. PVS/1183/825/G-3, dated 22nd April, 1983, and other relevant orders if any should be made applicable to socially and educationally backward classes.

17.14. The orders passed by the Government of Gujarat from time to time in regard to reservation of posts for Scheduled Castes and Scheduled Tribes have been consolidated in Government of Gujarat, General Administration Department, Resolution No. PVS/1183/825-G-3, dated : 22-4-1983. As we have taken the view that, the reservation of posts in public services at various stages for socially and educationally backward classes should be made in proportion to their population in the same manner in which it is being done in the case of Scheduled Castes and Scheduled Tribes, the orders contained in the above Government Resolution, as also other relevant orders if any, should be made applicable to socially and educationally backward classes for the purpose of giving them the benefit of our recommendations as to reservation of posts and relaxation of age for entry into the Government service etc. We find that recommendations made by the Mandal Commission on the above points are more or less similar to the relevant orders contained in the above resolution. It however, appears that, there is no provision in the above resolution similar to the recommendation of the Mandal Commission that, "Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27%" We therefore propose that, whenever, any orders on the lines of the above recommendation are made in favour of Scheduled Caste and Scheduled Tribes, they should also be made applicable to Socially and Educationally Backward Classes,

CHAPTER—XVIII

ADDITIONAL RECOMMENDATIONS

Appropriate recommendations on several points have been made at various places in the report.

18.1 We have already made appropriate recommendations on several points at various relevant places in the report. In this Chapter, however, we made some more recommendations in regard to certain matters, which also relates to the advancement of socially and educationally backward classes.

The Commission makes a few recommendations in regard to certain aspects of general importance.

18.2 According to term (v) : “The Commission may make such other recommendations germane to the main terms of reference as may be deemed necessary by it.” We feel happy to find that, the Bakshi Commission has made several recommendations to the Government for the amelioration of socially and educationally backward classes. Relevant details in the matter have been given in Chapters—V & VI of its report. The Government of Gujarat has accepted all the above recommendations as would be evident from its Resolution dated 1st April, 1978 referred to elsewhere in the report. We also find that, after the acceptance of the report of the Bakshi Commission, the Government have taken some more ameliorative measures for the benefit of socially and educationally backward classes as well as economically backward classes referred to in the Resolution, dated 1-4-1978. Details of various types of adventitious aids that are being given to socially and educationally backward classes have been given in the statement at Appendix—XXXIV. Similar information in regard to economically backward classes has been given in the statement at Appendix—XXXI. Looking to the various types of ameliorative measures adopted by the Government for the uplift of socially and educationally backward classes, it is hardly necessary to make any further recommendation in that respect. It is needless to add that, the benefit of all the above adventitious aids and also of our recommendations will be given to socially and educationally backward classes identified by us. We may, however, make a few recommendations in regard to certain aspects of general importance. We have noticed that, some of those belonging to socially and educationally backward classes have realised the importance of education to achieve progress in life, and that, some students belonging to these classes at those places where schools are within their easy reach have been able to take advantage thereof. We, therefore, suggest that the Government should examine the above aspect in details and wherever necessary increase the number of schools and spread them all over the State, in order to enable the students residing even in remote areas to take the advantage of the facility of schools. What is stated above applies *mutatis mutandis* also to colleges and other educational institutions.

Socially and educationally backward classes should be provided with such education, technical knowledge and vocational training as would enable them to stand on their own legs.

18.3 As pointed out in Chapter—VIII, unemployment among the educated, acts as a damper in the sense that, when the grown-up children and the young people find that, even those who have acquired educational qualification prescribed for entries into various categories of public services or for employment in other sectors, remain unemployed for a long time, they feel discouraged and lose all interest in and enthusiasm for education and leave schools at a young age in order to take up the jobs or occupations which do not require much or special education or any fixed educational qualifications. According to us the above aspect should be given due weight while taking suitable steps for the advancement of socially and educationally backward classes. It is common knowledge that, the Government would not be in a position to provide employment to all the persons belonging to the above classes. Under these circumstances, it is necessary to provide them with such education, technical knowledge and vocational training as may enable them to stand on their own legs for the purpose of find out sources of maintenance for their families. One of the ways in which the above purpose can be achieved, is to provide them with such type of technical education and vocational training as would enable them to start their own business or to engage themselves in the occupations where their technical knowledge and training would stand them in good stead. We, therefore, suggest that, the

number of technical institutions and the centres for vocational training may be increased and spread all over the State.

Suitable facilities for study should be provided to students.

18.4. Students belonging to the above classes have no amenities or facilities whatsoever for study in their houses. They do not receive any guidance for study from their parents, a large majority of whom are either illiterate or not sufficiently educated. We, therefore, suggest that, suitable facilities for study should be provided to them in the schools for a few hours at night on the days on which schools are open and during day time on Sundays and holidays.

Suitable hostel facilities should be provided as far as possible either free or on a moderate charge.

18.5. We find that, the students belonging to weaker sections of the society find it difficult to avail themselves of higher education or even of the education at lower levels because of non-availability of suitable accommodation at the places where the educational institutions are established. We, therefore, suggest that, suitable hostel facilities should be provided to students of the above category and the number of such hostels may also be increased. It is needless to add that, in order to enable the students to avail themselves of the above facilities, accommodation may be provided to them as far as possible either free or on a moderate charge.

Proper housing facilities should be provided to the above classes of people. Steps should be taken to bring children belonging to the above classes in social contact with their more fortunate counterparts among the advanced classes.

18.6. Environmental factors such as habitation in slums or areas lacking in sanitary facilities are responsible to a considerable extent for social and educational backwardness. We, therefore, suggest that, proper housing facilities should be given to the above classes of people. We quite realise that, because of the limited resources of the State, it may not be in a position to take steps as suggested above on a large scale. We feel happy to know that, the Government has already taken some steps in the matter. Till sufficient progress is made in the above direction, suitable steps should be taken to bring atleast the children belonging to the above classes in social contact with their more fortunate counterparts among the advanced classes, so that they can get rid of inferiority complex and derive other benefits of living in a better environment. One of the ways in which the above object can be achieved is to provide accommodation to the children belonging to socially and educationally backward classes alongwith the children of the advanced classes in one and the same hostel.

Central Assistance.

18.7 The observations of the Mandal Commission on the question of Central assistance are as under : "13.38 At present no central assistance is available to any State Government for implementing any welfare measures for Other Backward Classes. The 18 States and Union Territories which have under-taken such measures have to provide funds from their own resources. During the Commission's tour practically every State Government pointed out that unless the Centre is prepared to liberally finance all special schemes for the upliftment of OBCs, it will be beyond the available resources of the States to undertake any worthwhile programme for the benefit of Other Backward Classes." "13.39 The Commission fully shares the views of the State Governments in this matter and strongly recommends that all development programmes specially designed for Other Backward Classes should be financed by the Central Government in the same manner and to the same extent as done in the case of Scheduled Castes and Scheduled Tribes." We presume that, the State of Gujarat has also made out a case for central assistance before the Mandal Commission. We, therefore, whole heartedly support the above recommendation.

18.8 The former Chairman of the Gujarat Backward Classes Board, Gujarat State has suggested that, the Gujarat Backward Classes Board should be converted into an autonomous body. The Gujarat Tribal Development Corporation has been established under Gujarat Act No. 5 of 1972. There is also Gujarat Scheduled Castes Economic Development

Corporation Ltd., incorporated under the Companies Act, 1956. We feel that, if there is an autonomous body to look after the interests of socially and educationally backward classes, it would be in a better position to execute various schemes intended for their welfare and to undertake the task of social and economic uplift of socially and educationally backward classes. We now learn from the present Chairman of the Gujarat Backward Classes Board that, the Government is actively considering the question of establishing an autonomous Corporation as stated above, to look after the interests of socially and educationally backward classes. Under these circumstances, the question of making any recommendation as suggested by the former Chairman of the Board does not survive.

Duration of adventitious aids.

18.9 The Bakshi Commission has recommended that, adventitious aids on the basis of its report may be given to socially and educationally backward classes for a period of 10 years. The Mandal Commission has recommended a period of 20 years for the above purpose. We feel that, having regard to the rapid changes that are taking place in the social structure and concepts in regard to the questions of socio-economic nature and other relevant matters, a period of 20 years is rather long. We, therefore, suggest that, the benefit of adventitious aids may be given to socially and educationally backward classes identified by us, in the first instance, for a period of ten years, after the expiry of which, position may be reviewed and the question, whether the above time should be extended or not, may be decided having regard to all the relevant factors and circumstances obtaining then.

CHAPTER—XIX

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. The object of Articles 15(4) and 16(4) is to achieve equality by removing inequality.
(Paragraphs 1.3 and 1.4)
2. The problem of determining who are socially and educationally backward is very complex.
(Paragraph 1.7)
3. Caste system, the main cause of the deplorable conditions of our masses.
(Paragraph 2.1 and Chapter-III)
4. Caste system in its present form was not in existence in ancient India.
(Paragraphs 2.5, 2.6, 2.11 and 2.15)
5. Pernicious effects of the caste system.
(Chapter—III)
6. As the upper classes were interested in keeping the masses in a state of bondage and servility, progress of their march on the road of advancement has naturally been slow, the blame for which lies squarely on the upper classes.
(Paragraph 3.10)
7. Lot of Scheduled Castes and Scheduled Tribes is miserable.
(Paragraph 3.11)
8. Relevant criteria, tests and factors for determining who are socially and educationally backward classes in the light of the decisions of the Supreme Court.
(Chapters—IV & V)
9. Social backwardness can be determined without reference to caste.
(Paragraph 4.5)
10. Factors contributing to social and educational backwardness.
(Chapter—VIII)
11. Tests for determining educational backwardness.
(Paragraphs 4.4, 4.8, 9.1, 9.2, 9.3 and 9.10 to 9.15)
12. State average of student population in 8th, 9th and 10th standards in all the Schools is 24.08 per thousand population of citizens.
(Paragraph 9.15)
13. Identification of socially and educationally backward classes without reference to caste is quite according to law.
(Chapter—X)
14. Identification of socially and educationally backward classes without reference to caste would facilitate promotion of welfare and educational and economic interests of the weaker sections of the people and accelerate the process of establishing an egalitarian society.
(Chapter—XI)
15. Enumeration of caste for specifying socially and educationally backward classes is perpetuation of the evils of caste system.
(Paragraph 11.2)
16. Movement for upward mobility.
(Paragraph 11.8)
17. Forces that had started weakening the rigid caste system.
(Paragraph 11.10)
18. Organized efforts for being considered socially and educationally backward-cautious approach necessary while identifying such classes.
(Paragraph 11.14)

19. Identification of socially and educationally backward classes in terms of caste, will perpetuate the evils of caste system.

(Paragraph 11.15)

20. How some castes degraded themselves.

(Paragraph 11.16)

21. Identification of socially and educationally backward classes in terms of caste not possible in the cases of non-Hindu communities.

(Paragraph 11.17)

22. Some of the groups of people who are socially and educationally backward would be left out if socially and educationally backward classes are identified in terms of caste.

(Paragraphs 11.18 and 11.19)

23. Method of determining socially and educationally backward classes without reference to caste beneficial to all sections of people irrespective of the castes to which they belong.

