Reservations, Reality and the Constitution: Current crisis in India

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In the face of the recent anti-reservation agitation in Gujarat, the Union Government’s call to evolve a national consensus on reservation issue and the recent decision of the Supreme Court in K. C. Vasanth Kumar v. State of Karnataka, the wider discourse that takes place in India today centres round the meaning of justice for the Other Backward Classes (OBCs) or socially and educationally backward classes, entitled to the benefits of job and educational reservations. The elaborate system of compensatory discrimination for the Scheduled Castes (SCs) and the Scheduled Tribes (STs), has never been a source of intense social conflicts, court cases or political stalemate. It

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1. For an inside story, see Upendra Baxi, ‘Reflections on Reservation Crisis in Gujarat”, Mainstream June, 8, 15, 22 (1985).


3. Article 15(4), Constitution of India authorizes the State to make any special provision for the advancement of socially and educationally backward classes of citizens and of the Scheduled Castes and the Scheduled Tribes. Article 16(4) authorizes the State to make job reservations for any backward classes of citizens who are inadequately represented in services. Despite the difference in language the beneficiaries of both the provisions are the same. See Janki Prasad v. State of Jammu and Kashmir, A.I.R. 1973 S.C. 930, 936.

4. See Articles 341, 342, 366(24) and (25) Constitution of India. The courts have refused to review the presidential notification and held (f. n. contd.)
is almost universally agreed that the social disparities and restricted opportunities of the SCs and STs are directly related to their low ritual status and residence in exclusive territorial communities and despite the constitutional inducement to awaken, these utterly deprived and pathetically neglected social categories have a long social distance to travel for becoming a part of the mainstream of the national life. There is a Constitutional presumption of their social, economic and educational backwardness. The judiciary has taken a consistent view that there is a firm constitutional commitment for the economic betterment of the SCs and STs who are constitutionally defined and centrally designated. There is a national policy to provide representation to these people in economy, polity and administration, commensurate with their ratio in the population.

The OBCs, on the other hand, are nowhere defined in the Constitution and are left at the determination of the State governments. The OBCs are widely perceived to be numerous, populous and indefinitely expandable categories. The reservation for these categories has remained an intense source of social discord and protracted agitations. This paper attempts to portray the contemporary Indian discourse on the issue of OBC reservations in the setting of Indian Society and its political and legal culture.

The Emerging Public Debate

The issue of reservation has divided the Indians in unaccustomed ways. Reservations are blamed for generating a variety of social evils. Caste based reservations are seen as perpetuating the evils of caste-system and accentuating caste consciousness besides impeding the goals of secularism. It is widely believed that the benefits of reservations are snatched away by the elites that the SCs and STs are presumed to be backward and deserve massive compensatory benefits. See State of Kerala v. N. M. Thomas, A.I.R. 1976 S.C. 490, L. Siddappa v. K. Chandappa, A.I.R. 1968 S.C. 929, B. Basavalingappa v. D. Munichinappa, A.I.R. 1965 S.C. 1269.

among the backward castes at the expense of the really needy and deserving. It is alleged that compensatory policies have failed to achieve the goals of participation, representation, integration and assimilation of the disadvantaged groups in the mainstream of national life. The system tends to engender a spirit of self denigration and increases the dependency of the beneficiaries on State patronage, thereby undermining their self-development and self-esteem.

Then those who are excluded complain that they are no better off than those preferred. They argue that in a setting of scarce resources and opportunities, it is unfair way of distributing valued public offices and professions on the basis of group identity. The quota system places an unfair burden on the merited applicants who have to stake their careers as a price for collective good. The excluded ones are, therefore, very much doubtful about their ethical, moral or social obligation to repair the disadvantaged for the handicaps that they actually did not cause. Is it a compensation for centuries of invidious discrimination? Can reparation be made in any real sense for these kinds of historical injuries? They ask. Most Indians are supportive of affirmative action programmes aiming at helping the disadvantaged enabling them to catch up to the standards of competition set up by the larger society. Reservations, on the other hand, provoke resentments as they involve suspension of standards and alteration of rules of competition and constrict the chances of merited applicants.

It is argued that even if reservations are socially desirable for the SCs and STs on the ground or redressal of past injustices, there is no justification to extend the principle of historical compensation to the OBCs who comprise largely of populous middle peasant castes and whose social and educational backwardness has sufficiently been lightened by the post-independence agrarian reform measures and who have acquired enormous political clout as a result of suffrage. It is alleged that the OBC reservations have become a tool of aggrandizement on the part of politically dominant backward castes who are able to influence those who hold power. Even those in power see the advantage in the system for political gains.
These issues are debated in the judicial pronouncements, in the scholarly comments and among the political elites. Too much politicisation of the reservation issue is attributed to the increasing resilience of caste in all spheres of public life. There is little doubt that in the post-independence India caste has served as a readymade traditional channel of political mobilization. Politics has afforded to the lower castes a symbol to achieve upward mobility through reserved quota. This has resulted in struggle for power equation.

We arrive, then, at an ironic tension. The constitutional commitment to discourage caste is overshadowed by increasing resilience of caste in public life. Since the conferral of special privileges is essentially a political act, the reservation policies are designed more as a matter of political expediency rather than in conformity with constitutional imperatives. Marc Galanter has rightly remarked that the courts "act as a balancewheel channelling the compensatory policies and accommodating them to other commitments; but it is the political process that shapes the larger contours of these policies and gives them their motive force".

Sociology, caste-conflicts and Politics of Backwardness

Let it begin simply by examining the structure of caste conflicts over the single issue of reservations for OBCs. Some sociological studies have shown that the caste-conflicts on this issue are more acute in the Northern States than in the South. In South, there had been a pre-independence history of communal


quotas as a result of anti-Brahmin movement. In North, the OBC category has been used only recently and any attempt to reserve seats and posts on caste-lines leads to intense social conflicts. In Bihar and Uttar Pradesh, for example, the major beneficiaries are believed to be the intermediate caste like Ahirs, Kurmis and Koiries whose pre-independence backwardness has sufficiently been lightened by post-independence agrarian reform measures. A report submitted by R. K. Hebsur, amply highlights the phenomena of backlash and caste riots in Uttar Pradesh and Bihar and its absence in Southern States of Karnataka and Tamil Nadu. The historical timings of the introduction of OBC policies, says Hebsur, has a tremendous bearing on the reaction of the groups adversely affected by such policies. In Bihar, Uttar Pradesh, Gujarat and Madhya Pradesh, the reservations for OBCs was, for the first time introduced during the 1977-1979 Janata interregnum and was not the culmination of any backward classes movement as in the South. The upper castes faced with sudden threat of loss of status dominance or "rank disequilibrium" reacted sharply over the increased opportunities of backward castes. In contrast, the long history of backward classes movement and introduction of the reservation policies in phased manner in the Southern States has prevented the sudden reaction of the upper castes we learnt to live with the system of communal reservations over the years. The reactions over the reservation policies have also depended on the political strategy in devising the reservation schemes. For instance, in the States of Karnataka and Tamil Nadu the upper

10. See Parmanand Singh, supra, n. 8 at 80-84.
12. *Id.* at 144.
13. *Id.* at 141.
castes have been divided either politically or by reservation schemes. In Karnataka the Lingayats have been eliminated from the OBC list while the major segments of the Vokkaliga community have been declared backward. This has prevented an alliance between the two communities to react over reservation policies. Just until ten years ago, these two communities had been the major beneficiaries and had ruled the State. In Tamil Nadu also, every major caste group has been divided into advanced and backward classes, diminishing the possibility of the dominant caste to make a common cause to retaliate against the OBCs quota. This is in total contrast with the situation in the Northern States of Bihar, Gujarat or Uttar Pradesh where all major caste groups have been designated as forward enabling them to unite and exert retaliatory pressures to thwart the uprising of the intermediate castes.

