SOME ASPECTS OF
SOCIAL JUSTICE IN INDIA

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By

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STATEMENT BY THE CANDIDATE

I hereby state that the thesis for the Ph.D. degree on "SOME ASPECTS OF SOCIAL JUSTICE IN INDIA" is my original work and that it has not previously formed the basis for the award of any Degree, Diploma, Associateship, Fellowship or any other similar title.

Place: Goa.
Date: February, 1994

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INTRODUCTION

Our basic social system is built on the foundation stone of gross inequalities whereby there is still a large percentage of people belonging to Scheduled Castes and Scheduled Tribes and Other Backward Classes who have remained deprived of the fruits of liberation and development inspite of the rights guaranteed in the Constitution. Consequently, many have ended up in poverty due to social and educational backwardness. In a country which swears by Social Justice, victimisation of women is still a serious problem in the Indian society.

The objective of the present research is to examine the Policy of Protective Discrimination, especially the strategies of reservation to the Scheduled Castes and Scheduled Tribes as also for Other Backward Classes.

With the growing awareness of the rights and increased assertiveness on the part of the deprived sections of the society, who were pushed down to the lowest rungs of social order, the need for social justice has become all the more poignant. Our Indian Constitution which embodies the aspirations of the deprived sections for achieving social equality and justice, provides for the protection of Scheduled Castes and Scheduled Tribes, Other Backward Classes, women and minorities, in various ways. While Article 14 guarantees right to equality, Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, etc. Besides, provision has been made in Articles 15(4), 16(4), 330, 332 and 335 of the Constitution for Compensatory Discrimination and for the advancement of Scheduled Castes and Scheduled Tribes and other socially and educationally backward classes. Despite the fact that these special provisions termed "reservation of seats" (15(4)) and "reservation of posts", (16(4)) have generated heated discussions, they must be adopted in order to advance the prospects of the weaker sections or the historically disadvantaged groups. The debates and discussions on Reservations have been reviewed in this work and a case for 'Reservations' made.

The research also concentrates on the changing status of women in India, and more specifically in the State of Goa. Education has, no doubt, given women a career, and the law has given her protection, but there has not been a real change in the environment in and around her home. Her life is still full of contradictions. In view of this, attempts are made here to assess the extent of
oppression, the limitations of the legislations and, consequently, the failure to achieve the desired result, viz. "Social emancipation of women". Further, the study offers suggestions to ensure women equality and justice.

For the purpose of this study I have adopted besides library research, the interview method and also visits to relevant places for observation and discussion. The data pertinent to the objectives of the study, was collected from relevant documents, government reports, Supreme Court judgments, records of women’s collectives, books, newspapers and periodicals. Discussions were held and interviews (open ended and structured) were conducted to gather relevant information from MLAs, Principals of Colleges, students, Officers in the Departments of Health and Welfare in the Government of Goa, members of women’s collectives and actual victims of oppression. The thesis is divided into the following three Chapters: Chapter I: Protective Discrimination: Reservation for Scheduled Castes and Scheduled Tribes; Chapter II: A new Discrimination - Reservation for Other Backward Classes (The Mandal Commission); Chapter III: Women in India and Social Justice.

Chapter I on Protective Discrimination, deals with the Scheduled Castes and Schedule Tribes. The study covers the social discrimination which was practised and which segregated the Scheduled Tribes ethnically, from the other social groups thus relegating them to the bottom place in society.

It also highlights the need for their economic upliftment, social change and full protection, if they are to enjoy the benefit of equality and freedom. The Chapter examines the criticism levelled against reservations and makes out a case for justifying reservations as a protective measure. It analyses the policy of reservations in educational institutions, reservations in government services and reservations in politics. I have tried to explore the position of job reservation for Scheduled Castes and Scheduled Tribes in Universities through contacts with Principals of a few colleges in Goa. I have also interviewed the lone MLA representing the Scheduled Castes and hypothesized as to how the improvement in the status of Scheduled Castes can come about through political reservation. In fine, to counter the various criticisms, a suggestive scheme has been detailed to ensure the validity of both academic standards and professional competence on the one hand as well as Social Justice, through concessions, on the other hand.

Chapter II of this research deals with the New Discrimination for the Socially
and Educationally Backward Classes, or the "Mandal Reservations for the OBC'. The Chapter focusses on the various problems of identification of OBC beneficiaries and endorses the view that though the 'Caste System' is an evil, the implementation of caste-based privileges for those who are really backward among the identified backward groups by excluding the creamy layer, is the right move. In the process of analysing the Mandal Reports, its constitutional aspect has also been focussed upon, in the light of the recent Supreme Court Judgment (16th November 1992). The eminent jurist Nani Palkhiwala’s case against Mandal is analysed and refuted. The chapter also discusses the case of Goa in the light of the Mandal Report.

Chapter III reviews the position of Indian women. To begin with, a brief historical survey of the condition of women in pre-British India, in the colonial period and post independence period is given. The study also throws considerable light on the condition of women during the Portuguese rule in Goa. The Portuguese Civil Code of 1867 and the subsequent progressive amendments are critically analysed and evaluated. It is shown how the much lauded Common or Uniform Civil Code of Goa is really not all that uniform or common. The Chapter also details the exploitation women were/are subjected to under such headings as dowry, rape, devadasi system and prostitution. Case studies from Goa have been cited to highlight the extent of oppression. The Chapter also examines the various enactments regarding Indian women, which have not been fully internalised and, as a result of which, large masses of Indian women have remained unaffected by them. It is primarily with the hope of improving the present condition of women, that a suggestive Scheme Of Recommendation has been made by way of conclusion.

If my thesis, in any small measure, succeeds in providing a picture of the visible as well as the silent oppression of the lower strata and vulnerable sections of society, and in showing some hope of redressal, inspite of all odds, then it would have done justice to my objective.

It would not be out of place to state that in the course of this research I have had many educative and enlightening experiences and have received support and cooperation from various persons and institutions.

I am particularly indebted to Mr. M.S.Sail, Director of Social Welfare, Ms. E.
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Out of a deep sense of gratitude I dedicate this, my humble work, to late Dona Francisca Pinto and Senhor Jose M. Pinto, my guardians and a perennial source of inspiration to me.

Angela E. De Sá

Goa,
CHAPTER I

PROTECTIVE DISCRIMINATION:
RESERVATION FOR SCHEDULED
CASTES & SCHEDULED TRIBES
PROTECTIVE DISCRIMINATION: Reservations for Scheduled Castes and Tribes.

Deprived Communities:

Traditionally the Scheduled Tribes and Scheduled Castes, generally known as Adivasis and Harijans respectively, had no say in the government of the country. Today, however 'politics' is open and competitive. It is now as much a concern of Untouchables, Harijans, Tribesmen, Adivasis, and that of any other class. A Harijan is no longer an untouchable in politics though he may continue being regarded so, in social and religious matters. In the game of politics the numerical strength of the untouchables is considered more important by the power seekers than his individual wealth or social status.

The Scheduled Castes and Scheduled Tribes constitute more than 22 percent of India's population. The terms 'Scheduled Castes' and "Scheduled Tribes" were first used in the Government on India Act 1935. The two together were later known by the general term "Depressed Classes."

For hundreds of years the Scheduled Castes or Harijans occupied the lowest rank in the Hindu Caste hierarchy and eked out a miserable existence - their very touch or even shadow could pollute an upper caste Hindu. Known by different names in different States (Bhanguis, Chamars in Gujarat; Mahars in Maharastra, etc.) the Scheduled Castes have traditionally suffered from innumerable cast disabilities imposed on them by the high castes. Considered to be "ritually polluting", not only their touch but even their shadow was dreaded. Restrictions were imposed on their food habits, dress and behavior. Even today this degradation can be witnessed in many parts of the country where they are denied access to common village wells and caste Hindus pour water in their pots from a distance. This disability persists in spite of Art .17 of the Constitution which abolished untouchability and declared it a crime. Likewise though Article 25(2) threw open Hindu religious temples to the untouchables, in many places they are still barred entry into temples by caste Hindus. Very recently on April 1991, it was reported that several scheduled castes from Pernem taluka in Goa under the leadership of Deu Mandrekar, Scheduled Caste MLA, converted themselves to Buddhism at a public ceremony at Miramar beach, as a protest against the high castes refusal to let them worship in village temples.

The Scheduled Tribes in contrast to the Scheduled Castes, suffer less severe disabilities. Known by different names in different parts of the country (Girijans, Dublas, Dhodias, Kaliparaj...
etc.), these communities are now designated by the general term "Adivasis" (meaning aboriginal inhabitants). Not only do they suffer from less acute disabilities, when compared to the Untouchable Castes or Harijans, they are also perceived as having no specific obligations or duties towards caste Hindus. In other words we can say that their backwardness is more economic than social or religious.

Inspite of a large percentage of Scheduled Tribes being cultivators their condition is poor and miserable due to the smallness of their holdings, poor soil, absence of irrigation facilities and lack of material resources. With these handicaps they can not hope to be self sufficient in agriculture. The condition of the Scheduled Castes who are generally landless or hold very little land is still worse. Among the Schedules Castes, the number of agricultural labourers outstrips that of cultivators. Other Scheduled Castes follow traditional occupations like sub-marginal farmers, leather workers, weavers, fishermen, scavengers, rag-pickers, etc.

Another handicap in the way of the Scheduled Castes and Scheduled Tribes, is the high rate of illiteracy among them which makes their representation in government services far from satisfactory. Only a a marginal number of Adivasis and Harijans had education above the matriculation level.

In view of this the Constitution of India clearly stresses the importance of welfare programmes for ameliorating the conditions of these deprived communities. The Directive Principles state: "The State shall promote with special care the education and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation".

Certain safeguards have been laid down by the Constitution to insure the implementation of the Directive like representation in Parliament and the State Legislature and in Central and State Services, abolition of untouchability, economic advancement and appointment of special officers to monitor implementation of various welfare measures adopted for ameliorating the socio-economic conditions of the Adivasis and Harijans.

The adoption of the parliamentary model of democracy has opened one more avenue to these deprived communities, to attain equality with the caste Hindus i.e. through politicisation. With active participation in politics they can raise their status in society.

Positive Discrimination:

Positive discrimination is a legitimate means by which the State seeks to equalize competence as well as promote equality of opportunity subject to certain conditions, viz., that it should
be applied to an identifiable minority which has been seriously and manifestly disadvantaged in the past; disadvantaged, not because they are less well off or because they are poorer than others, but, because of being caught in a trap of deprivation due to historical reasons. It is deplorable but true that many Indians because of accident of birth in a deprived community, were denied all good chances of life with scant respect for innate talent and capacity. Such was the historical injury inflicted on these members who had to be "treated" for the injury. Positive discrimination in this sense is a short lived, reverse or rather rectificatory discrimination which must necessarily whither away once the required result i.e. social upliftment of the deprived groups, is produced. Through Positive Discrimination the earlier inequalities were to be replaced by "temporary" new inequalities i.e. new discriminations.

The Constitution of India while dealing with Fundamental Rights, lays down that there shall be equality of opportunity for all citizens in matters relating to appointment in Government Service. While Article 15(1) prohibits discrimination on grounds of religion, race or caste, Article 15(4) allows special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Likewise, Article 16 affords equal opportunity in jobs which, cannot be denied on grounds of caste, race and religion, but at the same time Clause (4) of the Article empowers the State to give reservation in appointment for those who are not adequately represented in service. These provisions were made to encourage the deprived groups to overcome handicaps and to advance them over a limited period of years - 10 years. Solely with the aim of upliftment and advancement of these backward groups under these enabling provisions, 22.5 percent of appointments in Government services and seats in educational institutions, were set aside for Scheduled Castes and Scheduled Tribes, at the same time lowering the standard of qualification for appointment to government jobs and for admission to educational institutions.

With the access of the Scheduled Castes and Scheduled Tribes to higher education and Government jobs, it is naturally expected that they would achieve parity and mobility with the high castes. These members who rose to a certain level due to the given opportunities, would in their turn influence others of the same group and thus the effect of the policy would seep through from the advanced section of Scheduled Castes/Tribes to the other members of the same group. Ultimately it would lead to an interaction between the high castes on the one hand and the Scheduled Castes and Scheduled Tribes on the other hand and gradually weaken the ascriptive values deeply embedded in Hindu Society.