(Paragraphs 11.18 to 11.20)

24. Inherent defects in the system of identifying socially and educationally backward classes in terms of caste.

(Paragraphs 11.21 to 11.23)

25. Only lower income groups are socially and educationally backward.

(Paragraph 12.1)

26. Benefits of reservation are snatched away by the top creamy layers of the backward class or caste.

(Paragraphs 12.2 and 12.3)

27. Social or educational backwardness does not exist in the cases of well to do sections or families.

(Paragraph 12.5)

28. Commission fixes the family income limit of Rs. 10,000 per annum.

(Paragraph 12.8)

29. Income limit cannot be challenged on the ground that it is fluctuating.

(Paragraphs 12.9 and 12.10)

30. Family means the citizen, his wife, sons, unmarried daughters, parents, brothers and unmarried sisters living with him.

(Paragraph 12.10)

31. Suggestions to modify the classification of socially and educationally backward classes made by the Bakshi Commission, in order to provide uniformity.

(Chapter—XIII)

32. Decision to identify socially and educationally backward classes without reference to caste, inspite of the fact that the Bakshi Commission has identified them in terms of caste.

(Paragraph 13.1)

33. There is sufficient justification to fix the income limit proposed by this Commission, also in regard to those classes which have been identified as socially and educationally backward by the Bakshi Commission.

(Paragraphs 13.2 and 13.3)

34. No useful purpose would be served by retaining the list of socially and educationally backward classes prepared by the Bakshi Commission.

(Paragraph 13.4)

35. Identification of socially and educationally backward classes. Terms of reference. Scope of term (i) explained.

(Paragraphs 14.1 and 14.2)

36. Identification of socially and educationally backward classes in terms of occupation is both equitable and realistic.

(Paragraph 14.3)

37. Criteria adopted by the Mandal Commission for identification of socially and educationally backward classes among non-Hindu communities is neither logical nor just. Criterion should be such as can be uniformly applied to Hindu castes and non-Hindu communities.

(Paragraphs 14.4. and 14.5)

38. Feeling of high and low on caste basis disappearing.

(Paragraphs 14.6 and 14.7)

39. Several sections of certain castes resent the label of backwardness.

(Paragraph 14.8)

40. Transition from a caste to a class. There is no scope for saying that, there is no feeling of high and low in regard to different occupations.

(Paragraph 14.9)

41. The concept of social equality is never fully practiced, even in England and America.

(Paragraphs 14.10 and 14.11)

42. Position of manual workers and other low income groups in India.

(Paragraph 14.12)

43. Persons following certain occupations or whose income is low are both socially and educationally backward.

(Paragraph 14.12)

44. While making provisions for the educational and economic advancement of socially and educationally backward classes of citizens under Articles 15(4) and 16(4), the State is giving effect to the directive principles enshrined in Article 46 of the Constitution.

(Paragraphs 14.17 and 14.18)

45. No difficulty will be felt in ascertaining and certifying citizens belonging to socially and educationally backward classes identified on occupational basis.

(Paragraph 14.20)

46. Socially and educationally backward classes specified.

(Chapter--XV)

47. List of socially and educationally backward classes is only illustrative and not exhaustive.

(Paragraph 15.1)

48. Overlap is intended to facilitate the process of identifying as to which citizens follow a particular occupation or belong to a particular category.

(Paragraph 15.2)

49. Occupation which is considered inferior and low income are the main causes of social and educational backwardness.

(Paragraph 15.3)

50. Group--A

Agricultural labourers.

(Paragraph 15.4)

51. Small farmers, marginal farmers, and sharecroppers.
(Paragraphs 15.5 and 15.6)
52. Cattle, goats and sheep rearing.
(Paragraph 15.7)
53. Rural artisans as well as their counterparts in urban areas are socially and educationally backward.
(Paragraph 15.8)
54. 'Jajmani' or 'Avat' system is fast disappearing.
(Paragraph 15.9)
55. Several occupations are treated as inferior and those engaged in these occupations are found to be socially and educationally backward.
(Paragraphs 15.9 and 15.10)
56. All those citizens who follow any of the occupations or as the case may be, belong to any of the categories of people mentioned above and whose family income does not exceed Rs. 10,000 per annum as stated above, are socially and educationally backward.
(Paragraphs 15.11 and 15.12)
57. No difficulty in identifying citizen belonging to socially and educationally backward classes on the basis of the occupations mentioned in this Chapter.
(Paragraphs 15.14, 15.15 and 15.16)
58. Only self-employed-own account workers engaged in certain occupations are included in the category of socially and educationally backward classes of citizens.
(Paragraph 15.17)
59. Clarifications to facilitate identification.
(Paragraphs 15.18 and 15.19)
60. Victims of adverse circumstances or adversity.
(Paragraph 15.20 to 15.22)
61. Recommendation in regard to physically handicapped persons.
(Paragraph 15.21)
62. Adventitious aids may also be given to orphans.
(Paragraph 15.22)
63. Recommendations on the basis of term no. (ii).
(Chapter--XVI)
64. We do not identify afresh a particular caste or sub-caste as socially and educationally backward.
(Paragraph 16.2)
65. Suggestion to seek redress under Government of Gujarat, Labour, Social Welfare & Tribal Development Department, Circular No. BCR-1478-M-3297-H, dated 26th June, 197
(Paragraph 16)
66. Suggestions to introduce uniform practice in regard to granting of certificate backwardness.
(Paragraph 1)
67. Castes/sub-castes or communities whose cases have been considered by the Commission in pursuance of term no (ii). Ajmeri Pinjara
(Paragraph

68. Ahir, Sorathiya Ahir, Panchali Ahir or Pancholi Ahir. (Paragraph 16.6)
69. Bariya—Baria Kshatriya. (Paragraphs 16.7, 16.8 and 16.9)
70. Bawa. (Paragraph 16.10)
71. Brahmbhatta. (Paragraph 16.11)
72. Chunara Waghari, Kamdiya Jagadiya Waghari, Patni Waghari (Paragraph 16.12)
73. Khristi/Gujarati Christian. (Paragraph 16.13)
74. Mansuri. (Paragraph 16.14)
75. Nhayi/Nhavi/Navj/Hajam. (Paragraph 16.15)
76. Ahira Hajam/Aayara Hajam/Matka. (Paragraph 16.16.)
77. Rajput Bhoi, Raj Bhoi. (Paragraph 16.17)
78. Suryavanshi Koli. (Paragraph 16.18)
79. Tarbada Koli. (Paragraph 16.19)
80. Reservation of seats/posts in educational institutions and services under the State for socially and educationally backward classes in proportion to their population and relaxation in the upper age limit for entry into the service. (Chapter—XVII)
81. Terms of reference nos. (iii) and (iv). (Paragraph 17.1)
82. The object of Articles 15(4) and 16(4) is to achieve equality by removing inequality between 'advanced classes' and the 'weaker sections of the society'. (Paragraph 17.2)
83. Economic interests of a group—as also social justice to it—are tied up with its place in the services under the State. (Paragraph 17.3)
84. In order to achieve the object of Article 38 of the Constitution benefit of reservation of seats/posts should be given to socially and educationally backward classes of citizens. (Paragraph 17.4)
85. In order to quicken the pace of educational as well as economic advancement of socially and educationally backward classes, it is absolutely necessary to reserve certain proportion of seats in educational institutions and of posts in services under the State. (Paragraph 17.5)
86. Reservation of posts should be made at all stages. (Paragraphs 17.5 and 17.9)
87. It would be just and fair to reserve certain number of seats/posts for socially and educationally backward classes in educational institutions and public services in proportion to their population in the same manner in which they are reserved for Scheduled Castes and Scheduled Tribes in proportion to their population. (Paragraphs 17.4, 17.5, 17.6 and 17.9)

88. Even though the population of socially and educationally backward classes comes to 35.16 per cent, only 28% of posts and seats can be reserved for them.
(Paragraph 17.6)

89. While giving the benefit of the above recommendations to socially and educationally backward classes identified by the Bakshi Commission the income limit of Rs. 10,000 per year should be prescribed.
(Paragraph 17.7)

90. Securing of certain percent of marks in the examination not to be a condition precedent for reservation of seats.
(Paragraphs 17.8 and 17.9)

91. Upper age limit for the purpose of recruitment of various categories of services should be raised by 5 years subject to the condition that, as provided in the Government of Gujarat, General Administration Department, Resolution No. PVS/1183/825-G-3, dated 22nd April, 1983 where maximum age limit for recruitment is 40 years or higher; age limit for socially and educationally backward classes should be increased by 3 years.
(Paragraph 17.9)

92. Reservation of posts should be made for socially and educationally backward classes in proportion to their population in the services under the State not only at the stage of initial appointment, but also at the stages of promotion, in the same manner in which the posts are reserved at various stages for Scheduled Castes and Scheduled Tribes in the State.
(Paragraph 17.9)

93. The Commission agrees with certain relevant recommendations of the Mandal Commission.
(Paragraph 17.10)

94. Percentage of reservation of posts in favour of physically handicapped persons to be taken into consideration, while fixing the percentage of reservation of posts in favour of socially and educationally backward classes.
(Paragraph 17.11)

95. Seats to be reserved for socially and educationally backward classes in all the categories of educational institutions in the State.
(Paragraph 17.12)

96. Position of Nomadic Tribes and De-notified Tribes in regard to the reservation of seats and posts.
(Paragraph 17.13)

97. Government of Gujarat, General Administration Department, Resolution No. PVS/1183/825/G-3, dated 22nd April, 1983, and other relevant orders if any, should be made applicable to socially and educationally backward classes.
(Paragraph 17.14)

98. Looking to the various types of ameliorative measures adopted by the Government for the uplift of socially and educationally backward classes, it is hardly necessary to make any further recommendation in that respect. It is needless to add that, the benefit of all the above adventitious aids and also of our recommendations will be given to socially and educationally backward classes identified by this Commission.
(Paragraph 18.2)

99. The Commission makes a few recommendations in regard to certain aspects of general importance.
(Paragraph 18.2)

100. We have noticed that, some of those belonging to socially and educationally backward classes have realised the importance of education to achieve progress in life, and that some students belonging to these classes at those places where schools are within their easy

reach have been able to take advantage thereof. We, therefore, suggest that, the Government should examine the above aspect in details and wherever necessary increase the number of schools and spread them all over the State, in order to enable the students residing even in remote areas to take the advantage of the facility of schools. What is stated above applies *mutatis mutandis* also to colleges and other educational institutions.

(Paragraph 18.2)

101. It is necessary to provide them with such education, technical knowledge and vocational training as may enable them to stand on their own legs for the purpose of finding out sources of maintenance for them and their families.

(Paragraph 18.3)

102. They should be provided with such type of technical education and vocational training as would enable them to start their own business or to engage themselves in the occupations where, their technical knowledge and training would stand them in good stead.

(Paragraph 18.3)

103. The number of technical institutions and the centres for vocational training may be increased and spread all over the State.

(Paragraph 18.3)

104. Suitable facilities for study should be provided to them in the schools for a few hours at night on the days on which schools are open and during day time on Sundays and holidays.

(Paragraph 18.4)

105. Students belonging to weaker sections of the society find it difficult to avail themselves of higher education or even of the education at lower levels because of non-availability of suitable accommodation at the places where the educational institutions are established.