Another difference is that unlike in Tamil Nadu and Karnataka, where there is very less cleavage between the OBCs and the SCs, in the Northern States of Bihar, Madhya Pradesh, Gujarat and Uttar Pradesh, there is a sharp cleavage between the peasant caste and the untouchables. If the upper castes feel threatened by the rising aspirations of the middle peasant castes, the latter also feel threatened by the uprising of the untouchables. The fundamental cleavage between the OBCs and the untouchables has facilitated the upper caste backlash. The caste conflicts over reservation issue, thus depend on caste composition, caste mobilization and the political strategy in devising the policies.

The Gujarat Crisis

The anti-reservation agitation in Gujarat dramatizes the full potential of the political abuse of reservation device. When in 1978 the Gujarat government introduced the OBC category comprising 82 castes and communities (on the recommendation of Bakshi Commission, 1976), the reservation issue did not provoke any violent protest. In 1981 Rane Commission was

14. Id. at 153.
15. Id. at 147-50.
appointed to consider the representation of those castes and communities which considered themselves backward but were not included in Bakshi list. The Commission reported in 1983 that income and not caste should be basis for determining social and educational backwardness. Applying the economic tests of backwardness, it specified 83 occupational groups as eligible beneficiaries and recommended 18 per cent hike in reservation in addition to the existing 10 per cent ordered under the Bakshi proposals. The Rane Commission also recommended an income ceiling to eliminate the better off from the listed groups. It decried caste test of backwardness as perpetuative of caste system and vested interest in backwardness. 16

The Rane report was lying among the dead files for nearly fourteen months because the government wanted a list of castes and communities and the income test of backwardness was not acceptable to it. 17 The report was dramatically activated in January 1985 as soon as the assembly elections were announced. The government promptly declared the enhancement of OBC quota from 10 to 28 per cent accepting the 18 per cent hike proposed by Rane Commission. Ironically, the beneficiaries yet remained to identified. It is very little known that the anti-reservation agitation in Gujarat was against a decision which was never implemented. Yet even the symbolic enhancement of OBC quota was seen as a sudden threat of loss of status dominance to one third Bania-Patel-Brahmin upper cast who saw in the hike a sinister move of the first non-upper caste Chief Minister, Madhavsinh Solanki to satisfy the political aspiration of his own castemen, the Kshatriya community - a backward caste in Gujarat. 18 The sudden increase of OBC quota from 10 to 28 per cent (in addition to 21 per cent SC/ST quota) unleashed the worst ever caste war in the country.

16. Id. at 145.
17. Supra, n. 1 at 2.
The rulers of Gujarat very well knew that in the earlier competitions the success of OBCs even under the Bakshi list was much less than the announced goal of 10 per cent. They very well knew that even enhanced quota was of no consequence to the beneficiaries, most of whom did not possess even the minimum qualifications to enjoy the benefits of reservations. The enhanced reservation, as Professor Baxi tells us, was, simply "an exercise in symbolic politics" entirely under the compulsions of electoral game but even this "symbolic politicking" had the "effect, desired or not of threatening the dominant and the privileged classes with attainia, the loss of status dominance." And as soon as the anti-reservation agitation mounted up, the government deliberately unleashed a regime of terror and violence to suppress the agitation. The low political tactics adopted by the Gujarat administration thus signalled "a tendency towards hijacking of political dissent into the arena of criminal violence and seemingly justified repression by the state." Both the ruling party and the opposition politicize the reservation issue and on both the sides "consistent with respectable tradition of amorality in power politics, the reservation issue was essentially political issue, social justice and constitutional goals were only incidental to the pursuit of power on all sides."

It is thus obvious that caste conflict and political stalemates on the single issue of OBC reservations are larger struggle and competition for power and social status. Sometimes these struggles manifest themselves in litigation; other times they manifest themselves in caste war. Too much politicization of the reservation issue tends to create fierce competition among the various

19. Professor Baxi reports that in 1984 out of 675 seats in medical colleges, 7 per cent (47 seats), 14 per cent (94 seats) and 10 per cent (67 seats) were reserved respectively for SCs, STs and OBCs but only 3.4 per cent quota for SCs, 3.5 per cent for STs and 3.5 per cent for OBCs was actually filled, the rest of the seats went to higher castes, see supra, n. 1 at 2.
20. Id. at 2.
21. Ibid.
22. Ibid.
23. Id. at 4.
castes to seek inclusion in the OBC lists. This in turn results in the political abuse of the reservation device for wooing and winning the backward groups for political gains. These trends have become the most pervasive feature of political struggle and competition for power.

**Who Are the OBCs?**

Marc Galanter has aptly observed that the "question of who were the Scheduled Castes was debated and roughly settled before independence within the executive and without the participation of the courts. But who are the Backward Classes is a post-independence question which the constitutional recognition of the category made one of all India basis." 24 A close look at the debates of the Constituent Assembly on Article 16(4) gives the impression that the backward classes were not merely economic groups but historical social categories whose backwardness was associated with discriminatory social structure of the Indian society. 25 The delegates from Southern States took a leading part in the debates due to their pre-independence experience of caste and communal quotas. A representative from Mysore referred to the then prevailing Mysore practice where the backward classes included every one except the Brahmins. 26 The delegate from Madras referred to the Madras practice where the term included numerous castes and communities among the backward Hindus. 27 The delegate from Bombay, K. M. Munshi, referred to the Bombay practice of including a broader category of socially, economically and educationally backward classes besides SCs and STs. 28 The delegates from the Northern States, however, believed that the backward classes meant only the untouchables. 29 Munshi assured the House that these classes included SCs and STs in addition to

25. 7 C.A.D., 701-2.
27. Ismail Saheb *id.* at 692.
28. *Id.* at 696-97.
socially and educationally backward classes." One speaker ec-choed the doubt that the term was ambiguous and would become a "paradise for lawyers", while others feared that the system of reservation might put a premium on backwardness and impair efficiency in administration. Ambedkar clarified that Article 16(4) was designed to serve as a happy formula to reconcile the competing claims of equalities and that a wholesale reservation in services would be incompatible with the principle of equality of opportunity. He believed that the OBCs will be determined at State level, while some members thought that it would be the President-appointed Backward Classes Commission, which would conclusively determine the criteria of backwardness. Later, while defending article 15(4) in Parliament, Ambedkar reiterated: "What are called backward classes are.... nothing but a collection of certain castes". K. T. Shah's suggestion to add the word "economically" was rejected by Nehru on the ground that the words "socially and educationally backward classes" were bodily lifted from article 340 and the word "economically" would cause a lot of confusion. Nehru conceded that giving recognition to castes and communities went against formal equality yet an exception to this was necessary to overcome historical injustice.