Criticism of Reservation Policy:

Critics however point out that equalization of all members of the Society is a far fetched dream
in a society where every member has an indelible impression on his mental fabric, that he is born in a particular caste and must live and die within its parameters. Now, if reservation helps perpetuate this impression, it can indeed prove to be a serious impediment to social interaction which the reservation policy so ardently seeks to bring about. Castes should in no way be perpetuated, for, in that case reservations will be here to stay.

Any law or action which is likely to perpetuate and divide people on the basis of caste and religions, must be rejected except as a temporary expedient. Mr. Justice Krishna Iyer in his Supreme Court judgment realised that the cause of the socially and educationally backward classes and of Scheduled Castes and Scheduled Tribes would be injured if their disabilities were treated as permanent. In Karmachari Sangh Judgment he said, 'If freedom, justice and equal opportunity belong alike to bhangi and brahmin, prince and pauper, if they are to feel the social transformation which Article 16 (4) promises, the State must apply equalising techniques which will enlarge their opportunities and thereby progressively diminish the need for props.3

Many criticisms have been made against the policy of reservation for Scheduled Castes and Scheduled Tribes. Thus, firstly it is argued that granting reservation in academic institutions will have adverse effects on the academic standards, since admission will have to be given to academically inferior students. In addition to this it is felt that the outcome of reservation of jobs for Scheduled Castes in public sector would be to induct 'inefficiency' in service.

An efficient public service is no doubt a prerequisite for the welfare and happiness of the people in a democratic country like ours and Article 335 rightly provides that the claim of Scheduled Castes and Scheduled Tribes must be consistent with the maintenance of efficiency of administration. But the fear about inefficiency could have been a matter for concern, if in the first place a considerably large number of Scheduled Castes and Scheduled Tribes had succeeded in entering the portals of educational institutions and employment sectors. Statistics, however, show that their representation has been very minimal, even after 3 decades and more of the Reservation Policy. For instance in 1989 the representation of the Scheduled Castes in Central Government service was 6.51 percent in Class I, 11.65 percent in Class II, 14.85 percent in Class III and 20.41 percent in Class IV.4 How could such a meagre presence of Scheduled Castes infect the service section with inefficiency?

The 1980s anti-reservation agitation had mainly centered round professional colleges. The anti-reservation stir in Gujarat was the brain child of medical students in the State, where out of 742 students in 4 colleges, only 22 were Scheduled Castes and Scheduled Tribes. To think that these 24 students could be responsible for sacrificing merit, lowering educational standards and spreading inefficiency, is sheer absurdity.
Another reason for opposing the reservation policy lies in the contention that benefits are being cornered only by a few members of that group, generally the well-off section. It is further argued that those really poor and deserving from the Scheduled Caste groups are left in the cold, as against the expectation that the advancement of one group of Scheduled Castes would have a spill-over effect on the next group and so on, until it covered ‘Scheduled Caste’ in its entirety.

Some find the reservation policy unacceptable because of the scarcity not only of seats in educational institutions (specially professional colleges) but also jobs. The crux of the problem is the ever-increasing population which accelerates the pace of competition for educational seats and jobs. The education systems and the public sector are in no position to expand continuously due to the lack of economic resources in the country. Expansion of reservation in educational institutions and services, and economic growth must necessarily take place simultaneously. Since this has proved difficult it is but natural that the policy of reservation has become a source of conflict in our society, marked above all by scarcity.

There is also a discordant note sounded by the opponents of the policy regarding the period of its operative stay, which was intended to be 10 years. Reservations, it is argued, instead of being a temporary social engineering device, seem to have come to stay. The policy came up for renewal in the Parliament in 1980 and is to continue for another period of 20 years i.e. upto 2000 A.D. as it failed to achieve the expected ameliorative effect. Critics, however, argue that vested interests have now emerged in its perpetuation. As things stand today, positive discrimination as a means of promoting equality of opportunity, these critics say, is just a farce. It has become a permanent policy as against the conceived short-term measure. What was meant to be severally limited in application, has been stretched to cover more and more people as there is a scramble for getting the Scheduled Caste nomenclature. In some States, reservations have been extended to cover other backward classes too. As a result in Karnataka, the reservations in jobs and education comes to 55 percent seats and posts; while in Andhra Pradesh it is nearly 45 percent. The policy has not made ex-post efficiency, higher standards and meritocracy mandatory and this, the critics claim can do immense harm to crucial institutions, professions and services.

In view of these criticisms, the critics of reservation argue that there is need on the part of the States to review, re-define and re-design the Reservation Policy and restore it to its original confines so that no destructive social conflicts are fuelled like those in Bihar and Gujarat.

**Justification of Reservation as a Protective Measure**

The policy of Protective Discrimination is a strategy for Social change and an expression of
the liberal ideology which prescribes non-violent, constitutional, legal and administrative solutions to the problem of age old social discrimination and economic exploitation. Welfare is after all the irrefutable natural right of every individual guaranteed by the Constitution.

The Scheduled Castes, who, over the ages, have been traditionally oppressed and underprivileged are theoretically liberated by the Constitution, which now affords them opportunities to climb up the social ladder and to enjoy higher status with its accompanying privileges hitherto deemed to be the birthright of only the twice born or higher castes. Our Constitution makers realized that given the type of social order and social hierarchy India has, equality of opportunity would remain a mirage for the Scheduled Castes/Tribes. Hence after a prolonged debate the Constituent Assembly resolved to provide Protective Discrimination to the traditionally neglected, the Scheduled Castes and Scheduled Tribes. Reservation is thus a mechanism of protective discrimination.

There are critics who argues that any programme to eradicate poverty must have no reference to scheduled castes but only to the poor. These critics who mainly belong to the upper castes and dominant groups or sections of society claim that 50 percent of the Indian Society may be said to come below the poverty line, then why should only the Scheduled Castes and Tribes be selected for specific benefits? These critics want the State to concentrate on economic development and on general poverty alleviation programmes. Their contention is that the benefits of development are bound to filter down to the poorer strata of society, including the Scheduled Castes and Tribes.

However, even if we accept this downward filtration theory, there is no guarantee that the Scheduled Castes would benefit because of the odious practice of untouchability from which the Scheduled castes suffer. As one scheduled caste put it to this researcher, "If we are not to be touched, then how can we benefit by way of getting jobs or from facilities like use of common wells, etc? The odious social boycott suffered by the scheduled castes at the hands of high castes poses a major hurdle for the scheduled castes to avail of the anti-poverty programmes.

It must be driven straight home that the policy of protective discrimination is no charity or favour towards the schedules castes. It is in essence a scheme of distributive justice through which the legitimate rights of the exploited groups are restored. The resentment of the rural high castes in particular, springs from the fact that through this policy they are forced to part with some of the privileges which rightly belong to the exploited sections of the Society.

Regarding the argument of the critics, that the benefits go mainly to the better-off or elite among the Scheduled Castes, two things can be said: Firstly, even if this is true, it can at best
be a passing phase and does not justify throwing the baby away with the bathtub. With adequate safeguards and corrective measures, the spill-over effect, over the times, is bound to touch the entire scheduled caste group. Secondly, one cannot overlook the psychological impact the reservation policy has had on the community as a whole. This researcher can speak from personal experience of Goa, that it has enabled even those members of the scheduled castes community who have not been direct beneficiaries of the policy to hold their head high. The very thought that we have "our men" in the Assembly or Panchayat works wonders in the psychology of the community. One SC community member informed me how he no longer felt helpless or insecure since he could now even approach the CM through the scheduled caste MLA from the reserved constituency.

Even the argument that the scheduled castes and tribes are so dependent on special privileges that they want always to remain at the receiving end, is at best a half truth, since there are instances when scheduled castes have foregone their privileges and have proved their worth by qualifying through open competition.

Another flimsy excuse put forward against protective discrimination is that the policy perpetuates inferiority status, when in fact inferiority springs forth from the lack of education among the scheduled castes. Since the policy affords educational facilities to the hitherto deprived, it will instead help shake off all complexes. The contention that the policy forces inefficiency is a fallacy, for, the candidate is selected after qualifying at least with the required minimum. He can therefore not be a 'tabua rasa' in the work assigned to him though he may not be more or as efficient than the others.

Some of these arguments put forward by the dominant sections of the society show that some among them are not eager enough to see the lot of the weaker sections improved. The dominant groups are reluctant to surrender the privileges held so long.

Protective discrimination is a new experiment in democracy envisaged by the Constitution of India to protect the weaker sections from social injustices and exploitation in any form and therefore in keeping with the original intention of eradicating poverty and other disabilities related to the practice of untouchability, the policy must be made available to the scheduled castes and scheduled tribes, by way of Compensation for the past historical deprivation. This is not to argue for perpetual protective discrimination in favour of scheduled castes and scheduled tribes, but to argue for continuing with protective discrimination in their favour till such time as the incapacitating disabilities are removed.

At present Reservations Policy for Scheduled Castes and Scheduled Tribes falls under three categories. They are: Educational Reservation, Job or Service Reservation and Political
Reservation.

**Educational Reservations:**

Education is the most important facet of the reservation. It is an instrument in the hands of Scheduled Caste members to break the chains holding them tied down to low status occupation and to help in promoting occupational mobility and improving their standard of living.

Educational institutions should serve as melting pots for caste distinctions and help in bringing about cultural integration of Scheduled Castes with high Caste Hindus. Moreover, education must create an atmosphere which is conducive to change. Education alone can ultimately bring about a change in the attitudes and outlook of both the high castes as well as SCs/STs and foster liberalism and humanism.

In keeping with the Constitutional provisions in Article 15(4) and 29, the Union Ministry of Education has issued instructions to all the State Governments and Union Territories Administrations as well as the Universities to reserve 20 percent of the seats in all educational and technical institutions for Scheduled Caste and Scheduled Tribe Students. Qualifying marks for their admissions have also been relaxed. Unfortunately some institutions do defy these instructions. Many educational institutions claim they are not able to locate suitable SC/ST candidates. Performance records of those who succeed in getting admission show the performance to be more often than not below average.

After investigation by the Commissioner for Scheduled Castes and Scheduled Tribes (1978-1979) into the pattern of admission and academic performance of Scheduled Caste and Scheduled Tribe students at the Jawaharlal Nehru Medical College - Raipur (MP), it was revealed that inspite of the State Pre-medical Board lowering the minimum percentage for the qualifying entrance test to 35 and even 15, the result was far from encouraging. Performance wise it was found that the Scheduled Caste students admitted, even after lowering the qualifying percentage, were comparatively lagging behind. For example out of the 42 Scheduled caste students admitted the speed of work ranged from 4 1/2 years to 8 years (1964-1973) in different students, in their attempt to clear the final examination. 4 students completed the course in 4 1/2 years i.e. in the normal time, 6 of them took 5 to 6 years, while 6 others cleared the same in 6 to 7 years and yet another 7 students saw the end in 7 to 8 years. In addition there were 3 who were rusticated and 2 migrated to other colleges. The remaining 14 gave up midway. Even the special coaching in some cases, in the first year proved futile.

One reason for the poor performance of Scheduled Caste and Tribe students at professional
colleges is their rather weak educational foundation. The Scheduled Caste and Tribe students attend Municipal or Government Schools which lack good training facilities while the upper strata students go to elite institutions which impart quality education. It is always the product of elite schools that take up professional courses. Scheduled Castes and Scheduled Tribes on the other hand find going to such elite schools beyond their reach due to their socio-economic condition. Those among the Scheduled Castes and Scheduled Tribes who managed to get into Higher Educational, Technical and Professional courses, cannot shine because they are the product of Government Schools with a weak background at the primary and high school level.

To add to this, there is the environment factor. The Scheduled Castes and Scheduled Tribes come from an environment which is not congenial for study and in the absence of any guidance from the family members and financial assistance, they can hardly make any headway in education. Besides, professional courses are too expensive, scholarships insufficient and borrowing creates more strains. With all these hardships it is nearly impossible for them to compete with non-Scheduled Castes and Scheduled Tribes students and meet with success at graduate and post-graduate level in medicine and engineering.