(Paragraph 18.5)

106. Suitable hostel facilities may be provided to them as far as possible either free or on a moderate charge.

(Paragraph 18.5)

107. Proper housing facilities should be given to the above classes of people.

(Paragraph 18.6)

108. Till sufficient progress is made in the above direction, suitable steps should be taken to bring atleast the children belonging to the above classes in social contact with their more fortunate counterparts among the advanced classes, so that they can get rid of inferiority complex and derive other benefits of living in a better environment. One of the ways in which the above object can be achieved is to provide accommodation to the children belonging to socially and educationally backward classes alongwith the children of the advanced classes in one and the same hostel.

(Paragraph 18.6)

109. The Commission agrees with the recommendation of the Mandal Commission for central assistance.

(Paragraph 18.7)

110. The benefit of adventitious aids may be given to socially and educationally backward classes identified by this Commission, in the first instance, for a period of ten years.

(Paragraph 18.9)

CHAPTER—XX

ACKNOWLEDGEMENTS

We cannot conclude this report without expressing our thanks to whom they are due. The main requirement of the Commission was Law Reports and other books. Shri K. M. Satwani, Secretary to the Government, Legal Department spontaneously placed all the law reports and other books required by us at our disposal. Shri Dwijen Desai, Secretary, Gujarat Legislature Secretariat also lent us several books from the library of the Gujarat Legislative Assembly. Shri Vinodbhai Tripathi, Registrar, Gujarat Vidya-pith took personal interest in providing us with the required books some of which were not available elsewhere. We are, therefore, grateful to all of them, the librarians and other members of the staff of their libraries. We are also grateful to the Director of Census, the concerned departments and officers of the State for the cooperation extended by them. Our thanks are also due to the Collectors and Social Welfare Officers for making all necessary arrangements in connection with our sittings for recording evidence at various places in the State.

The work of the Secretariat of the Commission was well-organised. Shri J. S. Patel, Secretary to the Commission did his work in a sincere and efficient manner and placed before us the material required by us at various stages. He was ably assisted in the above work by Shri C. D. Parikh, Assistant Secretary to the Commission, Shri V. A. Patel, Section Officer and Shri V. L. Patel, Research Officer, S/Shri C. D. Parikh and Shri V. A. Patel who were in the Secretariat of the Commission right from the beginning did the spadework. The work of preparing profiles of castes/communities was handled by S/Shri C. D. Parikh, Assistant Secretary, Shri B. R. Maniar, Research Officer and Shri V. L. Patel, Research Officer, Shri V. A. Patel was present at each and every sitting of the Commission and carefully took down the depositions of almost all the witnesses whose evidence was recorded by the Commission.

Assistants and other members of the staff also did the work entrusted to them in an efficient manner and assisted the Secretary and other Officers. We feel happy to find that, even though the members of the staff of the Secretariat of the Commission were drawn from different departments in the State, they worked as a team and discharged their duty in a devoted manner. Shri J. B. Mantena, English Stenographer Gr. I was prompt in transcribing the material given to him and carefully typed the report. Two other Stenographers and the typists also rose to the occasion and put their shoulders to the wheel. We, therefore, place on record our appreciation of the splendid work done by all the members of the staff including Shri R. L. Chaudhari who very carefully drove the staff car throughout the strenuous tours in the State and Class IV servants.

Place :

Dated :

C. V. RANE,
Chairman

I. P. DESAI,
Member.

J. L. DHOLAKIA,
Member.

G. L. BHAGAT,
Member.
(Subject to my minute of
dissent)

A CONCURRING NOTE

—Dr. I. P. DESAI

I

1.1 This is a concurring note and not a note of dissent. I fully share the collective responsibility for the recommendations of the report. But I alone am responsible for what I say in the note. The idea of the composite concept of backwardness developed during the course of the discussions at the meetings of the Commission, though it can be traced to the two previous Commissions (Baxi and Mandal) and to the judicial pronouncements also. I am thankful to the member colleagues of the Commission for agreeing to my suggestion that I write a separate but concurrent note. I am particularly thankful to the Chairman of the Commission, Justice Mr. C. V. Rane who agreed to my suggestion without a moment's hesitation.

1.2 I was associated with the first Socially and Educationally Backward Class Commission, appointed by the Government of Gujarat in 1972, popularly known as Baxi Commission. I was a member of the Experts Committee appointed by the Baxi Commission. I was also one of the members of the Honorary Technical Area Consultants and incharge of the survey of five districts which was carried out by the Centre for Social Studies at Surat (then Centre for Regional Development Studies). Unfortunately, the second phase of the Survey could not be carried out due to the shortage of funds and time. That left me and some members of the Expert Committee with certain intellectual dissatisfaction, particularly when Baxi Commission made caste as the unit of identification for being included in the SEB Class. The Experts Committee can not be completely absolved of the decision of the Commission as it used our tabulation though as a secondary source of support. We would have had the opportunity of tabulating the data differently if the second phase of survey was carried out. But that was not to be.

1.3 My dissatisfaction with the position of Expert's Committee enhanced when the Mandal Commission said the survey had no pretention of being a piece of academic research and that it has been used as a rough and readymade tool for evolving a set of simple criteria for identifying a social and educational backwardness. Ultimately the Mandal Commission also ended up with the rough and readymade tool of caste as the unit of identifying the socially and educationally backward class.

1.4 As a member of the present Commission I toured 16 districts out of 19 of the Gujarat State with the Chairman of the Commission who toured 18 districts. From what we observed, heard and also discussed with Government officers and citizens we were convinced that a non-secular or a Hindu religious institution of caste was being used for secular ends by Hindus and non-Hindus alike. How come that the Muslims could find—main communities and—sub-communities among them, who claimed to be included in socially and educationally backward classes in addition to those so recognised by Baxi Commission. This inspite of fact that Islam is one of the non-Hindu religions which are totally egalitarian in their outlook. Muslims had to make efforts to find out castes while we are committed to the abolition of caste system.

1.5 The Hindus who are socially unequalitarian in theory and in practice but not so much and not in the same way in practice as in the past, expressed the prevailing confusion. They claimed that those who are known by one name all throughout the state were one caste, notwithstanding their regional differences, social differentiations among them, occupational and educational differences, and weakening of the practice of caste endogamy.

1.6 The cases for different main categories and sub-groups both among the Hindus and Muslims were presented by the educated and better off sections among them. Among the Hindus, in some cases they came with the sanction of their state or regional caste organisations. Some of them talked of their oppression by the higher castes, particularly those who followed the jajmani occupations from which they have deviated and those who follow them in urban areas are no longer governed by jajmani relations. They are either regular employees, piece

wage earners or casual wage workers. The jajmani relationship still prevails in rural areas, but its spread and practice both are uneven. When they were asked who were higher than they and who were lower than they, the response was not immediate and the respondents often scratched their heads. When they were specifically asked who did not take food from them and from whom they did not take food, again the immediate response was "where are such restrictions observed these days?" When asked with reference to specific caste the tendency was to say 'equal' and in some cases the sophisticated word 'Samkaksh' was used. The ritual hierarchy did not seem to dominate their consciousness. The Muslims never talked of oppression by higher groups among them though they admitted of differential behaviour based on secular status.

1.7 It is not that egalitarianism has come to govern the Hindu behaviour. What is important is that the traditional caste status of the intermediate and lower castes is not accepted by these castes and that they wanted to use their traditional status for secular gains by being considered backward. The Commission has pointed out that upto the year 1931, the last Census year for which castes are recorded, there were several castes applying for changing their names to higher or more respectable names. The trend now is to claim backwardness by claiming the same status as those who are already legally considered backward castes including scheduled castes and tribes. When they gave the indicators of their own backwardness they were all secular, such as bad economic conditions, lack of education and consequent lack of white collar employment and poor housing. We also were informed by a ritually higher and also once economically dominant caste how they were referred to in humiliating terms by the lower caste because of their deprived status due to political change and economic measures. The Brahman in Gujarat had never that dominant social position as in the other states of India. His position on ceremonial occasions was respected. Otherwise very often the poverty of a person was compared with that of Brahman. In one region he was referred to as the beggar of flour (Lot manga).

1.8 The tour in this way opened our eyes to a picture different from the conventional one. If caste was made the unit for identifying backwardness, we would be legitimising the caste system by state action as the British and the pre-British Indian rulers did, while it is definitely not what it was say even 40 years ago. This conviction is based on our observation and also personal knowledge. That led me to think about writing this concurring note. I am also benefitted by my discussions with the Chairman during the tour and I again thank him.

II

2.1 The main issue before the present Commission is whether caste should be taken as the identifiable unit for the purpose of inclusion of a group in the SEBC or not? Or, can we consider modifications in view of our own observations of facts and our thinking based on that knowledge? Further, should we think of modifications in view of the future developments, consistent with the view that we as a nation want to build up a society as envisaged in the parts III and IV, the fundamental rights and the directive principles of our Constitution? In our judgement these principles do aim at the society without the caste system. This view I hold in the face of another view that "castes are not likely to cease to be castes in the consciousness of people in the foreseeable future"

2.2. We must remember that even the task of modification is not easy. Much less easy is the rejection of the caste as the identifiable unit in view of the fact that the recommendations of the Baxi Commission, have been accepted and also implemented by the Government of Gujarat. Our task is made more difficult by the Mandal Commission appointed by the Government of India which has also considered caste as the unit of identification for the purpose of including them into SEBC. If, therefore, we have to suggest either rejection or even modification of the principles or the views of these two Commissions we must first understand them. The next question is if we do not accept caste what other alternative do we suggest.

2.3. We make the beginning with the consideration of the views and recommendations of Mandal Commission. The Mandal Commission was assisted by three bodies. The Panel of Experts led by Prof. M. N. Srinivas; (2) A Research Planning Team of Sociologists and (3) a sub-committee of Experts constituted by Technical Committee. The names of the persons in these bodies are well-known to the social science world in India and the Mandal Commission was fortunate in having such a galaxy of experts to assist them. Anyone examining their views and work done for the Mandal Commission will have to tread warily.

2.4. The Commission writes (para 11.5, page 50, Vol. I), "Experts" Panel agreed with the observation of Research Planning Team that the task before the Commission was, to lay down the criteria for identifying recognisable and persistent '*collectivities*' and '*not individuals*'. That has to be readily agreed to. But it specifies that, "In the Indian context such collectivities can be castes or other hereditary groups traditionally associated with specific occupations which are considered to be low and impure and with which educational backwardness and low income are found to be associated". In short, the view means that those groups which follow low and impure occupations are also educationally backward and have low income. This view need not be controverted. What can be controverted is the relevance of the concept of "impure" occupations. The concept itself is changing among the so called higher castes and it does not have the same vigour as in the past. Practically physical cleanliness is becoming more relevant. Also while the coexistence of low occupation, low income and low education need not be questioned, it need not be taken that they are functions of the caste hierarchy, particularly in view of the growing severance between caste and occupation.

2.5. The important point that the Team has made is that the socially and educationally backward classes refer not to 'individuals' but to 'collectivities' which are "socially recognisable and persistent" This view that backwardness refers to a class or a group or a collectivity is also accepted by the judiciary. It is practically the non-controversial view. However, what the Team says in the next para (2) of Appendix—XIII, pp. 99 of their report is not so non-controversial.