There is little doubt that at the time of the making of the Constitution it was generally agreed that the OBCs would

30. K. M. Munshi, id. at 697.
31. T. T. Krishnamachari, id. at 699.
32. L. N. Misra, id. at 673. Damodar Swaroop, id. at 679.
33. B. R. Ambedkar, id. at 701-702.
34. Ibid.
35. Ibid.
36. K. M. Munshi, id. at 697.
38. Id., Col. 9815.
39. Id., Col. 9830. Nehru clarified that the need of Article 15(4) arose because of the furore created in Madras and other parts of South India over the Supreme Court's invalidation of Madras reservation scheme in State of Madras v. Champakam Dorairajan, A.I.R. 1951 S.C. 226, id., Col. 9615.
40. Id., Col. 9616.
be castes and communities who were backward due to historical reasons.\textsuperscript{41}

\textbf{Kaka Kalelkar Commission}

Even the Kaka Kalelkar Commission\textsuperscript{42} continued to defend the use of caste as the predominant factor in determining social and educational backwardness, as the Indian society was not based on economic structure but on the medieval concepts of \textit{varna} and social hierarchy.\textsuperscript{43} The evils of caste system could be combated by measures adopted on castelines.\textsuperscript{44} The commission listed 2,399 castes and communities as the recipients of reserved seats in educational institutions and government services. At the last moment, the Chairman, Kaka Kalelkar, dissented, emphasising economic test of backwardness as the caste test was repugnant to the ideals of secularism and a casteless society.\textsuperscript{45} The Union Government agreed with the Chairman's refusal of the commission’s proposals and rejected the report\textsuperscript{6} as being caste-oriented and inimical to an egalitarian society.\textsuperscript{4} The state governments were requested to draw their own lists using the tests of income and occupation instead of caste.\textsuperscript{47}

Just at the time the union government was launching a nationwide campaign for economic test of backwardness, the

\begin{itemize}
  \item [41] For a detailed account of the history of OBCs, see Marc Galanter, \textit{supra}, n. 6 at 154-179, see also Parmanand Singh \textit{supra}, n. 8 at 80-107.
  \item [43] \textit{Id.}, Vol. 1, 41.
  \item [44] \textit{Id.} at 39.
  \item [45] \textit{Id.} at XIV.
  \item [47] The Centre repeatedly objected to the use of caste test as perpetuative of communal divisiveness. By 1985 it was almost clear that an all India list of OBCs was not mandated by the Constitution and hence the Centre abandoned the idea of drawing such list. \textit{Lok Sabha Debates} Series 3, Vol. 48, Column 3973-76 (Nov. 25, 1985).
\end{itemize}
Supreme Court of India, in *M. R. Balaji v. State of Mysore*, intervened and struck down an expansive Mysore reservation scheme for its exclusive reliance on caste criterion. *Balaji* highly commended economic test of backwardness and joined hands with the Centre. *Balaji* was widely hailed as completely outlawing caste in the selection of OBCs. This decision also marked the judicial predominance over the governmental policies of reservation for OBCs. Such policies were subjected to close and rigorous scrutiny by the courts to find compliance with the legal prescriptions. The courts began to demand recent socio-economic data for determining socially and educationally backward classes.

*State Commissions*

Under the pressure of the judiciary many state governments using the category of OBCs, were compelled to appoint commissions to identify socially and educationally backward classes commended in *Chitralekha v. State of Mysore* for completely eschewing caste and communal considerations. Soon many people of Karnataka, began to realize that the new practice served yet another tool at the hands of the dominant Lingayats and Vokkaligas to advance themselves at the expense of less articulate backward castes. The government under the chief ministership of Devraj Urs, capitalized the resentment of the backward castes over the major gains of reservation going only to the two dominant communities under the *Chitralekha* arrangement. A commission under the chairmanship of L. G. Havanur was

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51. Nagan Gowda Committee (1961) had excluded the Lingayats from the OBC list but under caste pressure the government had to include them. This list was invalidated in *Balaji*.
52. Karnataka Backward Classes Commission (L. G. Havanur, Chairman), Vol. 1, Part I (Main report), Chairman's covering letter, at p. 11.
appointed in 1972 which reported in 1975 that the Balaji - Chitralekha view that “castes” could not be equated with “classes” was repugnant to idea underlying compensatory discrimination. 53  

The commission propounded the doctrine of equality of castes. 54 Several examples were given to prove that the word “classes” in the Indian context has historically been linked with “castes”. 55 The result of the massive survey conducted by the Havanur Commission was to designate 15 communities, 128 castes and 62 tribes as beneficiaries under Article 15(4) and 9 communities, 115 castes and 61 tribes as beneficiaries under Article 16(4). The Brahmins, Bunts, Lingayats, Kshatriyas and Jains were excluded from the list. The commission recommended only 32 per cent reservation for OBCs (in addition to 18 per cent SC/ST quota). The government order that followed during 1977 and 1979 added several groups to the list and as against 32 per cent as suggested by the commission, reservations were raised to 50 per cent sending the total reservation to 68 per cent6 apparently in utter disregard of the settled legal limit of below 50 per cent. The Lingayats, discomfitted by the new

53. Id. at V.  
54. Id. at 60.  
55. The definition by the Lahore High Court in A.I.R. 1947 Lahore 340 is cited, id. at 60-61 “The term class carries with it the idea of a readily ascertainable group having some element of permanence, stability and sufficiently numerous and widespread to be designed as a class. It is in this sense that the expression was commonly understood in this country....”  
56. Id., Vol. I, 359-72 The following reservations were provided:

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<tr>
<th>Percentage of Reservation</th>
<th>Professional Colleges</th>
<th>Government Service</th>
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<tr>
<td>SCs.</td>
<td>15</td>
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<td>STs.</td>
<td>3</td>
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<td>Backward Communities</td>
<td>20</td>
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<td>Backward Castes</td>
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<td>10</td>
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<td>Backward Tribes</td>
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<td>Special Group</td>
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68 66
policy saw in the report and the orders a sinister move of the
government to isolate their community and reduce their power
and influence but no violent protests took place. The resentment
manifested in a series of writ petitions culminating in Vasanth. 57
The Venkataswamy Commission appointed by the Hegde Govern-
ment is now conducting surveys to identify OBCs in Karnataka
on the guidelines supplied by Vasanth. 58