Another reason is that the structural framework of formal education is not suitable. A research into this by Bernstein (1975), Bowles (1977) and several others indicate that the syllabi, curricula, programmes, instruction evaluation, norms, values and expectations are designed for the privileged sector rather than to suit the life style of the disadvantaged. Academic institutions are breeding grounds for later occupational positions.

Consequently, along with knowledge and skills, these institutions are also expected to cultivate and reinforce qualities like suitable manners, bearing, behaviour values, style of life all of which link social class with occupational placement and form an important part of the total evaluation of students. Thus academic merit rating includes non academic factors also. Educational institutions have failed to balance these factors due to both pedagogic and administrative inadequacies. There has therefore been a growing resentment not only against concessions but eventually against the beneficiaries whom the privileged persons hold responsible for the dislocation in the educational system. Thus any policy which is to the advantage of the disadvantaged persons, meets with a negative response. All this renders the implementation of reservations, which involves not only the pedagogic and administrative challenges to be faced but also the handling of vested interest, very difficult.

There are various other reasons why the Scheduled Castes and Scheduled Tribes are not able to take advantage of educational, technical and professional courses. India is a country of teeming millions and quite a sizable number of children in the age group 6-11 cannot avail of
primary education. According to the report of the Commissioner for Scheduled Castes and Scheduled Tribes 1978-79, 83 percent of the children in the 6-11 age group from the general population are enrolled in the primary schools, while among the Scheduled Castes and Scheduled Tribes it is 75 percent and 66 percent respectively. At the same stage the drop out rate is as high as 79 percent among Scheduled Castes and Scheduled Tribes. Again the gap between the Scheduled Castes and Scheduled Tribes is wider at high school and college level. In fact college education even among the general population is by and large the prerogative of upper and middle castes.

Last but not the least, these students are often victims of humiliation at the hands of the high caste students and even teachers. To cite an example, the Dharbhanga Medical College in North Bihar was declared closed ‘sine die’ on 15th January due to caste clashes in the campus. Twenty Harijan and Adivasi students, including girls were ragged by upper caste boys in the College. Arjun Sahani, a backward class boy was beaten to unconsciousness for championing the cause of a tribal girl Mukta Soren who had to undergo sexual harassment. The Scheduled Caste/Tribe students did not however remain mute and passive. 200 of them turned up to take reprisals on the forward castes, mainly Rajputs, who took to their heels. The main cause of these caste disturbance was the judgment of the Supreme Court on 22nd December 1983, in favour of Scheduled Castes and Scheduled Tribe candidates due to which these 20 had joined the said Medical College. The Supreme Court felt it was more important to fill up the reserved quota than to adhere strictly to the 50 percent qualifying marks as per the rules of Indian Medical Council. Hence it ruled in favour of relaxing the marks to 40 percent after which all the reserved seats at the Dharbhanga Medical College were filled. This infuriated the high caste students who took a tribal girl to the boys’ hostel and forced her to wash the floor and lavatory thereby reminding the lower castes that it is obligatory for the Shudras to serve the higher castes. Such are the humiliations at the hands of the upper caste students that the Schedule Caste and Schedule Tribe Students have to put up with, if they want to persist in pursuing professional courses.

Since for various reasons the students from the disadvantaged communities fail to ‘measure up’ to the required performance level, it is suggested that their advance in higher education should not be cut short simply because of poor performance, thus concessions such as reserved quotas and lowering of qualifying requirements have been suggested as the important strategies to promote equality.

Critics of these concessions claim that it would encourage disregard for ‘competence’ and ‘standards’. Such concessions would particularly hinder vital educational functions like ‘screening’ selecting and ‘grading’ on the basis of merit.
The policy of granting concessions also widens the gap between the performance of Scheduled Caste students and the expected level. There is also a kind of dislocation created in the educational system. Selection by merit is an effective mechanism which enables an educational institution to grade students into homogeneous batches thereby making for smooth management. As against this, concessions give rise to uneven batches, the management of which becomes difficult.

In case of concessions for admitting Scheduled Caste and Scheduled Tribe students to the apex educational institutions like medical, engineering and technical colleges, the situation is particularly complex. The complexity can be highlighted with the help of data presented by Suma Chitnis, on the six Indian Institutes of Technology. These are expected to maintain high standards of scientific and technical skill and abilities through a system of rigorous and exacting evaluation. Since the entrance is highly competitive, only the cream of the student population can aspire to get in. Admissions are based on Joint Entrance Examination (JEE) for all six institutes jointly and is open to all candidates who have passed the High School Leaving Certificate (with 35% minimum). Between 1965-1970, the results proved that only those who had secured 70 percent and more at H.S.L.C. qualified for admissions while no Scheduled Castes and Scheduled Tribes found their names on the rolls. Thus the 15 percent and 5 percent quota for Scheduled Castes and Scheduled Tribes respectively could not be honoured.

With pressure from Government, different arrangements were attempted to accommodate the Scheduled Caste and Scheduled Tribe students, like disregard for J.E.E. during the period 1973-79, when admissions were given to all those backward caste students who secured 50% marks at the Higher Secondary School Leaving Examination. This was again done away with and all those who obtained two-thirds of the score of the last candidate admitted under open admission were considered.

But inspite of all these concessions, the number of admissions kept dropping gradually and by 1980 there was a marked drop, perhaps due to the discontinuation of the ‘direct admission’. According to the Report of the Committees specially appointed to study the problem of Scheduled Caste and Scheduled Tribe students (IIT, Bombay) submitted in 1977, it was observed that all those admitted directly had to struggle to make it to the required level, and inspite of special courses organised to help these to bridge the gap in performance, there was a heavy drop out and stagnation among the Scheduled Caste and Scheduled Tribe students admitted against the reserved quota, directly. It was noticed that out of 15 admitted in 1973 only 5 had survived till 1978 and that too, none was reading in the fifth year. They had stagnated somewhere.
Taking a clue from Turner's distinction between sponsored mobility and contest mobility it can be argued that to protect and sponsor the underprivileged, right through their advanced courses in education does not necessarily do justice to them, as, once these are projected into the employment market they are left to fend for themselves while facing the 'ruthless selective mechanisms'.

Here again two rival claims bring us to cross-roads where we aim either at academic standards and professional competence by striking off concessions, or, at social justice having concessions as its instrument. But since both the claims are equally valid, there is the need to balance the two, for neglecting any of the two would be detrimental to the society.

A suggestive scheme:

As a way out, we suggest that talent in the deserving Scheduled Caste and Scheduled Tribe students should be tapped in early childhood and once selected they should be groomed to cope up with the competitions they will have to face in later years.

School is the best place where the social handicaps of Scheduled Caste and Scheduled Tribe children, unmindful of talent, can be successfully tackled. Measures should be adopted to enable the socially handicapped children to study shoulder to shoulder with those favourably placed in society. But here we confront another spoke in the wheel of progress, another handicap, viz.. most Scheduled Caste and Scheduled Tribe children are forced to work part time to supplement the parents' income and during this time they are withdrawn temporarily from schooling while those well placed being free from such a handicap, forge ahead. Hence it becomes necessary for the Government to adopt measures ranging from exemption of fees and free supply of books and uniforms to free meals and a daily stipend.

The idea behind this protective discrimination measure is both to help the Scheduled Caste and Scheduled Tribe children to rise to the level of other children as also to provide them with an opportunity to develop their suppressed and latent talents and ability. Some Scheduled Caste and Scheduled Tribe students, may, by the time they go through their primary education, prove to be quite promising students. More attention should therefore be devoted to these at the secondary education stage. For instance, the more promising Scheduled Caste and Scheduled Tribe primary school students, should, when they come to the secondary school, be awarded special merit scholarships, in addition to keeping constant the facility of a daily stipend, as an additional incentive for more effort. The stipends and scholarships should increase for college education.

The above special provisions in education will no doubt increase the State's financial burden,
but if we are really serious about bringing the Scheduled Castes and Scheduled Tribes into the national mainstream, increasing their well being and above all enabling them later to compete on equal terms for admissions to professional colleges and services, there is no place for second thought about expenditure.

To conclude, more important than protecting and sponsoring the underprivileged right through their advanced courses in education, we should focus on trying to equalize competence at the primary and secondary levels of education.

Job Reservations:

As per the provisions of Articles 16(4), 320 (4) and 333, 15 percent of the positions are reserved at all levels in the government and public sector, for Scheduled Castes and 7.5 percent for Scheduled Tribes, at the same time relaxing the qualification for recruitment and promotion. Though there has been some progress in this direction much effort and time has to be put in to help the SCs/STs occupy all the positions in the higher level of administration reserved exclusively for Scheduled Castes and Scheduled Tribes. For instance, between 1959 to 1979, while only 1.18 percent of the positions in Central Government were occupied by Scheduled Caste members in 1959, the percentage stood marginally improved at 4.75 percent in 1979. During this same period (1959-79) the position of Scheduled Tribes also improved from 0.16 percent (1959) to 0.94 percent (1979). There was a similar trend in State Government and public sector, but in the private sector which recognises no reservation, Scheduled Castes and Scheduled Tribes find no scope.

Often it is noticed that the Scheduled Castes and Scheduled Tribes are unable to occupy the posts reserved for them not because they have failed to get the minimum qualification but due to the bias of the recruiting authority. Instances have been reported where authorities have deliberately delayed the implementation of the Government orders regarding recruitment and promotion of Scheduled Castes and Scheduled Tribes. To cite an example, according to the 26th Report of the Commissioner for Scheduled Castes and Scheduled Tribes (1978-79) the Central Board of Secondary Education, Delhi, delayed the implementation of reservation orders in promotional posts for more than 5 years and it needed the intervention of the Commissioner for Scheduled Castes and Scheduled Tribes, for their implementation.

To highlight further the prejudice of the recruiting authorities, the Commissioner cites the malpractice of the recruiting authorities, of dereserving the positions on flimsy grounds. In 1974, 1515 Scheduled Tribes vacancies were de-reserved, inspite of the availability of Scheduled Tribes Candidates for 254 posts in Class III, with one single stroke they were all declared
unsuitable for appointment.

Caste Hindu Officers see to it that Scheduled Caste and Schedule Tribe candidates are confined to Class IV positions so as to keep them to their low social status. It has been observed that a large number of Scheduled Castes and Scheduled Tribes candidates are declared unsuitable for appointment, even by denying the special instruction to judge them by relaxed standards. In fact there is a provision that, should they fail to qualify even by relaxed standards, the best among them fulfilling the minimum qualifications be selected for the appointment to the reserved vacancies and then be given ex-post training, which will help them maintain efficiency in administration. But this has never been done.

If Government is serious about filling the reserved quota in Class III (and above) services, it must take punitive action against such officers who adopt deliberate delaying tactics. Secordly, it must enquire or look into cases where the high caste recruiting officer has, en masse, found all the Scheduled Caste and Scheduled Tribe applicants `unsuitable', and, thirdly, as a long term measure, Government must work to bring about a general improvement in the economic status and well being of backward castes. In order to take advantage of job reservations at least an average economic condition is essential. Unfortunately such Scheduled Caste and Scheduled Tribe Communities as have traditionally been relegated to do menial tasks like the Chamars, Vankars, Bhangis, or Valmikis can hardly be expected even to try for reserved jobs.

Reservations in Government Services:

The reservation policy is a deliberate decision of the government, taken in the interest of doing justice through protective discrimination. Hence quite naturally it is expected that the Government which is the biggest employer will abide by its own decision regarding reservations in services.