2.6 The Team says, "As a corollary to the foregoing it implies that, that type of social backwardness which is more relevant to the present inquiry pertains to *ascriptive status* and not achieved status". It is possible to quarrel with the terms, "ascriptive" and "achieved" but without doing that, it may be pointed out that two points arise in this connection: (1) What is the relationship between the "ascripted" and "achieved" status? This point is important in view of the Supreme Court Judgement that "a collectivity should be both

socially and educationally backward." If it is backward in one respect only it does not merit inclusion in the SEBC. The judiciary considers that the concept "Socially and Educationally Backward Class" is a composite concept. The second question that arises while considering the first, is does the status of a group once ascribed remains the same? Is there or was there a scope for change in the status within the system governed by ascriptive principles?

2.7. Both these points have not escaped the mind of the Research Team. As regards the first point they say, "The study team felt it necessary to consider the problem of relationship between social backwardness and educational backwardness. While social backwardness refers to ascriptive status, educational backwardness refers to achieved status. It is obvious that former *can change* over a length of time while *faster change* is possible in case of the latter. Hence while: determining the criteria of socially and educationally backward classes, social backwardness should be considered to be the *critical element* and educational backwardness to be the linked element, though not necessarily derived from the former" (Ibid. para 3).

2.8. They refer to the second point when they say, "Once the collectivities are identified in terms of the traditional framework, one is to examine what *changes* have taken place in their social and educational status under the *impact of the various forces in modern society*" (Ibid., para 4).

2.9. The current social and educational status of collectivities can be taken as coming under the impact of various forces in modern society. The Research Team therefore rightly says, "The problems of determination of current social and educational status of collectivities that *can be identified as backward on an examination* of early source materials can be considered both at conceptual and empirical and statistical levels" [Ibid., para 7 (a).] While dealing with the conceptual level they very rightly say, "It can be assumed that the factors and processes of *generation, persistence and change of backwardness would differ in different historical formations and social situations*. For instance, in the areas predominantly inhabited by the tribals ritual disability may not be an important criterion for determination of backwardness for the non-tribal minorities residing there. In their case, access to centres of political power may be a more important factor. Similar difference can be noticed in the enclaves of semi-feudal or capitalist economy and society" [Ibid., 11(a) p. 100].

2.10 In the item (b) of the same para (1) they point out another important element of their perspective, "significance of some of the prevailing attributes of social and educational backwardness would be very much different in areas where social mobility movements have taken place among various castes and communities, and traditional occupational groups, from the areas where no such movements have taken place."

2.11 The Research Team thus makes very significant contribution to the perspective about the long range trend and the future of developments for the purpose of "identifying the current social and educational status of a number of castes and communities and other collectivities (such as traditional occupational groups)." We note three elements in their contribution. (1) The type of society (semi-feudal or capitalist), (2) the role of the political power and (3) social mobility movements.

2.12 Unfortunately, when it came to brass tacks they slipped into ascribed and achieved status, and said that social backwardness refers to ascribed status and educational backwardness to achieved status and they considered social backwardness as critical element and educational backwardness to be linked though not derived element (*see* para 2.7 above).

2.13 To be fair to the Research Team one can imagine the pressure of time and shortage of money under which they must have been working when faced with designing the research for identifying the "socially and educationally backward classes" for the purpose of giving them a push in competition with the entrenched classes. They were correct in taking the caste or ethnic groups and "occupation" as the *position of the vantage* to begin with for the purpose of observation. But that can be done only making the list of all castes and then by examining the case of each caste. It may be that a sampling technique might have to be applied. However, in the survey the village was made by the Research Team, the unit for the observation of caste. A caste is a horizontal segmental division of society spread over a district or a region or the whole state and also outside it. In the village a section of it exists largely

in vertical relationship with other castes. The community aspect of caste was thus missed in the survey. We are not taking up the old controversy, whether caste or the village is the proper unit of observation and analysis for the study of Indian society. What we are saying is that if caste is to be the unit synonymous with "socially and educationally backward classes," the selection ought to be made from the list of all castes. The survey of a village gives us the vertical relationship between castes in different villages in a district in a region. What is true of a caste in its vertical relationships in a village may not be true of the caste as a horizontal segmental division of society spread over different parts of a regions or the whole state, particularly the urban areas. On the face of it that was an impossible task for the whole of India, and yet, the Mandal Commission made the list in terms of caste and made a recommendations for the whole of India. It is the question for the Research Team and the Experts' Panel to think how much their decision to make the social backwardness (which was made synonymous with caste backwardness, that is the traditional status of caste) as the critical element in determining the criteria of socially and educationally backward classes (See para 2.7 above), was instrumental in suggesting to the Commission in making the position to begin with also the position to end with without sufficient knowledge of all castes selected for inclusion in the list of SEBC and also not selected for such inclusion.

2.14. The next task was to see the relationship between the ascribed status and achieved status as the Research Team puts it and say how they affected each other and decide to what extent and in what way caste or social backwardness was the critical element. Again, that can be done only by examining the case of each caste horizontally.

2.15. When faced with the problem that in India there are other religious communities than Hindus, the Mandal Commission took an easy course. It makes the following statement. "But despite the prevalence of caste system among the non-Hindu communities in varying degrees, the fact of the matter is that all these religions are totally egalitarian in their outlook. They proclaim absolute equality of their co-religionists and social differentiation based on caste is anathema to them. In view of this, caste cannot be made the basis for identifying the socially and educationally backward classes among the non-Hindu communities. We therefore have to evolve some other rough and ready criteria for identifying non-Hindu OBC's" (para 12.16, p. 55, Chapter XII).

2.16. What are the rough and readymade criteria ? "(1) All untouchables converted to any non-Hindu religion, and (2) such occupational communities which are known by the name of their traditional hereditary occupation and whose Hindu counterparts have been included in the list of Hindu OBCs" (examples : Dhobi, Teli, Dheemmar, Nai, Gujar, Kumbhar, Lohar, Darji, Badhi, etc.). Christians do not exist for the Mandal Commission.

2.17. Except for the fact of conversion the validity of the other assumptions and implications are still to be proved. On the face of it, it is not true that only the untouchables and not other Hindus of higher castes had not embraced Islam or Christianity. Anyone who has even a nodding acquaintance with Gujarat communities will say that there is a whole community known as *Molesalam* Garasias who were Hindu Rajputs. The case of Brahman converts to Christianity in the south is equally well known. Mandal Commission probably would argue that the Rajputs were higher caste so they would automatically have higher status among the Muslims. But there is a whole community of Sunni Vohra in Bharuch, Surat and Valsad district. It is not known from which Hindu caste they were converted. What position would they have among the Muslims ? Instead of questioning the validity of these assumptions the Mandal Commission took the decisions based on them. Firstly, the criteria presumed that all the members of those communities are converts therefore they have the elements of caste within them. Secondly, it presumed that their status in their respective religious communities and outside is determined by their status in the community from which they were converted generations ago as if conversion to Islam made no difference to them. It is cruel to remind someone of his ancestry for the purpose of getting the benefits under SEBC. Baxi Commission did a similar thing when they recommended benefits for those Christians who were converted from former untouchable castes.

2.18 Further, these criteria are to be applied on the basis of the occupations of the forefathers when they were Hindus. Does it or does not matter if they have given them up now ? It also does not matter if there are Muslim groups which are not related with any occupation. For example, the Sheikh in Gujarat is an omnibus surname not related to any

occupation and it covers also those who are not converts. Similarly, Pathans and Arabs are the groups not related with any particular occupation except probably as mercenary soldiers and as administrators or also businessmen as was the case with some Arabs.

2.19 These rough and ready criteria for non-Hindus (by which the Mandal Commission seem to mean Muslims only) do not stand the test of facts or of logic. The caste being made the basic unit of identification of backwardness "the critical element" of the Research Team—the Commission does not take into consideration its own statement in para 2.15 'above that "the non-Hindu religions are totally egalitarian in their outlook." This egalitarian outlook is to be spoiled by particularistic considerations of caste among them instead of taking egalitarianism from them to remove the caste particularism of the Hindus. The mind of the Commission is dominated by the system of one religion only—namely Hindu religion and by the castes in it. They are clinging too much to the past and not at all looking into the future as it is unfolding.

2.20 It is here that the perspective of the Research Team and Experts' Panel could have been brought to bear upon. Of course, the Team was not a party to the recommendations made by the Commission and in that sense it has no responsibility for the Commission's recommendations. However, the Mandal Commission does not seem to have given any thought to it. The merit of the perspective is that it enables us to look to the future and see the present situation as it is changing. What difference would the perspective of the Research Team would make ?

2.21 We have identified three elements in the Perspective : (1) The type of society; (2) relation of caste with political power and (3) social mobility movements (see para 2.11 above). We begin with the last element first. It is a well acknowledged fact that even before the British rule it was possible for a caste to change the position without changing the caste system. No less a person than the leader of Experts' Panel, Prof. M. N. Srinivas says, "Mobility was possible, though not easy in the traditional system and that it did actually occur occasionally". He further says, "We may recall, however, that while the traditional system allowed individual castes to move up or down, the system itself remained unaltered. In other words, there was only political change, not structural change." [*Social Change in Modern India*, (1966), p. 93].

2.22 Explaining the sources of mobility Srinivas writes, "One of the sources of mobility lay in system's political fluidity. Any caste that achieved political power at the local level could advance a claim to be Kshatriyas. Second, the king in traditional India had the power to promote as well as to demote castes, and he occasionally exercised this power to bestow a favour on a caste or punish it. It is presumed that the king consulted the Brahmins learned in the law before he promoted or demoted a caste, but this meant only that the power exercised had to be subject to certain conditions. Third, the availability in pre-British India, of land with some effort, could be brought under the plough enabled the families that were dissatisfied with local conditions to move out into new areas" (Ibid. p. 93). Thus the political authority was effective even in pre-British India in changing the positions of castes though not the caste system.

2.23 While accepting the role of political authority, the nature of that authority in pre-British, British and post-Independence India needs to be understood. The British introduced the modern or bourgeois national state in India and they continued the practice of exercising the political authority of the Rajas of the pre-capitalist society. From 1901 (may be 1891) at every Census the Commissioner was approached with the request by some castes to recognise the higher position for them. They did consider these requests and gave their decisions also. Without going into the reasons, it can be said as a point of fact that bourgeois state did not perform its historical function of abolishing the feudal elements as it did in other western societies. What is relevant here is the continued role of political authority even in the British period. In spite of its colonial character and the political advantages that the rulers derived from the non-abolition of feudal elements, the rise of what is called the Backward class movement was possible in a state of that nature and not in pre-capitalist state. Srinivas discusses some aspects of some movements in the book referred to and there are also subsequent studies available. The important thing for us to note is that they were social movements though not without its political and economic linkages. Moreover, they were affecting the structure of the caste system itself. It is difficult to say how much egalitarian element there was in these

movements. Yet, the difference between the mobility movements in the pre-British, British and in Independent India needs to be noted with reference to the nature of the state, along with the difference in the type of society. It is not possible to enter into such discussion here. But it needs to be stressed that the directive principles of the constitution of India envisaged a society in which there will be no discrimination on the basis of religion and caste. The Constitution (Parts III and IV) irrespective of its bourgeois or socialist character, definitely enshrines the element of egalitarianism in it unlike any other state or political authority in the past.