In Tamil Nadu, a commission 59 reported in 1970 that 9
out of 105 castes listed as backward managed to create a virtual
monopoly for themselves in government services and suggested
their elimination from the list. Instead of their elimination, more
castes were added in the list. 60 In 1979 an income ceiling 61
was fixed for enjoying the benefits but soon the government
yielded to vigorous protests by caste leaders and in February,
1980 the income ceiling was withdrawn. Reservations were also
enhanced from 31 to 50 per cent in addition to 18 per cent
SC/ST quota raising the aggregate reservation to 68 per cent.
In Tamil Nadu there is "an undercurrent of some disappointment
on the part of the weaker castes, against (a) the dominance
of the Mudaliars and Naidus, (b) the nine top backward
castes and (c) inclusion of otherwise powerful castes in the OBC
list 61a". At present, the Ambasanker Commission's report
submitted in February 1985, 62 is a source of intense debate

57. Supra, n. 2.
58. H. Kusumakar, "The Name Tag Tell All in the South", Sunday Re-
view, The Times of India, (Delhi) September 1, 1985.
Nadu (A. N. Sattanathan, Chairman), 3 Vols. (1971). The nine elite
castes are Vadugas, Veerakodi-Vellalas, Gavaras, Soursashtrians, Thulu-
va Vellalas, Devagas, Sozhia-Vellalas, Agha Mudiys, Sadhu Chettis.
V. G. Prasad Rao, "Caste Factor in Tamil Nadu", The Times of India
(Delhi), March 9 and 10, 1981.
60. R. K. Hebsur, supra, n. 11 at 149.
61. The income ceiling was fixed by Ramachandran ministry in 1979,
 id., 144.
61a. R. K. Hebsur, supra, n. 11 at 149.
62. A. S. Abraham "Turmoil over Reservations: Backward Classes in
Full Cry", The Times of India (Delhi), April 12, 1985.
in Tamil Nadu. It is reported that out of 21 members, 15 members of the commission are advocating that caste and communal quotas of 67 per cent for OBCs is commensurate with their population in the State. They are asserting that *Thomas* has completely overturned the *Balaji* below 50 per cent rule and has allowed wholesale reservations. The chairman denies it, holding that the *Balaji* rule still holds good and, therefore, reservations for OBCs should be limited to 32 per cent only.

In Kerala, the proposals of a backward classes commission applying economic test of backwardness was accepted by one government but rejected by another presumably under the pressure of some caste allies who were discomfitted by income tests and income cut offs. In Kerala, the benefits of educational reservations are given to listed castes and communities (recommended by Pillai Commission) and an income ceiling is imposed for enjoying the benefits. But for reservation in services there is no such ceiling and a separate list is used. Caste-class hierarchy is an inherent feature in socio-economic relations in Kerala. The Andhra list has fallen from 146 communities

63. *Supra*, n. 4.
64. *Supra*, n. 62.
66. The report was accepted by Achutha Menon ministry but rejected by Vasudevan Nair ministry. See E. M. S. Namboodiripad, *supra*, n. 7, 136.
to 92 communities and 25 per cent seats are reserved for them. Bihar, 71 Uttar Pradesh, 72 Gujarat, 73 Punjab, 74 also maintain a list of castes and communities and Jammu and Kashmir maintains the list of caste, occupational and territorial groups. 75

The random profile of state practice shows regional variations in selecting the OBCs. But "castes" and "communities" are by and large, the "classes" deemed backward who are selected on the basis of low social standing, low level of income, low

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71. The Bihar list comprises 128 castes and communities out of which 92 are designated as Most Backward. 26 per cent seats and posts are reserved for them.

72. Chote Lal v. State of U.P., A.I.R. 1979 All. 135 struck down the U.P. list containing 59 communities as being based on a pre-independence list. The court ordered the setting up of a commission to investigate into the social conditions of the state.

73. Bakshi Commission (1972) reported in 1976 that there were 82 castes and communities as OBCs and 10 per cent reservation was recommended for them. In 1978 the government implemented the report. Rane Commission (1981) reported in 1983 that instead of caste test, income and occupation test should be applied and applying economic tests 63 occupational groups were designated as OBCs. An increase of 18 per cent reservation was also recommended. Only those whose annual income was less than Rs. 10,000 were eligible to apply for reserved posts. The announcement of 18 per cent hike in the quota in January 1985 led to widespread and prolonged agitation in Gujarat leading to the removal of Chief Minister Solanki, in July 1985. See the Report section III.

74. The Punjab list contains 14 castes and communities, constituting 2 per cent of the State's population as OBCs. See Mandal Report, Part I.

75. In Jammu and Kashmir, the Kashmiri Pandits who constituted only 2 per cent of the State's population had the preponderance in services. This led to a widespread agitation by other communities to have their proportional representation in services. In 1956, the government introduced a pattern of communal allotments but the Supreme Court intervened and declared communal quotas as opposed to the Constitution. Triloki Nath Tikku v. State of J. and K., A.I.R. 1967 S.C. 1283, Triloki Nath v. State of J. and K., A.I.R. 1969 S.C. 1.

A list of caste groups, territorial groups and occupational groups based upon the proposal of a commission was upheld in Janki Prasad, supra, n. 3.
level of literacy, low level of occupation and so on. There is an increasing tendency to put income ceilings to exclude the better off members from the listed groups.

Mandal Commission and the prospect of A National Consensus

Even the Mandal Commission has strong preference for the historic view on the meaning of OBCs. It has specified 3,743 caste and communal groups as "classes" comprising about 52 per cent of the population of India. It wanted to recommend reservations for them in proportion to their ratio in the population, but in defence to the legal limitation only 27 per cent reservations have been recommended by it. The central theme of the report is to highlight the evils of Varna social structure and the exploitations growing out of it since ages. The commission believes that the caste standing of a person sums up his social and economic position. It says that in the traditional social structure the social backwardness was a direct consequence of caste status of a person and although some features of the caste system have weakened in ritual front, "It has more than gained in the political front". After extensive citations from the decisional law, the commission highly favours the Rajendran view that castes and classes are synonymous and severely criticises the Balaji and Chitralekha view that castes cannot be equated with classes. The commission says that there is a "close linkage between caste ranking of a person and his social and educational status" and thus "the lower ritual caste status of a person has a direct bearing on his social backwardness". It, however, makes no attempt to eliminate the well

78. Id. at 58.
79. Id. at 17.
80. Id. at 20.
84. Ibid.
off from the listed groups. On the contrary, it justifies the “elite benefits” as providing a “psychological spin off” among the members of the groups in the achievements of its better off members and as providing a symbolic sense of group participation at the higher echelons of public life. Balaji’s insistence on the comparability of the OBCs with the SCs and STs is also refuted by the commission which thinks that Balaji represents the “most conservative view on the relevance of caste for determining social backwardness and on synonymity between “classes” and “castes”.