In case of the Central Government, over the years, the overall position has been gradually improving as more and more Scheduled Castes and Scheduled Tribes are getting accommodated in various government services. The percentage wise increase in representation of Scheduled Castes is shown in Table 2 and of Scheduled Tribes in Table 3.
### TABLE I

RESERVATION OF THE SCHEDULED CASTES IN CENTRAL GOVERNMENT SERVICES  

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>4.95</td>
<td>8.23</td>
<td>6.51</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>8.54</td>
<td>10.41</td>
<td>11.65</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>13.44</td>
<td>14.45</td>
<td>14.85</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>19.46</td>
<td>20.09</td>
<td>20.41</td>
</tr>
</tbody>
</table>


### TABLE II

RESERVATION OF SCHEDULED TRIBES IN CENTRAL GOVERNMENT SERVICES  
(1987 and 1989)

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Group</th>
<th>Percentage 1987</th>
<th>Percentage 1989</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>1</td>
<td>I</td>
<td>2.05</td>
<td>2.24</td>
</tr>
<tr>
<td>2</td>
<td>II</td>
<td>1.92</td>
<td>2.00</td>
</tr>
<tr>
<td>3</td>
<td>III</td>
<td>4.23</td>
<td>4.52</td>
</tr>
<tr>
<td>4</td>
<td>IV</td>
<td>5.84</td>
<td>6.46</td>
</tr>
</tbody>
</table>

As Table I indicates in January 1980 the representation of SCs in different categories was 4.95% in Group I (or Class I government servants); 8.54% in Group II (or Class II government servants); 13.44% in Group III (or Class III government servants) and 19.46% in Group IV (or Class IV government servants). There was a marked improvement in 1987 with the percentage climbing up for all four groups, to 8.23% for Group I, 10.41% for Group II; 14.45% for Group III and 20.09% for Group IV. The percentages improved still further in 1989 for all groups except Group I. Thus while the representation of SCs in Group I declined to 6.51%; it went up to 11.65% for Group II; 14.85% for Group III and 20.41% for Group IV. Even in the case of Group I, although the percentage declined slightly, it is worth noting that the representation of SCs in the IAS (the single most important service in Group I) was, in the same year, more than 9%.

In the case of Scheduled Tribes too, there has been an upward trend as seen in Table II. In 1987, percentagewise there were 2.05 Scheduled Tribe employees in Class I, 1.92 in Class II, 4.23 in Class III and 5.84 in Class IV. In 1989 a considerable increase has been registered in the representation of Scheduled Tribes both in terms of their percentage to the total number of employees in all the four clusters, as also in terms of absolute numbers. It is worth noting that the representation of Scheduled Tribes in IAS in 1989 was more than 5 percent.

Thus it is amply evident that the reservation policy which came into existence way back in 1950, has begun producing results.

Turning to the States, we find that the picture varies from State to State. To take a single case of Karnataka which has 15 percent reservation for SC and 3 percent for ST, the Scheduled Castes have representation of only 9.88 percent in all the cadres of government service, as against the 15 percent which is prescribed. The position cadrewise is 4.46 percent each, in Class I and II which is unsatisfactory. Class III has a representation of only 7.33 percent while the percentage of Scheduled Castes in Class IV is 17.10 percent which is above their due share of 15 percent.

Though the situation in Bihar as regards the reservation to Scheduled Caste and Scheduled Tribe is, comparatively not very bright due to their earlier deplorable level of education, at present more than one fourth of the Scheduled Caste and Scheduled Tribe population has gained entry into government jobs.
On the other hand the policy of reservation to Scheduled Caste and Scheduled Tribe has made a positive impact in Gujarat due to the fact of their being more educated and better organised than their counterparts in Bihar. A large number of them have entered Universities and Government jobs.

Suggestions for action:

Finally, to conclude, a few suggestions are made to ensure effective implementation of the policy of reservation in government services. Since the responsibility of effective implementation rests with the Government, it must ensure that stricter regulations are enacted concerning reservations, while at the same time enforcing the existing ones.

It is not the paper instructions that matter, but it is the constant check on the actual situation, the manner of tackling and the follow-up action that is of paramount importance, so that the goods are delivered to those whom they are really meant for. To ensure that this happens we suggest that government (National and States) takes the following steps:

1. Keep a check on the list of existing vacant government positions as also the list of vacancies declared in each cadre.

2. Check on the total number of Government positions earmarked as reserved for Scheduled Castes and Scheduled Tribes and also whether rosterwise or otherwise.

3. Check on the type of posts set aside for Scheduled Castes and Scheduled Tribes and ensure that no deliberate attempt is made to keep the post out of their reach.

4. Another important area to be checked is the media of communication about vacancies. Care must be taken to see, that the Scheduled Castes and Scheduled Tribes are not kept in the dark about these vacant situations and that the advertisements in the newspapers, pertaining to these vacancies reach Scheduled Castes in rural as well as urban areas, if need be, with the involvement of social welfare organisations as also newsletters managed by Scheduled Castes themselves.

Once the interviews are conducted some sort of follow-up action must be undertaken to ascertain whether the interview was conducted in a fair manner. A special cell could be created which would interview select rejected candidates (especially for higher posts) to hear their side of the story. The Cell could also probe whether any pressure was exerted or any inducement offered to make the Scheduled Caste/Scheduled Tribe candidate withdraw from the competition.
It should be ensured that wherever possible, selection committees have SC/ST experts or officers sitting on them. Likewise agencies that monitor and evaluate the implementation of the reservation policy, or are entrusted with conducting surveys and field studies pertaining to SC/STs should not be made up of (high-caste) government employees only, but should also have impartial sociologists and social scientists drawn from universities; and where SC/ST academics are available these should invariably be included.

Lastly, Government must ensure that when lapses in the implementation of the reservation policy are uncovered, the “guilty” officers/party must be penalised.

It is only if above steps are taken that the policy of protective discrimination will acquire teeth and high caste Government officers will not be able to mislead the public either with “the all is progressing well” kind of report or with the “no suitable SC/ST candidate available” kind of report.

The case of Reservations in Universities:

Though Indian Universities were also expected to implement the reservation policy for a long time the Universities did nothing. It was only under heavy pressure from State Governments that Universities finally agreed to implement the reservation policy. Thus in Maharashtra reservation is now made at the prescribed rate for all category of teaching positions. A post is required to be advertised again in case no suitable candidate from the SC/ST is found. The post must be repeatedly advertised thrice and only thereafter, if still no suitable candidate is found, does the post become open. Till such time as the suitable candidate is found, non-SC/ST candidate may be temporarily appointed. The Government is now thinking of doing away with the last feature viz. the post becomes open after three attempts by way of advertisement for reserved class candidates. In other words Government feels that the only way to avoid abuse of power by University authorities is by depriving them of the power of declaring the post open after three attempts to fill the post with SC/ST candidates has been made. Maharashtra has no roster system but reservation is made for each category of teaching post viz. Professor, Reader/Associate Professor and Lecturer/Asst.Professor.

The Maharashtra pattern applied to Goa Colleges and the Centre for PG Instruction and Research till 1985 when the Goa University took over the college and the CPIR from Bombay University. During the period when Goa colleges and CPIR were affiliated to Bombay University (1960 to 1985) not a single SC candidate was employed in any of the colleges nor in the CPIR.

During the period 1985 (when Goa University was set up) to 1990, Goa University was able
to employ only one Muslim Scheduled Tribe candidate (a lady) in the P.G. Hindi Department.

Reservation policy of the Central Government as per the Brochure on Reservation for SC and ST in services, was made applicable to Goa, Daman and Diu with effect from April 1, 1973 when it was Union Territory, and the State Government today follows the same. Consequently, Goa had 2 percent reservation for SC and 1 percent for ST in group C and D (III & IV) posts, while for group A and B posts (I & II) there is 15 percent and 7.5 percent reservation for SC and ST respectively and these are advertised and filled on all India basis. There are also standing instructions from the Government to the appointing authorities, to maintain separate rosters for each category of posts.

In order to ascertain the extent of implementation of the reservations policy in Goa's colleges, the author contacted and interviewed the Principals and senior teachers in five colleges in Goa (see Table III) Dhempe College, Panaji, Carmel College for women, Nuvem, Damodar College of Commerce, Margao, St.Xavier's College, Mapusa and Government College of Arts, Science and Commerce, Sanquelim. My inquiries revealed a total non-implementation of the policy of reservations in these colleges, during the years 1985 to 1990.

Between 1985-90, Dhempe College, Panjim had advertised five posts of lecturers, one each in Economic and Political Science, reserved for Scheduled Castes, one in Psychology reserved for Scheduled Tribes and 2 posts in Physics one of which was reserved for SC and the other for ST. The said college selected not even one SC/ST candidate saying: “The Scheduled Castes/Scheduled Tribes candidates available were not found suitable”. On going through the records it was found that though the reserved posts were advertised even two and three times, they had to be filled by general category candidates, in the absence of suitable SC/ST candidates.

Between 1985-1990, Carmel College, Nuvem, advertised only one vacancy of lecturer but selected no SC/ST candidate saying “No post was reserved”. On inquiring further as to why no post was reserved, it was clarified by the Principal that this college being a minority run institution, it enjoyed “protection” under Article 30(1), which provides that “All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice”. In support of this claim the Principal cited the Supreme Court decision in two cases namely a Writ Petition filed by the Christian Medical College, Ludhiana challenging non-recognition of its minority character, by the Punjab University, in April 1990; and a Writ Petition of St. Xavier's College, Ahmedabad v/s Gujarat. The Supreme Court decision in both the cases, enables the minority institution to exercise its right to admission of students, appointment of teachers, composition of Governing body etc. and any dilution of this, is an infringement of Article 30(1). It is however heartening to know that this college does consider candidates from the
vulnerable section of society while making the appointments to class IV posts and sometimes even class III.

The Damodar College of Commerce advertised five posts of lecturers between 1985-1990. There was no response when asked as to how many posts were reserved. However, no post was filled up by a Scheduled Caste/Scheduled Tribe candidate, because it was stated: "No Scheduled Caste/Scheduled Tribe candidate was available."

Between 1985-1990, ten posts of Lecturers were advertised by St. Xavier's College, Mapusa, but no Scheduled Caste/Scheduled Tribe candidate was recruited and the explanation forwarded was that there was "No Reservation" in this college. Incidentally St. Xavier's is also a minority institution.

Worth noting is the situation in the new Government College at Sanquelim, which had advertised 37 teaching posts from 1988 to 1992 but none of them were reserved and the reason attributed to this was "posts are not yet reserved by the Government". However, in the advertisement, "Reservation according to Government Norms" was mentioned and perhaps no SC candidate was available and suitable, according to the Principal. Again the question of backlog does not arise here, for the time being, until such times as the Government makes the Reservation Policy truly applicable.

In Karnataka the government issued directives compelling universities to adopt a reservation policy from 1976. Since 1976 15% of the posts at all levels are reserved for Scheduled Castes and also roster system has been adopted. Mumtaz Ali Khan's study of 4 universities of Karnataka State, viz. Mysore University, Bangalore University, Karnataka University and Agriculture University (See Table IV for Universitywise back up) reveals that in the year 1980, out of a total of 275 professors (69 Mysore + 57 Bangalore + 72 Karnataka + 77 Agriculture University) only 4 SC professors were appointed, that is 3.2% as against the quota requirement of 15%. In the case of Associate Professors ( Readers), out of 447 (90 Mysore + Nil Bangalore + 160 Karnataka + 197 Agriculture University), only 6 were SCs, giving a percentage of 1.3 against the quota requirement of 15%. Finally, in case of Assistant Professors (Lecturers), out of a total of 1421, only 17 were Scheduled Castes, the percentage again working out to a meagre 1.2 as against the quota requirement of 15%. The worst situation prevailed in the Agriculture University and the main reason forwarded for the failure to recruit SC candidates was that suitable candidates with the requisite technical know-how were difficult to find.

There are various reasons advanced as to why the reservation policy for posts in Karnataka Universities has not been successful. Some opine that the selection committees do not take kindly to the Scheduled Castes and are at times quite hostile to them. The high caste employees
also show indifference towards the Scheduled Castes and are reluctant to accommodate them. Then there is the fear that under the roster system, a candidate once selected will rise very fast to the top position superceding the deserving, and senior candidates from other castes. And finally, there is the oft repeated charge that ‘suitable’ Scheduled Caste candidates are not available.

There may be some validity in the argument of non-availability of SC/ST candidates. However this researcher feels that even here there has been deliberate manipulation to prevent entry of SC/ST candidates. Many techniques have been adopted to make it difficult for SC/ST candidates to get entry. At times the posts are deliberately reserved in specializations where even normally it is difficult to get candidates.