2.24 Consistently with this element in the constitution what is called the policy of protective discrimination was introduced by the state in Independent India. Sometimes it is called discrimination in reverse. Both these terms are not in keeping with the spirit of the constitution and emerging new society. As a matter of fact the germs of policy were sown during the British rule. But the policy of Independent India does not mean either protection or discrimination. It means positive measures in the direction of society envisaged by the directive principles of the constitution. The discrimination, if we may say so has to be seen in the context of the in-built discrimination in favour of some castes which in the emerging new type of society also are associated with economic and political power. If those unfavourably placed in these respects are supported with a view to enable them to compete with those favourably placed and if it is to be called protective discrimination, it is discrimination in favour of the principles and the spirit of the constitution. It is therefore justifiable in view of the capitalist society that is emerging, if it has not already emerged. The subsidies to the farmers, and tax concessions, soft loans and other considerations made in favour of growing industries are not questioned as protective discrimination in favour of these classes which benefit by them and clamour for more. How are the reservations and other aids and facilities for the socially suppressed and oppressed classes with the view to help them come up and effectively participate in the new society, to be called protective and discriminatory measures ?

2.25 But Mandal Commission does not take such a stand as it did not follow up the considerations involved in the conceptual perspective suggested by the Research Team and the Experts' Panel. Whether the Research Team itself would have brought to bear its conceptual perspective on its research design and its scheme of tabulation is a relevant and important question. But this is not the place to raise it. Also we need not raise it here, because the Mandal Commission did not set much store by the results of the research. In what sense then castes and traditional occupational groups are "recognisable" and "persistent" collectivities, in view of what is said in the foregoing paragraphs ?

2.26 The Research Team writes in its report, "While it is recognised that a large number of people belonging to different castes do not adhere to their traditional occupation or occupations, it is assumed that in most cases the bulk of the population engaged in traditional occupations embodied in the pre-industrial technological nexus still belongs to the castes or the ethnic groups which have been associated with such occupations for generations" (Appendix-XII, para 6, p. 99). They correctly recognise that in the case of "large number of people" the relationship between caste and occupations is broken. But they also 'assume' that in the case of "bulk of the population" the relationship is not broken. Leaving aside the quarrel over the distinction between 'large number' and 'bulk of the population', we appreciate the fair-mindedness of the Research Team in giving equal weight to their facts that the relationship between caste and occupations is broken and that it is also not broken.

2.27 However, it can be asked how far they are right in assuming that some occupations in pre-industrial and industrial conditions are the same, even if carried on by the same caste or the same individuals of the caste ? Take the case of occupational activity of hair-cutting. No group other than a particular caste whose traditional occupation it was would like to take to it and it may be also true that the personnel in that occupation comes from the same caste with which hair-cutting was associated. It may also be true that in many cities and even small towns the hair-cutting shops are also owned by the members of that caste. The case of this caste comes under the 'bulk of the population' associated with traditional occupation. But is there no difference between the barbers employed as salaried workers or daily wage earners or as piece-rate workers and the barber under jajmani system ? Is the relationship between the man who cuts the hair in the shop and the man whose hair he cuts the same as it was in the past ? Or, in some villages even today ? In the industrial or industrialising society the individual, though he performs the same occupational activity as in pre-industrial society is a different person. He is an employee. His first responsibility

is towards his activity and its performance. His immediate relationship is with the customer whom he does not know. His next relationship may be with his supervisor, and his final relationship is with his employer whom he might not have been as in the case of large scale industrial unit. Thus even when the relationship between caste and "occupation" is not broken the relationship between the performer of an occupational activity and the man for whom he performs the activity is not the same in India today as in the past, say 50 years ago. Today it is a contractual relationship. That is the dominant relationship associated with the new emerging type of society in which he has the right to get the contract changed and the right to refuse to do the work if the contract is not changed. The point is that the Research Team while assuming the traditional relationship between caste and occupation in contemporary India did not make the distinction between occupational activity and occupational relationship. The latter is important for distinguishing the types of society which the Research Team mentions. The type of society towards which India is moving is contract based and not caste status based.

2.28. Occupational activity is linked to technology and occupational relationship is primarily related to the type of society. What difference will such a distinction make to the design of empirical research we do not discuss here. But, it does make the difference in the interpretation of facts as we have shown in the above instance of hair-cutting. What we have seen in that instance is that, though the occupational activity remains the same the person engaged in the activity is a new person. He is barber (hair-cutter) by occupation but not by caste. His occupational status in new emerging society can be characterised as contractual as distinguished from caste status or ascribed status. The ascribed status was determined by birth which was determined by his deeds in the previous birth. The new persons is a person who has not merely duties but has also rights including the right to refuse to do his duties which may be inconsistent with his rights both as a performer of an occupational duty and as a citizen. Our constitution recognises such a citizen.

2.29. The recognition of such a person implies that he has a larger space to move about in his choice of occupation, life partner, religion, etc. A collectivity the majority of whose members do not have the ways and means to move that way remains backward in comparison with those who have those ways and means.

2.30. The factors that come in the way of such members are lack of educational opportunity and/or of the mobility to take advantage of the opportunity either because the facilities are unevenly distributed or even if they exist the individual is not able to take advantage of it, due to the disabilities of caste or sex or of lack of economic wherewithal. It is therefore necessary to expand the facilities and economic abilities to enable these people take advantage of them. Caste as an ascriptive category plays but very little part. The aspiration of men and women of all castes and religions have moved up. It is general development of Indian society as a whole which is envisaged in the constitutional directives. Therefore identification of collectivities in terms of these educational and economic disabilities of the groups which are easily recognisable is in keeping with future Indian society. The question therefore is that of finding such recognisable groups. Unfortunately all commissions have done that in terms of castes, because their minds were too much possessed by caste. They thought that social and educational backwardness is the function of the caste system even today. There is such backwardness also in societies which do not have the caste system.

When I say that their minds are possessed by caste I am not passing a judgment on individuals. If we look to the reports of the commissions and committees appointed by different states and the political conditions and situation prevailing then the thinking and attitudes of the commissions can be partly understood. The pressures of expectations by different collectivities also play their part. I do not think it wise to go into the terms of reference of different committees and commissions appointed in the country, though I think such a study would be worth an M. Phil or M. Litt. degree of an University.

2.31. The broad indicators that follow from the foregoing discussion are the occupational relationship and the occupational activity to earn the livelihood. The conditions under which the activity is carried on are inseparably connected with it as also the economic and other rewards of such activities. These broad indicators make a composite whole and they are applicable to any activity and everywhere. They can be taken as the differentia for the types of society. However for observational and analytical purposes the classification of the

vities is necessary. They may be classified as agricultural and non-agricultural activity rural and urban areas respectively. It may be mentioned here that a neat definition of rural and urban is difficult to arrive at. But broadly the rural area is characterised primarily by activities pertaining to the production of commodities from land. Man's social relationship with agricultural land can be in terms of ownership, tenancy with its various forms and in terms of putting in labour without ownership or tenancy forms. We have thus broadly two classes—the owners of land and non-owners of land. The latter form a class of agricultural labourers. These classes would cover the huge proportion of the population of rural area.

2.32. The urban area is characterised by non-agricultural activities to earn the livelihood by the huge proportion of the population of urban areas. The single non-agricultural activity is the industrial activity. Again this is divisible in terms of owners of means of production of manufactured goods and those who do not own them or even the goods produced by them. But another characteristic of urban area is the variety of activities other than those directly connected with either agriculture or manufacture. These have to be identified and taken note of. However, all these activities rural as well as urban can be observed in terms of the common characteristic namely, the occupational relationship and the other indicators mentioned at the beginning of the para 2.31.

2.33. Coming to the specificities of rural and urban situation it must be admitted that the urban situation is much more complex than the rural. To deal with the urban situation, it is common to view it in terms of organised industrial sector and unorganised or, informal sector. It is the latter which presents formidable problems of classification in terms of occupational relationship. The relationship is impersonal and also contractual if and when a man gets employment. His activity is neither constant nor continuous. He may be at one type of activity today and at another next day. The wages also vary. They are governed by day-to-day, week to week or month to month market conditions. One thing that is definite about it, is that the labour in this sector is highly unprotected. It eludes definition. However both Gujarat Government and Government of India have tried to identify some classes of activity and the workers engaged in them. We can't do better than taking them as guidelines, as they are implemented also. However complex the urban situation may be this class of unprotected labour is too large to be ignored on the ground of lack of homogeneity. One thing that is common to them all is that they live by selling their labour power as any other worker does in organised sector. The difference is that they are unprotected and they are in or outside the unorganised sector.

2.34. Another class which is identifiable in terms of skill is that of those who come from rural areas where they were doing their occupational activity as village artisans. Some of them were governed by jajmani relationship. In the urban area they become employees performing the same activities but again as unprotected labour. But caste becomes irrelevant without its guarantee of some returns under jajmani system. The usual way of seeing the association or disassociation with and from caste or "ethnic groups" in the case of "large number of persons" or "the bulk of the population" is neither enlightening nor productive of results which may be useful as guide to action. As we have said earlier that they are carpenters or blacksmiths or tailors not because of their caste but because of their skill and muscle power which they sell in the market. It is common at least in district towns that they gather at one place from where they are taken by those who need them. Some of these artisans have fixed employers also. It can be said that this informal sector in urban areas is the breeding ground of socially and educationally backward classes. Caste or religion is irrelevant here.

2.35. The question before us, i. e., either as researchers or experts or as any commission (Baxi, Mandal or Rane) appointed to identify 'Socially and Educationally Backward classes' is, to what extent and in what way the position of an individual is recognised in theory and practice in terms of the citizen as envisaged in the constitution and the law based on it. What are the impediments coming in the way of the realisation of the person or of citizenship in terms of the new society as envisaged by our constitution? Our view is that recommending the measure that encourage the recognition and development of the new person in his occupational relationship as understood above will be consistent with the perspective of this note and with the existing reality and future society. The measures should aim at removing the impediments or disabilities in the realisation of such a person and they should positively encourage such realisation.

2.36. Recognition of caste as the unit for inclusion or exclusion in the SEBC also goes against the Backward Class movements which are to be understood as a refusal to accept or

as protests against the caste status ascribed to some groups in the traditional hierarchy. Some of such movements, though may not be all, indicate also the way to assert "equality". It would be the negation of this consciousness of equality which is in keeping with the spirit of the constitution and new emerging society embodied in the directive principles if caste is recognised as the unit equivalent to socially and educationally backward class. It would mean legitimising caste by state action and perpetuating the caste system which is inconsistent with the ideal of the constitution. The view of the present commission affirms that ideal.

2.37 Apart from the perspective and spirit of the constitution, there is the question of fact. In what sense do "the caste and ethnic groups" exist as "recognisable and persistent collectivities?" The pertinent question is, are and were these collectivities called castes and groups the same or homogeneous everywhere in different regions of the state or everywhere in the state horizontally? Is each such horizontal segment vertically homogeneous economically, occupationally and educationally or even status-wise in the same region and the state? If yes, with reference to which elements? Are these elements persistent? These are the questions of fact, apart from the perspective with which we concerned ourselves up till now. We deal with these questions next.

2.38 There are two features of the caste system which we consider central to it (1) The segmental division of society as Ghurye calls it. (2) The arrangement of these divisions into high and low, or, the hierarchical feature of the caste system. The hierarchy in practice has never been so neat as it is propounded in books or at the level of abstraction. There have always been certain areas which may be called "disputed areas" or certain border castes whose positions have never been neat in terms of high and low status. Even with regard to occupation there is no uniformity in the different horizontal segments in different parts of the state. This is true also with regard to restrictions on food and marriage with reference to which the boundaries of the segments were defined and hierarchy was expressed and generally delineated in books. These two elements have been the widely investigated areas particularly for propounding theory of pollution or the concepts of purity and impurity as the basis of hierarchy. It is with reference to these two elements that we consider the question, are collectivities called castes "recognisable and persistent" observable collectivities?