Thus, the commission completely ignores several tests developed in Balaji for classifying the OBCs. It uses caste standing as the sole determinant of backwardness, and recommends the principle of proportional representation for OBCs. The foot dragging of the Mandal report by the centre ever since August 1982 is quite understandable. In the prevailing political conditions, its outright rejection will invite political disaster and its acceptance will aggravate social dissensions. Professor Baxi is right that the “announcement by the Union Government that states should await formulation of a national consensus is a grand but dangerously futile gesture”, because “this would require an unequivocal policy declaration by the Union on the Mandal Commission Report, which will create either way quite an explosive situation at a national level”. One can hardly disagree with him that “consensus cannot accomplish reversal of history”, particularly the history of caste quotas in South. And the “present emergence of divisive authentic terrorist forces

85. Id. at 57.
86. Id. at 26, 167.
87. Strangely enough not a single Member of Parliament raised any objection to the effort of Mandal Report to resurrect Varna social hierarchy in India when the report was presented before Parliament in August 1982. The Times of India, Editorial, August 13, 1982.
88. Supra, n. 1 at 14.
89. Ibid.
90. Ibid.
in Indian society and polity” says Baxi, “do not offer any prospect of consensus on such deepseated emotional issue”.91

Judicial Responses

*Balaji* is still respected as the *locus classicus* in the area of backward classes reservation although, some of the doctrines developed in that case have undergone several kinds of erosion and distortions. Interestingly enough, *Balaji* has been fitted almost to any position; that it interdicted caste and communal units, that it permitted caste unit as classes, that it completely outlawed the use of caste test, that it permitted it to be used in conjunction with other neutral tests, that it highly commended economic tests and that it allowed caste plus poverty test.

The rival readings of *Balaji* has only augmented the confusion surrounding the role of caste in the determination of OBCs. Much of the confusion, as Professor Marc Galanter puts it, has been caused by the failure of the courts to clarify the distinction between caste (in the sense of a corporate group) as a unit of classification and caste (in the sense of rank or standing) as measuring rod of backwardness”.92 Failure of the courts to clear this distinction has led to “considerable confusion and, in particular, it has obscured the original commitment to overcome the heritage of caste-distinctions”.93

*Balaji* had struck down a Mysore reservation scheme on many counts. The Mysore order suffered from many vices, executive reservation, exclusive use of caste test, classification of backward classes into backward and more backward classes, inclusion of about ninety per cent of the population as the eligible beneficiary and many other. The court, speaking through Justice Gajendragadkar, viewed wholesale reservation as undermining the standards and efficiency in professions. Reservations should be “reasonably below” 50 per cent so that sufficient places are


available for open competition. Only those communities could be treated as educationally backward classes who are "well-below" the State average of literacy implying that the number of beneficiaries should be less than half of the population. For determining social backwardness, it should be ensured that the backward classes in the matter of their backwardness are comparable to the SCs and STs. The court agreed that in relation to Hindus caste status of a person could be one of the possible measures of backwardness to be used in conjunction with other non-communal tests such as poverty, occupation, place of habitation, etc. Caste status could, however, in no circumstance, be the sole determinant of backwardness. Social backwardness was on the ultimate analysis, the result of poverty to a very large extent and social backwardness which resulted from poverty was likely to be aggravated by considerations of caste to which the poor citizen might belong but that only showed the relevance of both caste and poverty in determining social backwardness. The court showed its hostility to the creation of layers or strata among the backward classes and emphasised the element of absolute backwardness so that "really backward classes" were the beneficiaries. Since the aim of reservation was to overcome rooted inequalities, the backward classes should be both socially and educationally backward. All these guidelines were supplied by the court to prevent the reservation clauses from expanding into a regime of caste and communal allotment.

Balaji undoubtedly opposed the exclusive reliance on caste standing in determining social backwardness but it tolerated communities (including caste groups) as "classes" under Article 15(4):

94. Supra, n. 48 at 662-62.
95. Id. at 660.
96. Id. at 658.
97. Id. at 659.
98. Ibid.
99. Ibid.
100. Id. at 658.
101. Ibid.
“It is for the attainment of social and economic justice that Article 15(4) authorizes the making of special provisions for the advancement of the communities therein contemplated, even if such provisions may be inconsistent with the fundamental rights . . . .”\(^{101}\) a

While developing the tests of educational backwardness the court observed: “Only those communities which are well-below the State average can properly be regarded as educationally backward classes . . . .”\(^{102}\)

It seems clear that Balaji allowed communities as classes or units of classification whose social and educational backwardness could be measured by multiple tests, caste standing being only one of the tests.

But in Chitralekha,\(^{103}\) Justice Subbarao “explained” Balaji by saying that ‘castes’ could not be ‘classes’ in any circumstance and in developing these responses the distinction between caste as a unit and caste as a measuring rod was completely blurred:

If the makers of the Constitution intended to take caste also as a unit of social and educational backwardness, they would have said so as they have said of the Scheduled Castes and Scheduled Tribes. 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.\(^{104}\)

In approving an arrangement based on income and occupation, the court modified Balaji by saying that caste was not a compelling test of backwardness and therefore backward classes could be designated by exclusive economic tests. Justice Subbarao perhaps neglected that the question regarding ‘classes’ and

\(^{101}\) a. Id. at 664.

\(^{102}\) Id. at 660.

\(^{103}\) Supra, n. 50.

\(^{104}\) Id. at 1833 (emphasis added)
'castes' was not whether the two could be "equated" but rather whether "classes" could be composed of caste and communal groups.

The notion propounded by Chitralekha was, however, short lived. In Rajendran, the court upheld a caste-based classification of OBCs and asserted that the aim was not merely to eliminate economic inequalities but to overcome disabilities arising out of past social discrimination. That in India classes were understood in terms of caste groups was stated thus: "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 caste . . . ." Rajendran became the judicial common place for the Justices propounding the meaning of classes in terms of caste groups. In Periakaruppan and Balaram Rajendran was applied with full vigour. The concern expressed in Chitralekha to exclude the prosperous segments from the OBC list, was also diluted in Balaram where the court observed that a caste as a whole could be treated as backward class "notwithstanding the fact that few individuals in that group may be both socially and educationally above the general average." Contrary to the Balaji "well-below the State average" test of educational backwardness, the court in Balaram upheld the inclusion of several communities in the list whose educational attainments were slightly higher than the state average." Not only this the court also disputed Balaji's comparability with SC/ST standard and relaxed it by saying that the OBC need not exactly be similar to SCs/STs.