For instance it is well known that reservations in specialized branches of Sciences like Computers, Marine Biology, etc. would just not attract SC candidates. Hence reservations must be in areas where SC candidates are known to be available like in the Social Sciences, Languages and General Sciences. In other words, since the main demerit of post-wise reservation is that it enables the appointing authority to manipulate by reserving particular posts knowing fully well that no SC candidate is likely to be available for the post, it must be replaced by system of total reservation. Directives must be provided by the administration that whenever SC candidates are available in certain disciplines, these should be given the opportunities to fill the particular vacant situation.

### TABLE III

**IMPLEMENTATION OF RESERVATIONS FOR SC/ST IN GOA UNIVERSITY (1985-90)**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of the Affiliated College</th>
<th>Total No. of Posts</th>
<th>No. of Post advertised as reserved</th>
<th>No. of Reserved Posts filled by SC/ST</th>
<th>Reasons (If not filled by SC/ST)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Dhempe College Miramar - Panjim.</td>
<td>5</td>
<td>5</td>
<td>Nil</td>
<td>Schedule Caste available but unsuitable</td>
</tr>
<tr>
<td>2.</td>
<td>Carmel College for Women - Nuvem</td>
<td>1</td>
<td>Nil</td>
<td>Nil</td>
<td>No Post was reserved</td>
</tr>
<tr>
<td>3.</td>
<td>Damodar College of Commerce, Margao</td>
<td>5</td>
<td>No information given</td>
<td>Nil</td>
<td>No Schedule Caste candidates available</td>
</tr>
<tr>
<td>4.</td>
<td>St. Xavier's College, Mapusa</td>
<td>10</td>
<td>Nil</td>
<td>Nil</td>
<td>No Reservations</td>
</tr>
<tr>
<td>5.</td>
<td>Government College, Sanquelim</td>
<td>37*</td>
<td>Nil</td>
<td>Nil</td>
<td>Not yet reserved by the Government</td>
</tr>
</tbody>
</table>

*This figure pertains to the period 1988-92 (New College)*
## TABLE IV

### IMPLEMENTATION OF RESERVATIONS: TEACHING POSITIONS IN THE UNIVERSITIES OF KARNATAKA

<table>
<thead>
<tr>
<th>Position</th>
<th>Mysore University</th>
<th>Bangalore University</th>
<th>Karnataka University</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor</td>
<td>69</td>
<td>1</td>
<td>57</td>
</tr>
<tr>
<td>Associate Professor</td>
<td>90</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>Assistant Professor</td>
<td>288</td>
<td>4</td>
<td>251</td>
</tr>
<tr>
<td>Total</td>
<td>477</td>
<td>9</td>
<td>308</td>
</tr>
</tbody>
</table>

### Source:

### Notes:
1. The designations of Associate Professor and Assistant Professor are equal to Readers and Lecturers.
2. The total position of Readers in Bangalore University was not made clear.
Reservation in Politics:

In the political field, protective discrimination implies reserving seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha and Vidhan Sabha (the lower houses of the Union and State parliaments). In the traditional political order the 'Shudras' were not only denied various social amenities but also excluded from politics. It is therefore only fair and just that independent India should have decided to take corrective action by providing adequate reservation for the Scheduled Castes and Tribes in the elective and the law making bodies.

Article 330 and 352 of the Constitution provide for reservations for Scheduled Castes and Scheduled Tribes in the Lok Sabha and Vidhan Sabha or State Assemblies, Political reservations were conceived as a temporary measure since it was feared that perpetual and permanent reservations would have an adverse impact. Not only would permanent political reservations alienate the Scheduled Castes and Schedule Tribes from the rest of the society, it could also generate a ghetto mentality and/or separatist tendencies.

To begin with political reservations were provided for ten years only. However, partly under pressure of political factors and electoral considerations and partly because of the widespread feeling that the objectives of such reservations had not yet been realized, the policy has been periodically extended. In the Lok-Sabha in 1986, 78 seats were reserved for SCs and 38 for STs; while in the State Assemblies the numbers were 540 and 282 respectively. In addition to reservations in Parliament and Assemblies, there also exist provisions for reservation for SC/STs in various local bodies.

In the long run if the underprivileged are to overcome their complexes and if confidence is to be generated among them to join the mainstream, they must be encouraged to venture out of their confines of reserved constituencies. The Government, political party leaders and dominant groups must spare no efforts to encourage and help them contest and get elected from general constituencies.

It is gratifying to note that some major political parties have adopted this strategy and encouraged SCs/STs to contest from non-reserved constituencies and get elected. In 1957 the number of SCs/STs elected to the Lok Sabha from general constituencies was 6 and 3 respectively; while in the Legislative Assemblies there were 9 SC and 11 ST members elected from general constituencies. However after the 1962 elections the number has declined. In 1977
there was only 1 SC and 2 ST MPs in the Lok Sabha and likewise only 1 SC and 2 ST MLAs in the Assemblies.\textsuperscript{17}

Most Scheduled Caste and Scheduled Tribe representatives face a peculiar dilemma, as one Goan MLA explained to me. If he vociferously raised issues pertaining exclusively to his community like defending land rights of dalits whose land was to be acquired by Government for general development, he was condemned for being short sighted, concerned only with his community and not general welfare. On the other hand if he took a broader general welfare position, his own constituents saw him as a puppet and a traitor to the community cause.

The dilemma faced by most of Scheduled Caste representatives is further aggravated by the complexity of caste-structures in most constituencies. In most reserved constituencies the Scheduled Caste and Scheduled Tribe population is between 10 percent to 30 percent of the total population and in no constituency does it cross 50%. In such a situation the Scheduled Caste and Scheduled Tribe representative is naturally expected to deal with a plurality of interests.

**Basis for Reserving Constituencies:**

Since Scheduled Caste communities are scattered all over India, there is hardly any concentration in constituencies reserved for them. The Scheduled caste population in all reserved constituencies constitute only about 23.13 percent of the total Scheduled Caste population of India which means that over 75% of the Scheduled Caste population lives outside reserved constituencies.

The Delimitation Commission while identifying reserved constituencies for electing representatives to the Lok Sabha takes into consideration two factors. While firstly taking into account the concentration of SC population, it also tries to ensure dispersal of reservations. Thus the Commission reserves on a statewise (and not all India) basis and the number of reserved seats may have proportionately more reserved seats than the bigger ones. For example Maharashtra which is a large State with 48 representatives to the Lok Sabha, has only three reserved seats (i.e. 6.25% reservations for 6% SC population); while Punjab a comparatively smaller State with 13 representatives to the Lok Sabha also has 3 reserved seats (i.e. 25% reservation for 25% of SC population). The criteria of dispersal (Statewise distribution) accounts for the phenomenon why many SC MPs do not always represent constituencies with the largest SC concentrations.

An alternative method of demarcating reserved constituencies would be on an all India basis and non State-wise basis. To begin with, all constituencies could be ranked according to the
proportion of SC population to the total population in the area, and then those constituencies should be selected for reservation according to their ranking. Under this method reserved constituencies would be those having largest concentrations of SC population on an all India basis. This method would ensure that reserved constituency MPs by and large represent constituencies with largest concentration of SC population as against the present method where SC representatives do not invariably represent constituencies with the largest concentration of SC population.

However, while the all India method of demarcating constituencies may make SC MPs truly represent their community, its disadvantages is that it does not ensure State-wise representation. Since the SC do not constitute a homogenous all India community the present method may be deemed more suitable. However, if the reservation policy continues for many more years to come and there takes place a homogenization of SC elites on an all-India basis, the possibility of SC representatives demanding a change in the method of demarcating constituencies cannot be ruled out.

Efficacy of Scheduled Caste participation and performance:

Parliament is the main forum in which the legislator enacts his role. His parliamentary skill and ability are judged by the way in which he participates in the twin powers of law-making and exercising control over the executive during the question hour, debates and discussions. Questions probe government activities and serve as a means through which governmental operations are subject to scrutiny; but it is in debates and discussions that a member's participation is effective and more demanding and where he does justice to his role as a legislator. It gives him an opportunity to argue, criticize, articulate opinion, suggest policy measures as also amendments to these policy measures and legislation.

An analysis of the Lok Sabha debates, 1977-78, reveals that participation by SC MPs during Question Hour was much lower than that of non-SC MPs. The non-SC members raised an average of 62.88 questions while those raised by the SC members was lower at 48.03. Regarding the overall frequency of participation of SC members in forums other than Question Hour, the participation was again lower than that of the non-SC members. The average frequency of participation of SC members in forums other than Question Hour, during 1977-78 was 4.86% in contrast to that of the non-SC members whose frequency of participation stood at almost double viz 9.09%.

However, it is revealed that during Question Hour, the percentage of questions raised by SC members on subjects of concern to the Scheduled Castes was much higher at 88.75%,
compared to the meagre 11.25% of non-SC members. The insignificant percentage of questions raised by non-SC members, on subjects concerning the SC, regrettably reveals that the non-SC members are least concerned about SC problems. Questions concerning the SCs, it seems, remain to be the task of SC MPs only. This one fact alone is adequate justification for reservations of seats for SC/STs in the Lok Sabha.

In the face of the comparatively poor performance of SC representatives in the Lok Sabha, some critics have questioned the wisdom of reservations for SC/ST in the Lok Sabha. In our opinion such questioning is unwise and overlooks the vital political function reservation for SCs performs in our body politic viz. in the absence of reservations no SC member could aspire to get party nominations. This is because party nominations depend on very powerful lobbying done by other groups and which the SC community, given its economical and political backwardness, is just not capable of.

At times it is argued that it is the SC elites who are generally given party nominations (to contest reserved seats) and these do not truly represent the SC masses in the House. In other words, it is claimed that we cannot be assured of an identity of interests between the SC elites and the masses they are supposed to represent. Now this is at best a partial truth. Even otherwise, some representation is better than none at all. It is better to have SC elites represent the cause of the SC masses (who in any case are too illiterate or economically backward to stand up and fight their own battles) than to have no one to represent them. Secondly, the argument made by critics of reservation, applies also, in some measure at least, to the other castes. Are not the non-SC MPs also drawn from the elites as against the poor (non-SC) masses?

In our opinion a more serious stumbling block to the effective functioning of SC MPs (than the assumed lack of identity of interest between the SC elites and masses) is the fact of party affiliation of SC nominees. If a SC member aspires to be nominated and re-nominated by the party, he has to play the party tune and constantly bear in mind party discipline and directives. Herein lies a greater danger viz. the emergence of an identity of interest between the personal interest of the SC member in seeking renomination and the interest of the party to capture power while the interests of the SC masses get relegated to the back seat.

So far we have discussed efficacy and performance of Scheduled Caste representatives to the Lok Sabha. Turning to State Assemblies we find, the picture in some States at least to be very encouraging. A study of the role of tribal representatives in the Andhra Pradesh State Assembly during the decade 1978 to 1987 revealed that the Scheduled Tribe members were able to play a significant role in not only airing tribal grievances but take positive ameliorative action in the interest of the downtrodden. For instance, contrary to popular impression the tribal
MLAs in Andhra Pradesh Assembly were not silent spectators to the "going-ons" in the State Assembly. Their overall participation was both extensive and effective, inspite of the fact that during Question Hour they may have failed to probe further with immediate supplementaries.

Particularly worth noting is the fact that during Budget Discussion the tribal MLAs participated 100 times and of these 91 interventions were on behalf of their own community.

They also regularly pleaded for more funds and succeeded in getting increased allocations for tribal welfare in successive budgets. The tribe legislators were apparently more satisfied with the Congress Government than with the Telegu Desam Party.

To test the sense of efficacy of the lone Scheduled Caste MLA in the Goa Assembly, elected from the reserved constituency of Pernem, the following five questions were posed to him. The questions posed to Mr. Deo Mandrekar and his responses are given below and indicate a high sense of efficacy.

Q.1. Do you think that the officials do not care much about what you think (because you represent the SCs)?
   Yes......... No........... Any other response...........

Ans. Rather than ticking Yes or No, Mr. Mandrekar's response was: "Response of the individuals depend upon their individual attitudes".

Q.2. Is voting the only way people like you can have any say in government?
   Yes......... No........... Any other response...........

Ans: Mr. Mandrekar's response was YES, indicating high sense of efficacy.

Q.3. Do you think people like you have little say in what government does?
   Yes......... No........... Any other response...........

Ans: Mr. Mandrekar's response was NO, again indicating high sense of efficacy.