2.39 The first element of the caste system namely hierarchy is according to one view the principle which is ingrained in Hindu religion, culture or society so much that you can call a Hindu as homo-hierarchical. It is therefore very difficult to imagine the Hindu society without hierarchy. This view is contested on both theoretical and empirical grounds. In our view the main point is that if we agree that hierarchy is an organising principle and not a system of stratification, then empirical evidence will not be the conclusive proof if not irrelevant. Probably, the demonstration of effectiveness of another principle in the working of the caste system can create difficulties for the principle of hierarchy. That principle is the principle of difference or divisiveness underlying the view of caste as segmental division of society. In fact, this can be held out as the basic feature. Before arranging the units into hierarchical order you must have the units. The number of such divisions is very large at least in Gujarat. In fact it was the working of this principle which was and is considered as coming in the way of India becoming a nation. The principle of divisiveness implies being different and separate. Is the principle of pollution and purity the basis of this division? Or, is it mere gregariousness which is helpful in adjusting to the new urban secular or any new situation e. g. migration? In the contemporary India latter is the case. What is important to note is that after being separate they do not organise on the principle of pollution and purity because they cannot organise themselves into high and low on that basis of caste any longer. That strikes at the hierarchical principle of the caste system. Our view is that caste system is giving place to the system of secular stratification. The claim of a caste group or groups on the ground that once they were recognised as high is not entertained any longer by those who were once below. That the former higher castes have to resort to violence to make the former low caste accept their former low status is the evidence in favour of the above view. This is also expressed in the Backward Class movements in various forms. Here it needs to be pointed out that during the process of breaking down of caste hierarchy, the principle of divisiveness has not stopped working. There is the tendency among the caste groups which consider themselves as high to come together at least covertly as also among the caste groups which are considered low. This is visible in several areas of life, social, economic, political and even religious. The caste rivalries and conflicts that took place in Gujarat and in other parts of the country during the 'seventies and strength to that view and cannot be dismissed outright.'

2.40 The process of uniting of higher castes and of lower castes damages both the traditional hierarchy and divisiveness. Among the higher castes in economic and political areas the processes of cooperation and competition or rivalry are working but not of conflict. Even in social areas in the important field of marriage endogamy there is laxity in practice but more than that there is tolerance in attitudes towards marriages between higher groups at least e.g. Brahman, Vania and Patidar, I do not have sufficient information to say that the same is true of the castes below them in traditional hierarchy. Amongst them the groups which have an advanced and advancing sections the situation is slightly different. For example, there are several endogamous groups in one artisans caste. The largest number of marriages are within the traditional endogamous groups. But there are inter-marriages between the advanced sections of these groups or sub-castes. The number is bound to be small because the advanced section itself is small and advanced sections in different castes are not equally advanced in all respects. These sections become the reference sections for the sections below in different castes and they also develop an attitude of tolerance towards these marriages which are understood by them and also probably by enthusiastic social reformers as inter-caste marriages. However, the point is that at the level of ideas and attitudes, one important element of divisiveness namely, endogamy, the divisiveness is weakening. The advanced sections are interested in that weakening. But the process of weakening is not a straight line process. Those entering into inter-marriage with sub-castes gain a position in the main caste category. At the same time their prestige is enhanced in their respective sub-groups because of their achievements in secular areas. They do not lose the support of their sub-groups which they use in asserting their interests in wider caste category or even outside it. The situation is quite different from what it was 25 years ago. Pocock used to say in private conversation that in inter-caste marriages, the individual did not reject the caste, Caste rejected him. In the contemporary time not only caste does not reject him but accepts him. The individuals of the sub-caste or wider castes uses him for their individual secular interests. The growth of these secular interests feeds the interest conscious unities which operate in economic, political and social fields. Let it not be understood that caste endogamy has ceased to exist. It will continue for quite some time. But its sanctions are not and will not be group sanction of a caste. It will largely be due to individual circumstances and conviction of the group will simply acquiesce in it. Thus the caste divisiveness is giving place to divisiveness on secular basis.

The traditional endogamy had two types of sanctions formal and informal. The formal sanctions were enforced by caste panchayats and the informal sanctions were enforced by gossip. The role of caste panchayats in the lower groups need to be studied. In my opinion both these are weakening fast. The neighbourhood is changing in terms of its composition and in terms of quality even when the composition has not changed much.

2.41 What is important is that the weakening of the divisiveness in all caste groups high or low is due to the change in the basis of their unity to such secular attributes as wealth, income, education and occupation etc. The interest conscious unities formed on this basis have driven a wedge into the unity based on caste consciousness. It may be repeated that the traditional relationship between occupation and caste has broken down. That relationship was another element of divisiveness and hierarchy both. It may be further pointed out here that association was more close in respect of certain castes and certain occupations only. It was strong in respect of artisan and servicing castes. However, weak and limited that occupational association was, today evaluation of occupation is also more on secular grounds, both at the individual and group levels. Similarly, the restriction on commensality or taking of food and water from one another has broken down not merely within the higher and lower divisions but also between them. The embarrassment in the higher secular strata of any caste might be whether a manual labour, mechanic, driver or peon will sit along with the members of inter-caste group on the same dining-table along with them. The basis of status distinction is secular. Those who are arguing that the caste as a system is not weakened or is getting stronger are ignoring the growth of the rival secular basis of differentiation and stratification which are the products of contemporary economic and political developments along with corresponding developments in social norms and in standards of behaviour and in aspirations. When these developments are admitted their strength or effectiveness is questioned. The strength is questioned because these developments are not seen in association with economic and political developments. On the contrary, it is very common to argue that caste, religion, language and other primordial relationship are vitiating or even channelising the economic, political and other developments in their direction. We do not subscribe to that view. Our position as stated above is that the two central principles of caste system have strong rivals in the new secular

basis of differentiation and stratification. The old basis of unity, namely, caste consciousness is weakening in the face of interest conscious unities.

2.42 The processes of division on the new basis works within each group such as caste, religious or linguistic and they weaken the solidarity of each group. It could be pointed out that actually along with this problem of weakening, there is the phenomenon of strengthening the old basis through all Gujarat or all-India association of castes, linguistic groups and religious groups and the agitations and movements based on what are called primordial principles. In the first place such associations, agitations and movements need to be studied from the point of view stated above. Our observation is that while the associations and representations were claimed to have been made on behalf of the whole caste, in every region we were told that they represent and have knowledge about sub-caste or regional group to which they belong. This phenomenon of all Gujarat or whole caste or language or even religious association needs to be studied. Confining to the caste associations it is obvious that they do not have the punitive sanctions. Their positive sanctions are in terms of baits which are called promotion of welfare, education etc. These are completely secular and they are taken in that spirit by the beneficiaries. The managers are selected or appointed. They do not hold office due to their hereditary traditional status. Actually what remains of the whole is only a label, but not necessarily ineffective on what account.

2.43 The areas in which the 'caste' is consciously used for its effectiveness are much wider than those primordial areas. They are political and economic and they may be state-wide or nationwide. The upper strata of all these primordial groups who indulge in these political and economic games use the primordial unities and invests in them to strengthen their wider political and economic interests. They have been quite successful uptill now. They have been supported by a section of the intelligentsia by spreading the illusion about the everlasting and unchanging nature of the primordial unities and thus spreading pessimism among the people. But anyone with the perspective of change and with the eye towards the future emergent society can easily see that very largeness of the scale of political and economic activities and the width of their physical spread makes erosion into the interests associated with primordial unities and consequently such unities themselves. Each creates its opposition to the other which has to be carried forward by those interested in transforming the society. The state which is based on the wider political secular interests and which has accepted the future society without caste cannot legitimise caste by accepting it as the unit for identifying the socially and educationally backward class.

III

3.1 If we abjure caste as an unit for identifying SEBC our task is to suggest the alternative. Certain broad indications are implicit in the foregoing critique of caste. They are (1) the unit must be completely secular. (2) It must be in consonance with the new society that has emerged and is developing. (3) The new society is based on the recognition of the individual as a citizen and his right and obligations are defined by secular political authority. (4) The class to which an individual belongs can be identified by the activity he engages in for earning the livelihood and the social relations in which he enters are governed by contract into which he enters of his free-will and which can also be annulled by the will of either party. (5) The backwardness of the class is to be judged by the existence or non-existence of various impediments in exercising the choice in selecting the activity for earning the livelihood and in entering into the contract. The impediments characterise the backwardness of class. They have a composite effect.

3.2 The social and educational backwardness are not to be taken in the discrete sense or in the cause and effect sense. These two exist together. An individual who may belong to a higher group in the caste hierarchy can be educationally backward and also socially backward as indicated by his occupation and income etc. Similarly, an individual belonging to the middle or low echelon in the caste hierarchy may not belong to the socially and educationally backward class because of his caste. In the secular status system he may not be backward.

3.3 Thus our effort should be to locate the recognisable section of the population which is delimited in secular terms. It does not matter if the limits change. Either a section may go out or a section may be included as the case may be. The collectivity need not be persistent in terms of the limits or in terms of the attributes in a changing society. Their recognisability will be in secular terms such as occupation, education and wealth.

3.4 In fact if the conditions of the society as a whole change in such a manner that the obstructions in the way of a citizen becomes less and less effective, there may be no need for having the special class for special attention. As a matter of fact that is what we aim at.

3.5 This positive view about the concept of the socially and educationally backward class we arrive at after negating caste as the unit of identification of such a class. In clear terms we negated the view that socially and educationally backward class is synonymous with socially and educationally backward caste as the Baxi and Mandal Commissions have believed. We do not view social and educational backwardness in the disparate sense. It is a composite concept in which there may not be one to one correlation between different characteristics of the population. It is enough according to us if there is general co-existence of low status activity of earning the livelihood, low level of education, low level of income and low status in the traditional hierarchy. We could perceive this as the result of our interaction with various people during our tour. Our perception was supported subsequently by the findings of a survey done independently of the Commission. We turn to those observations next.

3.6 The total number of groups that made written representation to the present commission was 244. Out of these there were 32 communities that were already recognised as SEBC by the Baxi Commission. But they applied for the removal of difficulties due to some ambiguities in the names of the communities as they were understood and as they were printed. In all thus there were 212 groups which were applying for the first time and in addition to the 155 groups that had applied to the Baxi Commission.

3.7 I would like to request everyone not to draw any inference or pass any judgement as to the number and nature of identifiable and persistent groups or castes. What I could perceive was that there were two trends in the self-perception of those groups. One trend was that they wanted to see themselves as part of the larger whole. In the case of the Hindu communities the larger whole meant wider caste category such as Rajput, Koli, Baria or Kumbhar, or Darji in Gujarat and sometimes their counterparts in other states also. At the same time, there was also the consciousness of their existence within a social or geographical

limits. Among the Muslims, too there was similar consciousness so far as narrower limits were concerned. But so far as wider limits were concerned they were conscious of the wider categories such as Khatri, Memon, etc. and also of religious category like Islam. So far as commensality was concerned there was no doubt or hesitation in saying that they could eat with any one. But so far as marriage was concerned they said that as Muslims they could marry anyone from the Muslim communities. But when asked what was the actual practice they said that largely the marriages had both social and geographical limits. Among the Hindus these limits were recognised but it was also added that now a days these limits are also crossed and that restrictions on inter-dining are ineffective. The only inference that I can draw is that there is a stage of confusion and that it would be misleading to identify, socially and educationally backward groups on the conventional lines.