Only a year later, the court in Janki Prasad quickly reverted to the Balaji posture, holding that the comparability test

105. Supra, n. 81.
106. Id. at 1014-15.
108. Supra, n. 70.
109. Supra, n. 50 at 1834.
110. Supra, n. 70 at 1395-96.
111. Id. at 1397.
112. Id. at 1395-96.
113. Supra, n. 3.
was a fundamental requirement as the SCs and STs exemplified the real social and educational backwardness and served as a model for classifying OBCs.\textsuperscript{114} The court was willing to commend the income tests and the income ceiling applied to caste and communal units but it rejected the notion that poverty alone could be the conclusive test of social and educational backwardness.\textsuperscript{115} An exclusive economic test would encompass a vast majority of India's population and an "untenable situation may arise because even in sections which are recognized as socially and educationally advanced, there are large pockets of poverty."\textsuperscript{116} An exclusive poverty test was again disapproved in \textit{Pradip Tandon}\textsuperscript{117} in reply to an argument that all people from rural areas of Uttar Pradesh were uniformly backward. The court reiterated the view that poverty was rampant in the whole of India and perhaps not in affluent classes.\textsuperscript{118} But reservation in medical colleges for candidates coming from Hill and Uttarakhand areas of Uttar Pradesh was upheld under article 15(4). The court found that the absence of the means of communication, technical processes and educational facilities in these areas rendered the poor and illiterate people backward and immobile. The concept of backwardness was thus expanded to include restricted opportunities due to geographical or environmental factors. \textit{Pradip Tandon} was in striking departure from all the earlier rulings that caste could be one of the measures of backwardness to be applied along with other neutral indices. The court here, held that caste could not be made even one of the factors of social and educational backwardness. Justice A. N. Ray clarified that the "socially and educationally backward classes of citizens are groups other than groups based on caste" and that "neither caste nor race nor religion can be made the basis of classification...\textsuperscript{119} Only a year later, Ray C. J. (as he then

\textsuperscript{114} \textit{Id.} at 938-39.

\textsuperscript{115} \textit{Id.} at 937.

\textsuperscript{116} \textit{Ibid.}


\textsuperscript{118} \textit{Id.} at 568.

\textsuperscript{119} \textit{Id.} at 566-67.
was) changed his heart in *Jaysree*\textsuperscript{120} where after citing *Balaji* and subsequent decisions, he readily agreed that caste standing could be one of the tests of backwardness, although it could not be the exclusive test. Both caste and income were relevant.\textsuperscript{121} The court rightly commended Kerala's means-cum-caste/community test of backwardness and agreed that with the economic advancement the social disabilities were also dispelled and, therefore, the state should strive to eliminate the well-off from the listed groups by fixing income ceilings.\textsuperscript{122}

All the rival readings of the reservation clauses and the idea underlying compensatory discrimination are neatly crystalized in the recent debate within the Supreme Court in *Vasanth*\textsuperscript{123} on the meaning of OBCs. Chief Justice Chandrachud commends means-cum-caste/community test of backwardness and wants that the OBCs should be comparable to the SCs and STs.\textsuperscript{124} Justice Desai interprets *Balaji* as recommending exclusive economic tests.\textsuperscript{125} He believes that caste test entails lion's share problem and also impedes the goals of secularism and of a casteless and classless society. Praising the approach of the Rane Commission in completely eschewing communal tests in favour of economic test, the judge concludes:

"The only criterion which can be realistically devised is the one of the economic backwardness .... If economic criterion .... is accepted, it would strike at the root cause of social and educational backwardness and simultaneously take a vital step in the direction of the destruction of caste structure, which in turn would advance the secular character of the nation. \textsuperscript{126}"

This is clearly incompatible with the earlier notion that poverty is not the decisive and determining factor of backward-

\textsuperscript{120}*Supra*, n. 67.
\textsuperscript{121}*Id.* at 2386.
\textsuperscript{122}Id.
\textsuperscript{123}*Supra*, n. 2.
\textsuperscript{124}*Id.* at 1498-99.
\textsuperscript{125}*Id.* at 1500, 1505.
\textsuperscript{126}Id.* at 1507.
ness and that both income and community are relevant, Justice Desai, thus, equates poverty with social and educational backwardness. He perhaps, ignores that even the pure income tests would create lion’s share problem because under such tests also only better off among the poor will be able to enjoy the benefits of reservations. Poverty by itself cannot assure a reserved seat in a medical college or government service. To enjoy the benefits one needs necessary qualifications and only those with favourable home environment and prior degree of success will be the major beneficiaries. And the elimination of the well-off can as easily be accomplished by putting income ceilings rather than by altogether abolishing communal units. Then, the pure income tests will render it difficult to apply the Balaji tests of “comparable to the SCs/STs”, “socially and educationally backward classes”, “backwardness of classes and not of individual citizens”, the “well-below the State average of literacy”, etc.

Justice Sen also deplores “caste-oriented policy of reservations” and wants it to be “economically based,”127 but he is aware that pure income test would ignore the historical context. He, therefore, allows communal units as classes whose backwardness should be measured pre-dominantly by poverty test.128 But “caste or sub-caste or a group should be used only for purposes of identification of persons comparable to the Scheduled Castes and the Scheduled Tribes.”129 He recommends the setting up of a permanent National Commission For Backward Classes for reviewing the whole policy since the courts are ill equipped to perform the task of identifying the OBCs.130

Justice Chinnappa Reddy equates social and educational backwardness with low social position and equates castes with classes: “Social hierarchy and economic position exhibit an undisputable mutuality. The lower the caste, the poorer are its members. The poorer the members of a caste, the lower the

127. Id. at 1530.
128. Ibid.
129. Ibid.
130. Id. at 1531.
caste... 131 Justice Reddy comes close to saying that caste standing of a person is the sole determinant of social backwardness:

One may without hesitation, say that if poverty be the cause, caste is the primary index of social backwardness so that social backwardness is often readily identifiable with reference to a person’s caste. 132

It is just unclear how the classical model of social stratification in terms of “status summation”133 can still be applied in modern India in view of considerable decline in the traditional conceptions of purity and pollution and sufficient evidence of occupational mobility among the low castes. Today there is no necessary congruence between ritual status and socio-economic status indicating homogeneity of a caste group with regard to the levels of social and educational attainments. 134 There is little data to show that low ritual standing (except in the case of untouchables) always stands as a barrier and a source of social disabilities and restricted opportunities to numerous middle level peasant castes.