Q.4. Do you find government and politics complicated and difficult to understand?
   Yes......... No........... Any other response...........

Ans: Mr. Mandrekar's response was NO, showing high sense of efficacy.

Q.5. Besides being a scheduled caste representative, you also belong to a party. Do your party bosses stop you from raising Scheduled Caste issues in the Assembly
Yes ..........  No ..........  Any other response .........

Ans: Mr. Mandrekar’s response was NO.

The response to questions 2, 3, 4 and 5 indicate positive sense of efficacy, while the response to I, would have shown a positive sense if Mr. Mandrekar had said No. His answer however is not Yes which would have shown a negative sense of efficacy. On the whole, it can be concluded that Goa’s lone SC representative has a high sense of efficacy.

On the whole, political reservations have worked well and enhanced the sense of efficacy as well as the performance of SC/ST representatives.

Notes:

1. I was a personal witness to caste discrimination and to these caste disabilities in the Degam Village in Nadiad Taluka of Kheda District in Central Gujarat in 1976.


6. This was in keeping with ‘Objective Resolution’ moved by Pandit Jawaharlal Nehru in the 1st Session of the Constituent Assembly on the 9th December 1946 which interalia said that adequate, safeguards should be provided for minorities, backward and tribal areas and depressed and other backward classes.


8. Sunday Observer, Bombay 30.1.83, report entitled ‘Medical Students Humiliate
Harijans and Adivasis'.


11. Ibid, pg. i5.


14. **Prasad Ishwari - Reservation: Action for Social Equality pg. 31-32.** See also Shah, V.P. and Agrawal B.C. - 'Reservations: Policy, Programmes and Issues', pg. 142-143.


CHAPTER II

A NEW DISCRIMINATION -
RESERVATION FOR
OTHER BACKWARD CLASSES
Reservation for other Backward Classes

The Indian Society is well known for its lack of social homogeneity, the caste system being the root cause of this inequality, as a result of which certain castes were condemned to the bottom place and the consequential social, economic, educational and cultural backwardness. It was therefore felt that this group stood in need of some concessions in order to bridge the gap between them and the privileged castes and thus ensure a substantial share in the public services as also in other spheres.

Article 16 of the Constitution guarantees equality of opportunity to every citizen in matters of public employment while article 15 forbids discrimination on grounds of religion, race, caste, sex, place of birth or any of them. However, the Constitution, being extremely solicitous about the well being of the backward classes in the Indian Society allows certain amount of discrimination in their case, through its Article 15(4) which lays down that ‘nothing in Article 15 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 or Scheduled Tribes’. Furthermore, Article 16(4) lays down that ‘nothing in Article 16 shall prevent the State from making any special provision for 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’.

Thus the State as well as the Central Government is empowered to reserve posts in favour of any ‘Backward class’ but the Constitution does not provide any clear definition of the term ‘Backward’.

Dr. B. R. Ambedkar, the Chairman of the Constitution Drafting Committee interpreted the term ‘Backward classes’ to mean only Scheduled Castes and Scheduled Tribes, or those whom the caste Hindus considered untouchables. Hence Article 335 categorically provides for reservation for the Scheduled Castes and Scheduled Tribes in appointments in the public services stressing at the same time on the maintenance of efficiency in administration.

Though the Constitution emphatically defines preferential treatment to Scheduled Castes and Scheduled Tribes it is not specific about the provisions for the other Backward Classes. Hence the move towards mandalisation, a new turn towards the recognition of backwardness.

Article 340' provides for the appointment of Commissions to investigate the conditions of socially and educationally backward classes and to recommend steps to ameliorate their
conditions, after which a report has to be presented to the President of India to be placed before the Parliament. Consequent to this, several commissions were appointed by the State Government like the Bakshi Commission (1972-76) in Gujarat which recommended 10% reservation in Education and jobs for 82 OBCs with caste as criterion. Then came the (Justice) Rane Commission (1981-85), also in Gujarat which recommended 28 percent reservation. It overlooked caste and suggested occupation and income as the legitimate criteria. In Bihar 20 percent reservation based on castes and economic criteria was recommended by Karpoori Takur Commission. The Central Government appointed the Kaka Kalelkar Commission and the Mandal Commission to investigate into the conditions of OBCs.

The Kalelkar Commission - a glimpse:

It was the First Backward Classes Commission appointed on 29th January 1953 under the chairmanship of Kaka Kalelkar and included 10 other members both from backward and non-backward communities. It submitted its report on 31st March 1955. The commission recommended 25 percent reservation of posts in civil service in Class I, 33.33 percent in Class II and 40 percent in Class III and IV, and 70 percent seats in all technical and professional institutions. At the same time it stressed on the importance of recruiting the best candidates in the competitive examination with no weightage given to caste. While emphasizing his denouncement of the fissiparous principle of caste in service reservation in Government services for any community, he stressed on the point that the 'services are not meant for the servants but they are meant for the service of society as a whole'.

In Kaka Kalelkar's opinion, posts cannot be reserved for certain backward communities just as patients cannot be reserved for particular doctors. Instead he suggested that adequate facilities should be given to them for training and education and even special courses could be conducted to help qualify them for competing for top posts. His opinion was that Government service is rendered attractive because of the prestige, power, influence, scales and security attached to it, as such everyone aspires for Government service. He even went to the extent of suggesting that the emoluments be reduced so as to render it less attractive, thus lessening the desire on the part of OBCs for government service. Besides, reduction of the vast disparity in scales would be in the best interest of Social Justice and communal harmony according to him.

In the field of education, Kalelkar was completely in favour of preferential treatment at the rate of 70% seats to be reserved for the best among the backward classes for 10 years. He again lays stress on the word 'best' as it is the right of the nation to have the best in its service.

Coming to the question of criteria of backwardness, this commission enumerated a variety
of causes for the creation of backwardness namely - social, environmental, economic and political. Economic backwardness is however the result of many social evils. The Commission finally felt that social hierarchy is based on the social conditions in Indian Society and taking into account the causes for backwardness of a large section of the society, it settled down to the following criteria:-

i) Low social position, in the traditional caste hierarchy of Hindu Society.

ii) Lack of general educational advancement among the major section of a caste or community.

iii) Inadequate or no representation in government services.

iv) Inadequate representation in the field of trade and commerce and Industry.

Based on these criteria, the Commission while submitting the report listed 2,399 socially and educationally backward castes, 837 of them as 'most backward' which included among others, the backwards among the Muslims, the Christians, the Anglo-Indians, the Sikhs, the Gurkhas, the Bhangis, unfortunate women, etc. At the same time, measures were suggested for the removal of backwardness among various groups in different spheres. In order to uproot social evils, prohibition of social disabilities by law, liberal use of the Press, films, radio and platform for the removal of social evils, re-organisation of educational system so as to suit all with special emphasis on the dignity of manual labour, also prohibition in any way of the promotion of caste feelings in governmental activities etc., were suggested. Suggestions for removal of educational backwardness were also made, viz. introduction of free and compulsory education for the age group 6-14, establishment of basic schools in areas where there were no schools, and teachers for the same to be drawn from the artisan and occupational communities in the rural areas, and, to see that every child in the area availed of basic education. It also suggested free non-communal hostels, Samata Ashrams where teachers and their families could live with the students, work and study together. In order to popularise basic education it proposed that Government should, while selecting candidates for Government Service, declare that preference would be given to students trained in basic schools. It also stressed the need to start secondary schools in rural areas with hostels attached where majority of the seats would be reserved for backward class students so as to help them in developing a common social outlook. Similarly there were suggestions for providing facilities in higher education, research professional and technical education, advanced studies abroad and even scholarships.

The Kalelkar Commission also referred to economic inequalities as one of the causes of backwardness. In this direction it suggested a number of measures like, regulation of Tenancy Acts, Re-distribution of land, land ceiling, establishment of cooperative marketing societies with
banking facilities, State help in improving agriculture through irrigation. It strongly recommended Vinoba's Bhoodan Movement, a great agrarian revolution which is the essence of a Sarvodaya Society. There was also emphasis on measures to be taken for the revival of traditional occupations rather than the creation of new avenues of employment. As far as large and small industries were concerned the suggestion was that these should be dispersed all over the country to avoid over population in urban areas. Also, the need for training courses for the backward classes was stressed, so that they could number among the skilled personnel.

All these recommendations, however, were not acceptable to the Central Government as the Commission failed to formulate and apply any objective tests for the identification of the other backward classes. In the absence of such a test there would be a bloated list of OBCs which would leave the government helpless in extending special assistance to such a large number and in the bargain the really needy would be swapped by the multitude.

The Mandal Commission: The Second Backward Class Commission:

The Mandal Commission was appointed by President Neelam Sanjeeva Reddy during the Janata Regime in 1978, under the Chairmanship of Mr. Bindeshwari Prasad Mandal together with Mr. R.R. Bhole, MP, Mr. Dewan Mohan Lal, Mr. L.R. Naik and Mr. K. Subramaniam as members, while Mr. S.S. Gill was the Secretary. Its members were exclusively drawn from the backward castes as against the broad based membership of the First Backward Class Commission. The Commission had for its terms of reference, the task of determining the criteria for eligibility and identification of socially and educationally backward classes, and at the same time work on the aspect of quantum of reservation. Once identified, the commission was expected to recommend measures for the removal of existing social and educational backwardness among these.

Given the fact that there are certain backward classes of citizens who do not get adequate representation in public services and other posts at the Central and State level, the work of the Commission extended to this area too, and it was required to examine whether it is desirous or otherwise to make provision for reservation of appointments or posts in favour of the unrepresented classes. The Commission was required to present its report to the President of India, indicating the facts as found by them as also making such recommendations which in the opinion of the Committee are meet and proper.3

Having conducted an extensive socio-educational Survey which covered 405 out of 407 districts, the Commission evolved and derived 11 (eleven) indicators grouped under 3 heads viz. social, educational and economic for determining social and educational backwardness among
people, and worked on the hypothesis that social and educational backwardness is the main cause of economic deprivation in society.

Social backwardness was determined on the basis of 4 indicators and for purpose of evaluation each was attached with a weightage of three points. In this category namely ‘Social backwardness’ were included:

1) caste or classes which are considered socially backward by others.
2) Those whose main livelihood depends on manual labour.
3) Castes or classes where atleast 25 percent females and 10 percent males above the State average age, get married at an age below 17 years, in rural areas, and at least 10 percent females and 5 percent males in urban areas.
4) Those where participation of females in work is at least 25 percent above the State average.

Three indicators dealt with the identification of ‘educational backwardness’, with each given 2 points weightage. They were: castes or classes where the number of children in the age group of 5-15 years who never attended school, is atleast 25 percent above the State average.

The third includes castes or classes having matriculate proportion of atleast 25 percent below the State average.

Since it is a fact that social and educational backwardness results in economic backwardness, four indicators were also used by the Commission to determine economic backwardness. These were:

1) Castes or classes where the average value of the family assets is at least 25 percent below the State average.
2) Castes or classes where the number of families living in kuccha mud houses is at least 25 percent above State average.
3) Castes or classes where more than 50 percent households live half a kilometer or more away from the source of drinking water.
4) And those where the families having taken consumption loans, is at least 25 percent above the State average.
Having applied the above eleven indicators to all castes those castes which scored above eleven points out of the total 22, were included in the list of socially and educationally backwards, thus the Mandal Commission came out with a swollen list of 3743 backward classes as against the 2399 identified by the Kalelkar Commission (The First Backward Class Commission).

Its bold conclusion was that 52 percent of the country's population is socially and educationally backward. In our opinion, the Commission overlooked the impact of the various developmental schemes, on the status of some backwards like the Yadavs, Kurmis, Koeris in Bihars, the Jats, Ahirs, Rajputs in Uttar Pradesh and others.

In this context a note of dissent was sounded by one member of the Commission, Mr. L.R. Naik, himself a Scheduled Caste, who suggested that the list of OBCs be modified so as to exclude the elite backward classes who have swallowed away the benefits of all developmental schemes meant for the lower backwards who own no economic assets and thus remain perpetually deprived. He wanted this group which was extremely backward, socially, educationally as also economically, to be termed ‘depressed backward classes’ and be paid special attention to. This was however not acceptable to B. P. Mandal and others on the grounds that Article 15(4) of the Constitution does not include ‘depressed backward classes’ as a postulate, but just ‘socially and educationally backward classes’.