3.8 The numbers by themselves do not indicate anything except the consciousness to make good through secular measures either among the Hindus, Muslims or Christians. The emphasis on the means differed according to the educational, occupational and public life status of those who presented the cases. The educated and better off sections had their eye on reservations in educational institutions and services. The rest had their eye on getting the work, earnings from work and living conditions, while there was a general feeling among all classes to take whatever they got by being recognised as socially and educationally backward or even worse. The fact that among both the Hindus and Muslims the communities which would not like to be considered socially backward also presented their cases for being considered as SEBC. In one case they said in so many words that uptill now they thought that it would be inconsistent with their traditional status to publicly apply for being considered as SEBC. But they found that if they did not they would be nowhere. They said that they were perceived as a landowning group, but they would not mind if the wages of agricultural labourers were raised because that money would go to the people of their own community. The tendency to take whatever one got from whatever sources is indicative of general malady irrespective of caste or religion. The problem is to search for and identify the malady in the directions as shown by the developing capitalist society in India and in Gujarat or in any other state as a part of the Indian society. The recommendations of the present commission are in line with that perception of the problem. But I would like to emphasise that our judgements are based on the observations in Gujarat. The conditions and situations may be different in other states.

3.9 When these groups were asked whether their population was villages or in urban areas nearly sixty to sixty five per cent of them said that the majority of their population lived in rural areas. What they meant by majority varied from 65-70 to 90 per cent.

3.10 There are about 30-40 of the communities who said that larger proportion of their population lived in urban areas. By majority they meant generally 60 per cent in urban areas and 40 per cent in rural areas. Of those communities which reported that majority of their population lived in urban areas nearly 50 per cent were the Muslim communities.

3.11 Barring some exceptional cases this means that most of the rural communities had some portion of them living in urban areas. Purely rural communities were not the rule. But there were purely urban communities which had no counterpart in the rural areas. Such communities however could be counted on finger-tips and they were small too. As purely rural community was not the rule, purely urban community was also not the rule.

3.12 While it was possible to divide the communities into purely urban and purely rural in the 19th century, or may be even in early 20th century, today it will be difficult to find a community which is purely rural though there are communities which are purely urban, in terms of residence. The division then and now could largely be observed in terms of occupational activity. Some activities for earning the livelihood were related to urban life style only. Those who were engaged in such activities were in the town or city primarily because they could perform these activities as they were needed there irrespective of their caste or religion. Religion or caste was incidental to the activities. The activities did not follow the caste in such cases. However, structurally the situation was that the society was stagnant and there were not many varieties of occupations for the people to choose. Those who followed their respective occupations were protected by their guilds which were necessary due to the limitation of occupational choice. In this way occupations did follow the caste and the religious sanction strengthened the association between caste and occupation. The nature and extent of this closed shop occupations is not known.

Today the number and types of activities have grown so much and the association between caste or community and occupational activities has been served to such an extent that the division of castes or religious communities into rural and urban is not likely to be either enlightening or fruitful. This does not mean that division of population in terms of rural and urban is not meaningful. We shall have to search for the meaning. One of the directions of that search could be still in terms of occupational activity. The rural area can be characterised as that in which a very large majority of population is directly and indirectly dependent on agriculture wholly or partly, either as owners of land, hirers of land, or as labourers on land. The activities of the artisans and of the agriculturists were mutually supportive, as expressed in the jajmani relationship. The activity of the moneylender and of the village shopkeeper were also mutually supportive. But the relationships were not of jajmani type. They were different. That suggests that for the purpose of describing society, activities by themselves are not so meaningful, as the social relationships underlying them.

3.13 It is necessary to emphasise that the referent is the area and not the village or the caste or religious community. It is the area in which agriculture is the centre of occupational activity or of the means of earning one's livelihood. The style of agricultural operations and also of living of the agriculturists is changing fast and the divisions or classification of population in a village or in the whole area will bear closer relation to ownership of land, i. e., those own the land and those who do not but are dependent on those who own land as agricultural workers. Each of these classes will have different life style. The activities of other classes such as of artisans, of moneylender or shopkeeper will have to be seen in relation to these classes. Further, these activities have not to be seen only as they exist within the confines of the village. It has been suggested years ago by sociologists (M. N. Srinivas and A. M. Shah) that the concept of village as a self sufficient unit as it was supposed to have existed in the past has to be revised in view of the changing rural and urban scene in the present. Probably rural urban relationship will be more helpful in understanding rural and urban areas both. It may be that the concept of area and along with it rural or agriculture as a way of life also might have to be given up and the relationship between agriculture and industry might be more meaningful and useful. Even agriculture may be an industry and if so rural might have to be characterised as the area of agricultural industry.

3.14 The urban areas on the other hand, will be characterised by the very large majority of the people being dependent on non-agricultural activities for earning the livelihood. One has to see the taluka towns or district towns as they are growing to believe that their dependence on agriculture as the activity of earning the livelihood is negligible or not visible at least at the first sight.

3.15 It is in this background that I use the distinction between rural and urban. In the rural area land is the centre of earning the livelihood. The difference today from the past will be in terms of between different classes of population with reference to it, such as owner or non-owner, agricultural labourer or owner-labourer.

The most important relation will be that between owner and his employee. The latter could be bonded attached or free. It is not that there are no non-agricultural occupational activities or that all landless labourers are agricultural labourers. But the non-agricultural activities in the village itself are not many. Their share in the economy and society of the village is also negligible. But it is doubtful if the same could also be said of rural as an area, a taluka or a district. With the dwindling of the jajmani relationship, the direct share of such non-agricultural occupations will also dwindle to insignificance in the rural area.

3.16 The well-known jajmani occupations are making earthenware utensils and pots etc., hair-cutting, carpentry, tailoring and smithy. They were dependent on owners of land and even today many of those came to plead their case said they are dependent on them through the same relationship. However, the life style of the owners of land and also the methods of tilling the land and crop patterns are changing with unfavourable consequences for the jajmani occupations and relationship. All of the jajmani artisans were not and are not landless even today. Moreover, the question can be, how many of these castes and what percentage of them are following the occupations known by their caste names. From what the witnesses said I am inclined to say not many and not majority in each caste. Irrespective of percentages the direction is clear. Therefore, it will be misleading to judge their castes. Instead, starting with occupational activities as the vantage point leading to occupational relationship will be more in the

fitness of things and more reliable guide than caste for perceiving their social, educational and economic position of those engaged in these activities.

3.17 Some of the occupational activities, particularly of the artisan class, are performed living in the village. Some others commute and some others may tend to migrate and settle down in the urban areas. For many of the other jobs as in State Transport or in Railways or in manufacturing unit the villager has to leave the village. Even as a clerk or a peon he would like to live in the place where his job is. Looking to the list of such activities, they are mostly requiring education not above tenth standard or higher secondary. The other equipment that they have is the skill acquired by what may be called the workbench experience in their family trade, as is largely the case among rural artisans. The acquisition of this skill might have to be adjusted to the requirements of the new situation, through the formal system of education.

3.18 There are other activities which are performed living in the village such as temple *pajiri* or as a *bangi* or *mulla* or a *muzaver* may be partly paid and partly supported by community. In the case of other poorly paid jobs man feels obliged if he is given one. The activities such as shop-keeping, selling grains in small quantities and other things of daily need, are the activities of the nature of self-employment. They also do not require much education and big capital. Such activities are also to be found in urban areas. Their varieties are innumerable. They vary from umbrella, shoe, primus and cycle repair to selling fruits, eatables, clothes and sundry things.

3.19 These activities may be classified into those that require some education and those which do not require education. The man engaged in both these classes of activities stagnates in the sense that there is nothing to look forward to improve his earning and consequently his life or the life of his children. If I take the liberty to use the concept 'life chance' in the popular sense without its social philosophical connotations, it can be said that the rural and urban classes whom we are mentioning in the report as the people belonging to socially and educationally backward classes are the people whose life chances are bleak, irrespective of their caste and religion. This was the picture, that we could get from the representations made before us by the people of different castes and religion and from our observations on the spot.

3.20 This is also the impression that I got from an empirical inquiry, the results of which are still not published. It is, therefore not public knowledge. But that is the basis of my private and personal knowledge in addition to what I have observed and to that when I say 'I know'. The inquiry is carried out by Prof. Ghanshyam Shah, Director, Centre for Social Studies, Surat in one hundred villages distributed over all the 19 districts of the State. The data collection period was from July 1982 to April 1983. The number of villages selected for each district depended on the number of villages in a district. Having selected the villages information from each and every household in the village was elicited. The total number of households in the hundred villages added upto 15,700 in round numbers.

3.21 The data is being processed and the tables won't be ready before the end of this year. However, Prof. Shah was good enough to allow me to see the raw data. That information further confirmed my impression of the rural scene.

3.22 What I find in the data is a fairly close co-existence of low earning level of occupational activities, low status, of the people engaged in them and low level of education irrespective of their castes or religion. The instructive part of the evidence is that the low secular status cuts across ritual status have a cognizable number of their members in the occupational activities ranging from unskilled manual labour to marginal and small farming in the village. The educational level of these households, as indicated by the highest level of education in a household, also did not go above the 10th standard. That was true of the groups who have the supposed low ritual status and high ritual status. There are among them households that come in the upper brackets of the secular status measured by ownership of land and educationally they are not different. This fact belies the common belief that even in the contemporary Indian society there is congruence between caste or ritual status and secular status. As a matter of fact it may be repeated here that a precise hierarchy of castes based on the concepts of purity and impurity could be observed at a very narrow local levels.

3.23 There is a lot of looseness in this talk about people of low ritual status going into low occupations of new society. During 'twenties' and 'thirties' it was not considered below the dignity of landowning Brahmanical caste to take up jobs as spinners or weavers on the machines in textiles mills in Bombay and Ahmadabad. Also it was not considered below the ritual status for Brahmans to join the police constabulary. They also joined it. Whose status and which status are we comparing ?

3.24 These results of the independent inquiry confirms our perception that caste is not conterminous with secular class and much less does the new stratification based on secular attributes concures with traditional caste hierarchy or status system. That also validates that composite concept arrived at by the Commission for social and educational backwardness. In the rural areas the class of small and marginal farmers, and the agricultural labourers with negligible quantity of land or without it, and other unskilled manual labourers from the socially and educationally backward class. The others such as those who are serving in the temples or in masjid or on Dargah, or in the church also belong to that class. There are others pursuing occupational activities for their livelihood such as making earthen utensils, roof-tiles and bricks, cutting hair or doing the work of carpenter, or of ironsmith or of tailors and such other occupations which were known as jajmani occupations. Such people should be considered for inclusion in the SEBC irrespective of their caste, religion, or rural or urban residence.