Justice Reddy propounds a complex vision of equality and society. His conception of equality allows excessive quotas to a large stratum of population made up of populous middle castes. He discards the Balaji tests of nearness of OBCs to SC/STs, as unprincipled. 135 In his zeal to allow benefits to all falling between the upper castes and the untouchables, Justice Reddy opposes the “well below the State average” test of educational backwardness. Contrary to the Balaji concept of absolute backwardness Justice Reddy favours classification into backward and most backward classes. 136 He wants that all those falling bet-

131. Id. at 1512.
132. Ibid.
133. The classical model of social stratification in India was that of “Status summation”. One’s caste position in a ritually determined status hierarchy summed up his total life chances — his occupation, his education, his civil and political rights, his commercial and other ritual behaviour. See Anil Bhatt, Caste, Class and Power (1975), pp. 2-10.
134. Id. at 64-97.
135. Supra, n. 2 at 1515.
136. Id. at 1516-17.
ween the upper castes and the untouchables should be designated as OBCs. He assails the below 50 per cent rule as based on meritorian principle and on the facile assumption that reservations will inevitably reduce efficiency and standards. In saying so Justice Reddy transposes all previous discussions about the SCs and STs to the OBCs. The rulings in Thomas and Shoshit Sangh on which he so heavily relies, is limited to SC/ST employment preferences. These cases endorsed a higher percentage of reservation for SCs and STs looking at their overall employment position which established a yawning gap between the announced goals and the utilized quota. In respect of these categories there is a firm national commitment to accord priority in the agenda of compensatory discrimination and to provide them proportional justice in economy, polity and administration. There is no such national commitment for the OBCs. Justice Reddy wants that reservation for OBCs should be in proportion to their population in the state but forgets that once the principle of proportional equality is pressed for all the categories it would be impossible to confine the quantity to below 50 per cent. His view on the meaning of OBCs completely abandons all existing learning to limit the number of beneficiaries,

137. Id. at 1517-18.
138. Supra, n. 4.
140. In Balaji below 50 percent rule was applied to reservation in services. The Supreme Court struck down the carry forward rule the effect of which was to raise the reservation to 64 per cent in a particular year. But in Thomas, supra, n. 4, the court upheld state employment preference to the extent of 62 per cent on the ground that SCs/STs were severely under represented in state services. In Shoshit Sangh, supra, n. 139, the Supreme Court deviating from Devadasan, upheld the validity of carry forward rule in view of long gap between the announced goal and the utilized quota. All these cases related to the employment preferences for SCs and STs and in Thomas and Shoshit Sangh, the court’s observation on the extent of preference was limited to SC/ST reservations. For a comment see Parmanand Singh, supra, n. 139 at 37-46.
to avoid the exclusive test of caste standing, to limit the aggregate reservation to below 50 per cent and to classify really backward classes as OBCs.

Justice Venkataramiah is also critical of Balaji for not giving "adequate importance to the evils of caste system" and to the history of the reservation clauses. He attributes the meaning of "classes" to the expression "classes" in article 338(3), which is in the nature of the explanation to the definition of SCs and STs. Applying the rule of *ejusdem generis*, he defines OBCs as castes, communities and races. He argues that this interpretation is confirmed by the history of article 16(4) where Ambedkar equated classes as castes and communities. He points out that the word 'classes' was substituted in the place of "communities" just at the last moment. Therefore, the OBCs are those "who belong to castes/communities which are traditionally disfavoured and which have suffered societal discrimination in the past." He finds support for his view in clause (6) of the Objectives Resolution of December 13, 1946 moved by Nehru. Justice Venkataramiah, like Justice Reddy, equates classes with castes but he, unlike Justice Reddy, wants the OBCs to be comparable to SC/STs and wants aggregate reservations to be below 50 per cent. But Justice Venkatramiah agrees with Justice Reddy's historic view that only castes and communities are classes under Articles 15(4) or 16(4). Groupings based on income, occupation,

141. *Supra*, n. 2 at 1546.
142. *Ibid*.
143. *Id.* at 1544.
144. *Ibid*.
145. *Id.* at 1545.
146. *Id.* at 1548.
147. The resolution referred to the safeguards to be provided to minorities, backward and tribal areas and depressed and other backward classes, *id.* at 1544.
148. *Supra*, n. 2 at 1556.
149. *Id.* at 1559.
150. *Id.* at 1548.
geography, personal deprivation, situational hardship etc. were impermissible under the reservation clauses.\footnote{Ibid.}

\textit{Vasanth} too passes up the chance to clarify many confusions surrounding the meaning of OBCs. The anxiety expressed by Marc Galanter over the judicial failure to clarify the distinction between caste as a unit and caste as a measuring rod remains unclarified. None of the Justices, particularly Justices Reddy and Venkataramiah, propounding the caste test has addressed the problem of need of caste-wise data which has been abandoned in the post-independence India on the ground that caste-wise census would impede secularism and accentuate caste consciousness. Interestingly, both Mandal and Kaka Kalelkar commissions had to use dubious statistics based on the projections from older census. Consequently, whatever OBC population on caste lines would be projected, it will be misleading and unreliable.

The Chief Justice and Justices Reddy, Venkataramiah and Sen, all agree that “classes” under Articles 15(4) and 16(4) would be “castes and communities”. Justice Desai alone thinks that the “classes” would be economic groups. All the four justices uniformly advocate income cut-offs to exclude the better-off from the listed castes and communities. Three out of five Justice (Justice Venkataramiah, Sen and the Chief Justice) require that the OBCs should, in the matter of their backwardness, be comparable to the SCs and STs. Beyond this the opinions are far from clear. There is great divergence among the Justices on the tests to measure the social and educational backwardness of the classes. Justice Reddy emphasises caste status as the predominant test, whereas Justice Sen considers poverty as the predominant test applied to castes and communities. Justice Desai favours income test to be applied to all weaker sections but tells nothing about the way such test can be applied. Thus the concern expressed in \textit{Balaji} to apply multiple tests has completely been diffused by the plurality of opinions in \textit{Vasanth}.

Our analysis from \textit{Balaji} to \textit{Vasanth} clearly reveals that the judiciary presents a variety of opinions on the meaning of OBCs.
On the question of determining socially and educationally backward classes, the Supreme Court has vacillated; sometimes allowing communal quotas, other times preventing them; sometimes emphasising the elimination of historic disparities, other times emphasising the elimination of economic inequalities. The constitutional commitment in favour of OBCs, thus remains ambiguous and dithering and continues to be a source of dismay and resentment.

Conclusion: Social Consequences of Expansive Reservation

Even if it is agreed that the beneficiaries of Articles 15(4) and 16(4) are only historic social categories, this is of no consequence in a doctrinal setting where every other kind of groupings or classifications are permissible under the general doctrine of reasonable classification. In Thomas, the doctrine of equality developed by the Supreme Court has equipped the government with wide powers to take any measure or adopt any equalizing technique to achieve “actual equality” for the unequals. Equality should be gauged only by equality attained in the result and not merely formal or numerical equality, and “the law-maker should have the liberty to strike at the evil where it is felt most”. Equality implies “compensatory State action to make people who are really unequal in their wealth, education and social environment . . . . equal.”