Another point brought out by L.R. Naik is that, in the absence of Constitutional safeguards to the ‘depressed’ backward classes, the elite among the backward classes often try to perpetrate the same treatment to the depressed backward classes similar to what they had received at the hands of upper castes. This is particularly true of a State like Bihar and communities like Yadavs and Kurmis.

Again while championing the case of ‘depressed’ backward classes, the same member of the Commission, in order to put the case more forcefully refers to the 1931 Census report which highlights that out of 43.70 percent Hindu backward class groups, a whopping 25.56 percent is made up of the depressed backward classes. In the face of the vast disparity which exists between the two groups of ‘backward classes’ and ‘depressed backward classes’, Mr. Naik did have a valid case for reservations exclusively for the ‘depressed backward classes’. The Commission could have for instance considered atleast setting 15 percent of the intended 27 percent quota for the depressed backward classes.

Many were critical about the composition of the Mandal Commission, which was in character a sort of Inquiry Commission. There was according to them the need for a broad based membership, of people who are highly competent in the subject matter and capable of
delving impartially into issues of such a wide public importance before coming out with any recommendations. This criticisms was founded on the premise that the entire Mandal Committee hailed from the disadvantaged castes having little or hardly any judicial experience and that the membership being one sided the principle of objectivity in any inquiry could hardly be honoured.

As against this, I hold the opinion that the Mandal Commission has made all out effort to maintain objectivity. A lot of special care has gone into the tapping of valuable, independent sources for collecting data. It also involved special measures through an expert panel consisting of eminent personalities, who collectively in the course of their countrywide tours, undertook socio-educational survey based on the evidence of legislators, sociologists, anthropologists, public men etc. With the commission's multilateral approach, the Report of their inquiry can be nothing short of dependability.

**Mandal Recommendations:**

There are no two opinions that the backward sections of our society had for long been kept only yearning for a pride of place in the society, and now it was felt that time had come to enforce vigorously the objectives of equality and distributive justice enshrined in the Constitution which should gradually lead to the upliftment of other backward classes. Upliftment here should in no way be interpreted as removal of mass poverty which is a part of the larger national problem. The basic question regarding the deprivation of OBCs is that of social and educational backwardness and the need of the hour is a drastic change in the social structure as also a change in the attitude of ruling classes towards the problem of OBC.

Reservation in government services and educational institutions for the candidates of other backward classes is an indication of a beginning in perceptive change.

The population of OBCs, both Hindus and non Hindus sums up to 52 percent of the total population of India which means 52 percent of seats and posts should be set aside for them. But a number of Supreme Court judgments hold that as per Articles 15(4) and 16(4) there is a legal obligation to keep total reservations below 50 percent. Since there is already a reservation of 22.5 percent for the Scheduled Castes and Scheduled Tribes, which is in proportion to their population, the Mandal Commission in keeping with the legal constraints, recommends a reservation of 27 percent only to the OBCs in all Government services and in all educational institutions, technical and professional both in the Centre and the States. While the recommendation overlooks the proportion of OBCs, it religiously honours the total quantum as per the law (22.5 + 27 = 49.5 i.e. below 50). This recommendation will however not affect States which already provide for more than 27 percent reservations e.g. Tamil Nadu which has 68 percent reservation.
In view of the recommendations in the Mandal Report submitted on 31st December 1980, the Government issued orders on 13th August 1990 enforcing the implementation of 27 percent reservation, to benefit the Socially and Educationally Backward Classes (SEBC) in the following terms:

"1. 27 percent of the vacancies in civil posts and services under the Government of India shall be reserved for SEBCs.

2. The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

3. Candidates belonging to SEBC recruited on the basis of merit, in an open competition on the same standards prescribed for the general candidates, shall not be adjusted against the reservation quota of 27 percent.

4. SEBC would comprise in the first place the castes and communities which are common to both lists in the report of the Mandal Commission and the State Government lists. A list of such castes/communities is being issued separately.

5. The aforesaid reservation shall take effect from 7th August 1990. However this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders."

The aftermath of the announcement was the mounting demand from various uncovered groups for their inclusion in the list of OBCs, to which the government was not averse. There was a demand also from the Muslim members of Rajya Sabha for their community to be given preferential treatment in matters of public employment.

After all in a democracy it is the legitimate right of every individual of every community to share in the governance of the country, and 52 percent of the country's population cannot be denied this right. On the face of it, our democracy appears to provide equal opportunities to all citizens. But the principle of equality of opportunity, more often than not, results in the unequal distribution of wealth and privileges. The basic shortcoming of the Equality-of-opportunity principle in India is that it tries to treat unequals (the vulnerable sections of Indian Society and the privileged, well off, high-castes) as equals. Any scheme of Social Justice must therefore envisage ample safeguards for its vulnerable sections, against the ruthless competition in life. There will be equal opportunity only when the State provides 'adventitious aids' in the form of reservations to the underprivileged persons. This will help hold the 'haves and the have nots' in balance.
All the same it can hardly be expected that a few jobs granted to the 52 percent OBCs, could bring about an overnight change in the general condition of the have-nots and make them forward. A beginning must be made in bringing about a change in the minds and attitudes of backward people, and in boosting their morale. Government services have always attracted people for reasons of being the seats of prestige and power. As such if representation is given to a handful of OBCs in government services, a feeling of pride and participation will be created among the whole OBC group even though every individual member may not at all draw any immediate material benefit. However, the tremendous amount of psychological benefit that gives him a feeling of being socially elevated to form a part and parcel of the society at large, is of great importance.

The Mandal Commission envisages a comprehensive scheme of reservation. It proposes 27 percent reservation not only at the initial stage of recruitment but also in the case of promotion at all levels. Secondly, if any reserved quota remains unfilled, the same should be carried forward for a period of three years and then only could the post be dereserved. Furthermore, it proposes that relaxation in the upper age limit for direct recruitment and the roster system for each category of posts (which have already been granted to Scheduled Castes and Scheduled Tribes) should be extended to OBC candidates also.

The Commission also wanted the scheme of reservation to be made applicable to all recruitment in public sector undertakings both in Central and State Governments and also to Universities and affiliated colleges, and the nationalised banks. Over and above these, the Commission also proposes that recruitment of personnel in all private sector undertakings which receive any type of financial assistance from the government, be necessarily done on the basis of the scheme of reservation.

In order to give proper effect to reservations, in educational institutions, which includes seats of higher learning and technical institutions, the commission suggests integrated schemes for financial and infrastructural support of OBCs in educational institutions. This support is also expected to be in the form of OBC hostels and coaching facilities in residential schools in areas having a heavy concentration of OBCs.

The scheme of reservation for OBCs with all the proposals is designed primarily to help backward classes to improve their self image and raise their social status which will ultimately help them gain the confidence required for the governance of the country. This can undoubtedly come about only through education which is the best catalyst of change. Our present educational system caters only to the elites of society and bears no relevance to the needs of backward classes. Hence the Commission recommends reform of the educational system with a view to
making it meaningful for the masses and in conformity with their life-styles. In the absence of such a reform, educational concessions given to OBCs by State Governments like tuition fees, free books and clothes, stipends and free meals etc. will amount to a wastage of public funds. In order to make education more attractive proper environment and incentives for serious studies need to be provided. Most of the backward class students are known for their irregularity and indifference to studies which fact results in stagnation and a high drop out rate. The reason for this being the extremely deplorable social and cultural conditions in which they live, and, the fact that there is hardly any motivation to study. Another more pathetic reason is that due to extreme poverty the backward class children at a tender age are expected to get into big boots and toil in order to supplement their parents' income. Hence the recommendation for stipends to pay for these damages.

But upgrading the cultural environment of the OBCs is both a difficult and an expensive task. The commission recommends a move in the direction of adult education, to be launched in areas having a dense OBC population, for it is only when parents are motivated, that they realize the importance of educating their children. Furthermore the proposal for all found residential schools providing both general education and vocational training will also go a long way towards the creation of the right type of climate conducive to serious work. In addition, another right step is to provide separate Government hostels for OBC students with free lodging and boarding. All these facilities once begun on a small scale should expand and multiply depending on availability of resources to cover up the entire backward class community.

Even with the best of facilities, the OBCs may still not be able to compete openly on equal footing with the formers to qualify for admission to technical and professional institutions. They may in other words, still fail to use the phrase of Ms Suma Chitnis 'to measure up'. Hence special coaching facilities are essential and will have to be provided for.

As for the recommendation of reservation in services, the number of posts available is a pittance when compared to the large OBC population. In 1989 there were 2,04,290 vacancies in the Central Government, with 27 percent recommended by the Commission, about 55,158 posts would have to be shared by about 3743 Other Backward Classes, which works out to about 14 jobs only for each backward class community. Quite obviously the bulk of OBCs would derive little benefits from job reservations.

In order to remedy this situation the Commission suggests that the recommendation for service reservation be supplemented by liberal financial as well as technical assistance to vocational communities among the OBCs to enable them to set up their own small scale industries. Since the existing financial agencies at the State Government level, cater only to
those with influence, the Commission recommends that Government set up separate financial institutions meant only for OBCs.

Over and above the financial assistance in education and employment, there is the problem of backwardness to be dealt with. The real cause of backwardness is the dominance by the rich landowners which reduces the poor OBC peasants to mere bonded labourers. The urgent need is to break this dominance through proper land legislation which would bring about a structural change in production relations. Land ceiling laws should be strictly enforced and surplus land should be made available to OBCs, as also Scheduled Castes and Scheduled Tribes.

For implementing all the aforementioned recommendations and other socio-educational and economic measures for the development of the OBCs, the Commission recommends that a Backward Classes Development Corporation and a separate Ministry/Department for the OBCs be set up at the State as well as Central level.

If the Mandal Commission’s recommendations are to be executed in a fairly decent manner, the Central Government must come to the rescue of the State Governments, for, any welfare measures for the upliftment of backward classes cannot be implemented solely from the scarce State resources available. Therefore, just as the Central Government extends financial assistance for developmental programmes designed for Scheduled Castes and Scheduled Tribes, it is recommended that similar assistance also be considered for the OBCs.

The most significant Mandal recommendation is that for the proper effect of the implementation, the policy must stretch over to twenty years and then be reviewed after assessing its impact on the social status of the OBCs.

**Reservations in States prior to Mandal:**

Reservations is not a novel idea in India, it has been a long standing practice in Southern States like Tamilnadu, Kamataka and Kerala. It is not surprising then that Mandal reservations brought with it the contention from many quarters of glorifying the British legacy of adopting their policy which sought to divide society in the name of caste and religion. This contention holds some water as Mandal’s caste data was based on the British census of 1891 and 1931.

It was in 1919 that Mr. Miller, the Chief Justice of the Mysore High Court, came out with a report highlighting certain measures for the upliftment of the non Brahmin castes in the State. In the mid 1920s the non Brahmins vehemently opposed the 3 percent minority of Brahmins who dominated the modern sectors of the society, education, government, etc. This non Brahmin
movement had the support of the British, who were aware of the nationalistic attitudes of the Brahmins and felt that encouraging the non-brahmin movement would help clip the Brahmin's wings. It was more this ulterior motive than any genuine desire to uplift Backward Classes that made the British adopt the system of quotas in government jobs and representation to Assemblies.

Non Brahmins with minimum qualifying marks were absorbed in most of the Government jobs to the detriment of the first class Brahmin candidates. Further, there was the 'fee waiver' so as to enable the non Brahmins to pursue higher studies up to college level.

With the depression of the thirties there came about acute unemployment. It was then that the non Brahmins realised that there were too many claimants for too few seats and jobs. This marked the beginning of the rush to claim backwardness with some, specially the labour class, calling themselves more backward and as such more deserving of help from Government. In 1961 an expert committee called the Nagan Gowda Committee was set up by the Mysore State Government (now Karnataka State), to investigate into the problem of criteria for identifying and classifying the backward classes in the State. The Committee decided that while the caste/community base was the only practical method for classifying the backward classes, the latter should be subdivided into 2 categories viz. Backward and the more Backward. Similarly in Kerala there were the Backward and Most Backward Class (MBC).