3.25 Those in the towns and cities i. e., in urban areas can also be similarly identified on the basis of their activities for earning the livelihood. We do not have any recent studies of the urban areas in Gujarat to annumerate them. But from what persons of different castes and religions represented to us and from our personal observation and knowledge it can be said that a sizeable number of persons following what are called jajmani occupations also pursue the same activities either as employees or as self-employed persons. The ironsmiths, the goldsmiths, coppersmiths, carpenters and tailors, said that they are doing the work of their occupations as employees, or as self-employed persons. They are neither organised nor protected. Potters do not find it easy to make their ware and bake in the kilns in the urban areas. They therefore do not have their people following their occupation as employees or self-employed persons. There are people who bring the earthen pots etc. from rural areas even at a long distance, and sell them in the urban areas. So most of them who are not well educated take to other occupations. Similarly, there are manual unskilled and semi-skilled workers who do not have much education and take up any activity to earn their livelihood. They may be employed in organised sector or they may be employed in what is called informal or unorganised sector. The latter are generally unprotected workers and the government has recognised this category by their resolution referred to in the Commission's main report. All these unprotected workers in informal sector may be considered as SEBC irrespective of their caste, religion or rural or urban residence but not those in formal organised sector.

3.26 These are the categories of rural and urban classes to be recognised for inclusion in the SEB Classes. For the operational purposes they have to be specified. So far as the rural area is concerned, all India categories mentioned in Integrated Rural Development Programme are workable categories for the identification of SEB Classes. It should be made clear that we are not taking IRDP but only their classes for identification. The classes other than those may be specifically mentioned as per their occupational activities such as those who live by fishing or by cattle and sheep rearing as an occupation or could be left to the Government for including or excluding them after proper inquiry.

3.27 We have already mentioned the government resolution for the activities that may be found largely in urban areas. We may also mention the other occupational activities that Unprotected Labour Acts of Central Government adopted by the Gujarat State.

3.28 The perspective and the approach of this note and of the Commission is completely secular and based on the actions of the citizens here and now in this world. It does not admit that a citizen or a group of citizens is backward or advanced because of his or its caste or religion. A citizen is not a devil because he is born in the so called higher caste or in the majority religion or minority religion. Nor is he an angle because he is born in the so called low caste or in a minority religion. Backwardness is not a permanent and 'persistent' attribute of a citizen. It is the result of secular social forces of power and pelf. The purpose and aim of the government action is to encourage those who are unfavourably

placed with regard to those secular forces, irrespective of caste and religion. Distribution and redistribution of power and pelf changes the positions of classes and of their members. The socially and educationally backward classes will not remain backward tomorrow with the change in the redistribution of power and wealth or property. Income is one of the instruments and indicators of such a change. It is therefore necessary to set a limit in terms of income which enables him to be on his own without the crutches of reservations and other aids. The income limit is not meant to prevent people taking under advantage. It is meant to instill and encourage self-confidence in them. Understood and taken in this spirit, there is no reason why the reservation in educational field and in services and the income limits and time period for reservation and for other aids should run concurrently and uniformly.

3.29 Education is an indicator of backwardness or advancement and it is also the instrument for removing backwardness. It is possible to put a limit to the reservations after a family has reached certain level of educational attainments. The benefits of reservations may be continued upto one generation after that level is reached. But then it should stop. Since education is an instrument for advancement other aids for education may continue without reservations beyond one income limit and upto another limit that may be fixed according to the needs of the situation from time to time. But they should stop thereafter.

3.30 We have already said that reservation and other special aids to special groups are not in the nature of protection. They are actions in the direction of achieving our ideal—the ideal of new society in keeping with our constitution. Reservations are meant to affirm that ideal. We may repeat that the ideal is the society envisaged in the part—III and IV of our constitution. We have to make efforts to achieve that ideal. Without the efforts in that direction, the efforts that we make by way of reservations and other benefits to the socially and educationally backward classes will not prove adequate to the situation.

Date : -10-1983.

Dr. I. P. DESAI,
Member.

Place : Gandhinagar.

MINUTE OF DISSENT

by

SHRI G. L. BHAGAT, IAS.

Caste system is basically hierarchical structure of society. Historically speaking it was a form of sociological and also economical organisation of society. Historically societies have been formed as a result of aggression, conquest and expropriation and emergence of slavery in similar circumstances. The character of the caste has been changing over time. Caste at the lower rung of the society made by conscious efforts and combination of circumstances gain higher status in the social hierarchical status happened to the Nadars of Tamil Nadu and Zhva of Kerala. Therefore, while it is true that the castes are not fixed and rigid categories, it is necessary for the purpose of identification of socially backward that we must look at given point of time as a point of departure. At any given point of time, groups of people suffer social stigma as consequence of their historical social origins. It is in this perspective that the socially backward has to be identified. In doing so, it will be lack of constitutional propriety to ignore the social aspects of group in the society, while over emphasizing their economic status.

The origins of the inferior status of the bottom classes of castes are low society in sociology as well as economic functions performed by them. It will be flying against the facts to deny that the roots of social status lay in social and impurity arising from the occupations possibly enjoyed upon the bottom groups. It may happen that some members of a caste may not be performing impure functions. But the social status of a group or a caste have those historical roots and, therefore, the cost or a group where it is ethnic, religious or rational suffer from stigma of social degradation. It will be naive to hold that occupation alone determines social status and that manual labour performed by a caste or a class of a people are looked upon as socially backward. Performance of manual labour is the economic function in the sensible to any organised society. Cultivators also perform manual labour. India is an agricultural country. Therefore, India would be socially backward if cultivation is held to be a occupation of only socially backward. Factory workers, transport workers and allied groups of unskilled workers also perform manual work. It will be absurd to say that all of them are socially backward merely because they are manual workers. No social stigma is attached to these jobs. Neither they are socially impure for that matter.

Relative backwardness is not social backwardness in a country, where around 50% of the people live below the poverty line and as against the per capita income of about 10,000 USA dollars in USA, per capita income in India is less than 200 dollars. By the criterion of economic backwardness, the whole of India Bangladesh and Nepal would be consisting of only socially backward population.

Persons engaged in primary sectors of economy like mining, quarrying, agriculture, animal husbandry have a low economic status. Economic status of those, engaged in secondary sectors like production and manufacturing of handicraft, textile, etc. is higher. Those engaged in professions like medicine, engineering etc. are treated as a still higher category. Thus mere economic status cannot be equated with social backwardness, though the class of people engaged in primary sector of economy are relatively backward both economically and socially in a general sence. Economic backwardness may be a consequence of exploitative land relations, imperfect market economy and unequal terms and trade between various sectors of economy. It gives rise a class of people who are known to be living below poverty line. In any case, the society in any part of the world will always suffer from economic backwardness because of economic organisation of that society. But it cannot be said that it is a mark of social backwardness as understood by the Constitution makers. Relative backwardness is no backwardness. It should be absolute and specific. Therefore, it cannot be made a sole criterion for determining social backwardness. Ritual impurity prevents social and economic mobility for determining social backwardness. Ragpickers butcher, fishermen, itimerant, fish vendors are of scavengers, flayers and tanners. Ragpickers butcher, fishermen, itimerant, fish vendors are a class of citizens who suffer from similar social backwardness. Those who hunt and eat lower animal like vermin, monitor lizard, turtles etc. also suffer from social backwardness. Bonded labourers, street beggars and lepers as also those who beg left over cooked food also suffer from social backwardness. Prostitutes are also class who are akin to these groups. Those who

keep inferior animals like pig and live in permanent ghettos outside towns and village like grave diggers also fall in that category.

Economic backwardness will require economic solutions. Integrated Rural Development Programme, National Rural Employment Programme, Slum Clearance etc. are the programmes clarified the economically backward. But social backwardness needs sociological solution. Educational backwardness will indicate educational programme. Temple entry, hotel entry, entry in publically run schools has had to be organised for the untouchables. Socially backwards are also suffer from denial of basic rights by operation of socio-economic forces. Therefore, social groups who are analogous to untouchables or scheduled castes would constitute the socially backward class.

Once it is determined that they are socially backward, then only an attempt should be made to determine educational backwardness. More educational backwardness also should not be viewed in isolation. The national literacy rate is 35%. Those relatively below this level cannot be considered as educationally backward mechanically, but those who have just touch only fringe of the literacy and also socially backward should be considered socially and educationally backward.

Article 46 of the Constitution has no direct relation with identification of socially and educationally backward. It is only a directive principle of State policy which enjoins upon the State that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the scheduled castes and the scheduled tribes. The weaker sections here are scheduled castes and scheduled tribes, and others who suffer from social injustice and exploitation. The article gives thrust to educational and economical uplift of the weaker sections if directly or indirectly recognised with the scheduled castes and scheduled tribes are *the weaker sections* and only those who are analogous to the scheduled castes and scheduled tribes can be considered *the weaker sections*. Scheduled castes and scheduled tribes happen to be socially and educationally backward, as is widely recognised. Therefore those who are socially and educationally backward in social status is only qualify for identification as socially and educationally backward.

Social status has a specific connotation for birth, marriage, death rites, cultural activities both for religious and social nature in a social organisation. In modern times, society is conceived as a whole embracing all classes of citizens in a nation or a state. For instance, the scheduled castes evolved their own social organisation for performing birth, death and marriage rites and allied social and other cultural activities. They have been a class of people easily recognisable as a distinct social group. They were engaged in disposal of dead animals etc. They consumed flesh of both slaughtered and dead animals. They were ostracised and segregated from practically all walks of life because of their impure status and occupation. Their dwellings were away from the main settlement of villages and outside the walls of towns. Any contact with them required undergoing ritual purification. This would be cured by purificatory rite. This resulted in their social backwardness. Therefore, social backwardness is to be viewed as a specific condition of group of people with reference to their social status in the larger society.

In the ultimate analysis adoption of occupational or economic criteria for identification of socially and educationally backward class is not in accordance with the Constitution, howsoever appealing it may be progressive economists. Economically backward are for all practical purposes subsumed among the socially and educationally backward, because the bulk of the latter have been historically poor, deprived subjugated socially backward class of citizens. Manual workers or the groups of employees in the occupation other than, impure do not suffer from no absolute the social or economic disability of mobility. The Indian Constitution does not permit those who are so relatively economically or socially lagging to be branded as socially and educationally backward. In our enthusiasm to transform the society, we need not run away with an idea that all ills can be cured by arbitrary conferring upon a large population the status of socially and educationally backward. For example, landless can be cured by radical redistribution of land and inequality should be removed by socialisation of all assets and wealth and thereby redistributing it.

It is only these social groups or castes which are or were stigmatised and suffer from social backwardness of specific nature which amounts to absolute and unsurmountable social

backwardness and can only be the 'valid category' for identifying as socially and educationally backward class of citizens. Those who are socially and educationally backward may sometime be relatively speaking economically not so worse off i.e. may not always be living below the poverty line but the converse of it that those who live below the poverty line are socially and educationally backward is a proposition which the Constitution does not recognise as valid. Indeed, those who are economically backward may not be barred or inhibited for inter-dining, inter-marriage and inter-mingling on social and cultural occasion and from seeking the services of the priests of those who are not otherwise so stigmatised. They may not, therefore, suffer from any social handicaps and, therefore, are not socially backward. But they may suffer from indigence, manual workers of all types may have lower economic status and therefore generally lower social status. But that is not a constitutionally valid category for conferring the status of social and educational backwardness.

Dated the 25th October, 1983.

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Rane Commission, Gandhinagar.

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