Thus the departure from the principle of rewarding effort and competence is permissible not only for overcoming historic disparities but for overcoming all kinds of inequalities arising out of personal or circumstantial handicaps. The outcome of the enlarged meaning of equality and compensatory treatment is to


153. Supra, n. 4 at 519 (Krishna Iyer, J.)

154. D. N. Chanchala v. Union of India, A.I.R. 1971 S.C. 1762 (Reservation for children of political sufferers, defence personnel, government nominees upheld by the extension of the principle contained in article 15(4) to otherwise handicapped groups).
accord preferences to many new categories in addition to SCs, STs and OBCs. Thus the physically handicapped, children of political sufferers, ex-servicemen, victims of emergency, nominees of government, sportsmen, children of diplomats and many others are the new candidates of preferential treatment along with the SCs, STs, and OBCs. Reservations for these new categories are justified on the ground that “it is open for the government to decide the sources from which the admission would be made” and the principle contained in Article 15(4) can be extended to others who are handicapped in competition.

In recent decisions of the Supreme Court the enlarged meaning of equality and of compensatory discrimination has been fully articulated in dealing with institutional or regional preferences in medical school admissions. Thus in Jagdish Saran v. Union of India, Justice Krishna Iyer has justified preferences in admission to medical courses to ensure better supply of medical services to the neglected regions of the country. Regional preferences are justified to correct imbalance or handicaps from which the students from backward regions are suffering. He believes that the notion of merit should be enlarged to enhance the provision for rural health service and therefore, belonging to a university catering to a deprived region is a plus point of merit.

In Pradeep Jain v. Union of India, Justice P. N. Bhagwati (as he then was) cited with approval the above meaning of equality and merit. While allowing 70 per cent of institutional or


156. Chote Lal v. State of U.P., supra, n. 72 (Reservation in services for dependents of freedom fighters and emergency detainees upheld under the doctrine of reasonable classification).

157. Supra, n. 154 at 1769.

158. Id. at 776.

159. Id. at 778.


regional preferences in medical school admission, he has further enlarged the distributional potential of equality. He says that the dynamic concept of equality now takes "within its sweep every process of equalization or protective discrimination" so that equality becomes a living reality for the masses and the State must, therefore, "resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment." 162

While developing responses justifying departure from merit, the justices seem to say that the performance in tests is not necessarily a good predictor of better performance in professions, the applicant's sense of dedication to tearful masses and his intellectual integrity all are part of merit conceived as a system of perceived social needs. But, however, laudable this notion of merit might be from jurisprudential point of view, it is almost impossible for either the government or the judiciary to administer such concepts of merit which involve the measurement of each applicant's sense of dedication to serve the tearful human masses in the underserved areas. The excluded ones will find little comfort with the notion that howsoever high their scores might have been in the examinations or competitions, they are bumped simply because they are less dedicated than those preferred.

In contributing to the meaning of equality as mandating substantive equality or equality of results, the courts have not considered the question that the vast compensatory responsibilities bestowed by them to the government will give rise to the problem of resources and priorities in fulfilling the competing commitments. Nor have they considered the question of relationship between reservations for backward classes and compensatory measures for otherwise handicapped groups. What will be the quantitative limit of reservations? What will be the position if reservations of backward classes combined with reservation for the other desperate groups raise the total beyond 50 per cent leaving very little for open merit competition? What are the legitimate social goals in the pursuance of which the notion of merit can be broadened or enlarged? How to design the compensatory policies

162. Supra, n. 161 at 676-77.
that the benefits filter down to the most backward with fewest resources and advantages? Professor Marc Galanter very rightly reacts:

"In a setting of chronic shortage, an enlarged commitment to remedy all undeserved difficulties betokens a commendable generosity of spirit. But it also raises the question of priorities and allocation of scarce resources, including attention. Government's authorization to pursue substantive equality is vastly greater than the resources that will conceivably be available to it. Among the claimants on its compensatory powers will be many who are better placed to press their claims on the attention and sympathies of government. Will not the commitment to the lowest social groups - especially where these are perceived to receive massive benefits - be overwhelmed by governmental response to be better-placed claimants on its compensatory attention? . . . . The sense of a regime of formal equality qualified by a singular exception to alleviate disparities derived from position in the traditional social hierarchy is liquidated or dissolved into a general and unfulfillable commitment to substantive equality."163

The enlarged commitment to equality and removal of social disparities will not automatically transform the Indian society. The courts can only erect broader notions of policy and produce legal doctrines favourable to the disadvantaged and the deprived. Still the beneficiaries have to depend upon the state patronage. They cannot take the initiative to compel the government to live up to its commitments. Even the courts have not been able to play an affirmative role to see that the policies are properly designed and implemented, that the benefits really flow to the really needy and the disadvantaged. So far the device of public interest litigation has not been used in the area of compensatory discrimination.

The current crisis on reservation issue amply dramatizes that it is beyond the courts to rescue the reservation power from political abuse and distortions. The multiple and competing principles

163. Marc Galanter supra, n. 6 at 392.
on equality and compensatory discrimination have facilitated selective reading of the legal doctrine and have enabled the commissions and governments to choose which are favourable to them.

Reservations involve social costs and impinge heavily on the careers of merited applicants, provoking resistance and resentment. Much of the resistance and resentment can, perhaps, be minimized by either diluting or widely spreading the social costs by measures aimed at improving the environment, coaching, training, etc. But the political leadership has not found the improvement in the existential conditions of the poor and the deprived to be of much electoral advantage. Symbolic enhancement of reservations or expansion of beneficiary groups have proved to be more politically gainful to beguile the wider public that too much is being done for the victimised and the oppressed. The harsh reality, however, is that reservations produce only illusory benefits. For instance, the system has succeeded only in creating a small elite among the backward classes and has not helped in achieving group mobility which can be achieved only when a group possesses a high degree of cohesion and its leadership is able to perceive the interest of the whole group. But the individuals who move up through reservation suffer from an identity crisis and are quite often reluctant to identify themselves with their castemen and thus fail to play the representative role underlying the idea of compensatory discrimination.

The Indian experience teaches us that the quota system is only a short cut and crude strategy of social reconstruction which, if mismanaged, will lead the society to traumatic tensions. In democracy, groups wield political power and a government confronted with the demands and pressures for compensatory attention from all sides cannot withstand fierce onslaught without giving something. Once a society decides to distribute scarce resources and opportunities on the basis of group identity, groups are strengthened and benefits once given can never be withdrawn. More and more groups would proliferate and public patience will be exhausted by the runaway expansion of reservation device. By definition 'reservation' is a temporary measure to achieve equality, to be complemented by long range developmental measures which, when begin to produce results, the reservations can be slowly
withdrawn. What is needed today is that the state should divert more and more of its resources to increase the overall competitiveness of the beneficiaries rather than to stick to ‘reservations’ as the only best means to promote equality. Unless the number of beneficiaries is reduced and bounded, the system will always carry the threat of expanding into a regime of communal quotas. Therefore, until other better ways to combat discrimination are devised, the people of India must learn to live with better and regular social conflict over the reservation policies.