As more and more backwards staked claims for seats and jobs, there was a demand from those castes having a larger numerical strength, like the Vanniyars in Tamil Nadu, that they be given reservations in government jobs and in educational institutions in proportion to their numerical strength in the general population.

Then came the landmark judgment of the Supreme Court in 1962 in Balaji v/s the State of Mysore in which Justice Gajendragadkar observed that the concept of 'backwardness' did not imply that a class must be deemed 'backward' in relation to the most advanced classes of society. In such a case, he said, almost all would claim the status of backwardness, and seek shelter under Article 15(4). According to Justice Gajendragadkar 'backwardness', in case of Article 15(4), was essentially to be understood as implying social and educational backwardness. Secondly, the judgment held that in no case the quantum should cross 50 percent. Accordingly, the total reservation of 68 percent, as per the Government Order of 1962, (the break up being 50 percent for OBC, 15 percent for Scheduled Castes and 3 percent for Scheduled Tribes) was held to be excessive. Further it held that in the Indian context, caste of a particular class or group of citizens cannot be totally irrelevant, nonetheless its importance must not be exaggerated by considering

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it as the only yardstick to measure backwardness.

The Backward Class movement started in Southern India during British rule (in 1919 in Mysore State) and since then the southern States have had extensive reservations which date back to over 65 years with hardly any ill effects on efficiency in administration.

As against this what we notice is an ever increasing resistance to reservation of educational seats and jobs for OBCs in Civil Services and public sector, in the Northern States. The reasons for this being that the modern sector in Northern India was not dominated by Brahmin elite alone, but also by Kayasthas, Banias and some Muslim elites. In addition to this, there was the sharp Hindu-Muslim divide which in a way hindered the development of the backward class movement in Northern States.

In Southern States, Mandalisation did not create any social upheaval for the simple reason that the backwards were already, for long, enjoying reservations. In Karnataka by the seventies, the list of backwards who enjoyed reservations had swollen to include nearly 70 percent of the population. However, thanks to the Venkataswamy and Havanur Commissions, by 1983 reservation was brought down to 27 percent by taking out the Lingayats and Vokkaligas from the list of backwards. Consequently the two incensed BCs together put up a violent agitation as a result of which the OBC reservation was increased to a high rate of 78 percent, except for those, whose parents' income was Rs.10,000 and more. This of course brought in its wake corruption in the form of a roaring business in fake income certificates.

In Tamil Nadu the problem of backwardness was identified, way back in 1957 when Mr. Kamaraj was the Chief Minister. It was observed that many of the communities were very badly off and thus they were grouped as Backward Classes and Most Backward Classes. In Tamil Nadu (which has seen 2 Backward Class Commissions namely in 1969 chaired by Mr. A.N. Sanathan and in 1982 by Mr. J.A. Abasankar) concessions have improved Backward Classes representation in education and in services and the general condition of the Backward Class. Since the policy of reservation in appointments at various levels is applied consistently and since benefits are available to all those designated, the OBCs in Tamil Nadu have attained already a high stage of representation in services, nearly 68 percent. Inspite of this there was no resentment and tension among the Brahmin and non Brahmin upper castes because the expanding economy and speedy urbanisation provided avenues and job opportunities to these forward castes.

Turning again to Northern States, we find that in 1985 an attempt in Madhya Pradesh to raise reservations from 28 percent to 82 percent was answered with arson and riots, and so withheld by the High Court. Similarly in Gujarat, about the same time, trouble brewed up with the introduction of reservations for promotion of posts in medical colleges. There has always been
a lack of consensus in favour of reservations, in North Indian States.

To sum up, the Southern States reacted differently to the reservation policy in contrast to the Northern States. The Southern States like Tamilnadu, Karnataka etc. have a long history of backward class movement and the welfare measures were introduced in a gradual manner. There were no conflicts between the Backward castes and the Brahmins as the latter comprised only 3 percent of the population. Another reason is that the forward castes do not form a big group and are divided amongst themselves, as such any agitation organised by them does not produce the intended effect. Again clashes, if any, between the Scheduled Caste and Backward Class, are comparatively milder. There is less frustration among the forward caste youth because the private sector in the Southern States and in metropolitan cities like Bombay and Delhi, has kept expanding and absorbing the unemployed among high caste southern youth; and most important is the fact that due to the long history and organization of Backward Class groups, they had a political clout and they could be easily absorbed in the mainstream.

As against this, the situation in the North was different; for example, in Uttar Pradesh and Bihar, reservations have not brought about a split in the forward castes. On the other hand there are sharp cleavages between the SC and Backward castes and resultant violence has weakened their solidarity. In the absence of any OBC movement in the Northern States, the forward castes have managed to keep the backwards under their control and every effort is made to keep them off the mainstream. But it was when Karapoori Takkur introduced 20 percent reservations for BCs in November 1978, that there came about a widespread backlash, because since the tertiary sector is quite static in the North, the forward castes had to depend mainly on government jobs. Reservations brought about a sudden imbalance and the high castes found they were losing their political and economic position to the backward classes viz the peasant classes like Yadavs, Jats, Kurmis, Koeris, Lodhs etc, who now came to the forefront and began to organise backward class movements.

In conclusion, we may say that the mid twenties saw the dawn of reservations for non-Brahmins in South India as the outcome of a social and cultural movement. The fact that the movement had the tacit backing of the British India Government, further helped in the rapid consolidation and acceptance of a policy of reservations. It was the absence of such a movement in Northern States, that mainly explains, both the absence of reservation policy in the Northern States and the severe backlash it provokes today among the high castes in the North.
### TABLE V

**RESERVATION QUOTAS IN SELECTED STATES (Figures for columns 1 - 5 percentage wise)**

<table>
<thead>
<tr>
<th>STATES</th>
<th>SC</th>
<th>ST</th>
<th>OBC</th>
<th>OTHERS</th>
<th>TOTAL RESERVATIONS</th>
<th>NO. OF GROUPS IDENTIFIED (STATE LIST)</th>
<th>MANDAL LIST</th>
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<td>7</td>
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<td>19 &quot;</td>
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<td>10</td>
<td>5</td>
<td>35</td>
<td>82 &quot;</td>
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<td>35</td>
<td>15</td>
<td>68</td>
<td>272 &quot;</td>
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<td>10</td>
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<td>Nil</td>
<td>41</td>
<td>58 &quot;</td>
<td>116 &quot;</td>
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</tbody>
</table>

**SOURCE:**
Frontline (fortnightly) Madras, September 1 - 14, 1990, pg. 22.
Ishwari Prasad; Reservations - Action for Social Equality, pg. 70, New Delhi - 1986.
THE MANDAL REPORT ANALYSED

The Constitutional Aspect:

Reservations, one of the mechanisms of 'Protective Discrimination' is a social policy of the State enshrined in the Constitution, by which the traditionally neglected social groups are ensured certain amount of participation.

The two most important opportunities for an Indian citizen, which gives him a sense of participation in the life of the nation, are employment under the State and admissions to various institutions. These were traditionally and invariably the privilege of the higher castes only.

As a sequel to this inequity, India has experienced many low caste movements, specially in the South, which resulted in setting aside of seats in medical and engineering colleges for the lower castes in some Southern States like Madras and Mysore, even before independence. However, it was after only independence that as a remedy to the agitations, clause 4 of Article 16 and clause 4 of Article 15 were incorporated empowering the State to reserve posts in favour of any socially and educationally backward classes of citizens, which are inadequately represented.

Equality before law is a basic and most precious Fundamental Right of an Indian citizen guaranteed under Article 14 of the Constitution and which is further endorsed and specified in Articles 15, 16 and 29. Though the Articles 15(4) and 16(4) which give the State over-riding powers, appear to bring in a conflicting element to undermine the equality of opportunity inherent in Articles 14, 15, 16 and 29, we must not overlook the fact that equality is multifaceted in character. Equality of opportunity by itself is nothing much to be desired. Since it weighs the weak and strong in the same balance, it is like trying to have a line up of 5 year olds with 15 year olds for the same race and this tantamounts to a denial of social justice. It is equality of results that matters. It requires unequal opportunity or treatment to the disadvantaged so that they end up being equal in resources or rights.

Ours is a highly unequal society, and it is the degree of protection the society provides for its unequals i.e. the weaker, handicapped and less talented members, that determine the humaneness of society. Thus the special provisions by way of reservations, is nothing but unequal opportunity to secure Social Justice to the weaker sections of the Society and in achieving this, Articles 15(4) and 16(4) have been instrumental. For it is only, when the underprivileged section is afforded special protection, that they are able to resist exploitation by the strong.
In view of this, the Constitution envisages special provisions for the Scheduled Castes, Scheduled Tribes and OBCs. However, Constitutional provisions are not uniform for the entire backward classes including Scheduled Castes and Scheduled Tribes, thus although the Constitution spells out Scheduled Castes and Scheduled Tribes through Article 335, which deals with their claims for appointments or posts, at the Centre and State level, the task of designating additional handicapped groups as 'Backward', is left for the States to take up.

Article 15(4), however, does not warrant the division of Backward Classes into backward and most backward, as demanded by some. It has been argued that Article 15(4) speaks, not of reservation but of 'any special provisions' which could be in the form of affirmative actions like extra tuitions, better and subsidized books, subsidized food, stipends etc.

Whether the reservation policy in matters of employment is constitutionally sound can, be gauged from Article 16(4). While Article 16(1) is for equality of opportunity in matters of employment Article 16(4) holds that nothing in 16(1) 'shall prevent the State from making special provision for reservation of appointments or posts in favour of any backward class of citizens'.

By virtue of this Article the State is empowered to provide for job reservation for members of backward classes, which in the opinion of the State, are unrepresented. However, Article 16(4) also expects that while honouring it, care be taken not to provide unreasonable, excessive or extravagant reservation which, while undermining general competition, could also create widespread dissatisfaction among the employed, culminating in inefficiency. Taking Article 16(4) and 335 together it is clear that reservation in services must be consistent with the requirements of efficiency of administration. There is no denying the fact that the backwards also must find a place under the sun, but there can be no compromise on efficiency.

Thus an array of special provisions guaranteed by the Constitution are oriented towards the building of a new India. However, some have argued that the spirit of the Constitution is to have an egalitarian society, one which is casteless as the Constitution is against caste perpetration. How then, they ask, can caste-based reservations be justified? In this context the view of Justice Y.V. Chandrachud of the Supreme Court is worth quoting: 'If the State patronage for preferred treatment accepts caste as the only insignia for determining social and educational backwardness, the danger looms large that this approach alone would legitimise and perpetuate caste system. It does not go well with our proclaimed secular character as enshrined in the Preamble to the Constitution. There is no doubt that the Mandal Commission has run into serious legal questioning, but the fact remains that the Constitutional provisions for OBCs will have real meaning only when the upper caste dominance is curtailed by deliberate State action. After all the left out masses cannot wait endlessly for the emergence of a castless society. For this
reason, there is need today, to adopt caste action to abolish casteism. Like the use of the proverbial 'thorn to remove a thorn, caste which is a social reality in India can be removed only through caste based action'. India's system of official discrimination in favour of the most backward section of the population is unique in the world.

Basically the Constitution is explicit on the Governments authority to act affirmatively to identify the backward classes, to create conditions conducive to social advancement of these deprived groups, leading to their participation in the social life of the country, in short, to secure the overall improvement in their life style in terms of Art. 340 read with Articles 14 and 16(4).

Failure to fulfil this requirement is viewed by many as a negation of the basic structure of our Constitution. The dire need of our undulating society is the earliest possible achievement of the objective of social justice enshrined in the Constitution. This was the very purpose for which the Second Backward Classes Commission viz. the Mandal Commission was established.

On the other hand, the eminent jurist Nani A. Palkhiwala, while pointing to the flaws in the Mandal Report argued that its implementation would go against the basic structure of the Constitution, and that any constitutional amendment to avoid judicial scrutiny would itself be unconstitutional and void. He calls the Reservation Policy 'thoughtless action to achieve the thoughtful object' of doing justice to the 'backward castes' Mandal can prevail (according to Shri Palkhiwala) only by scrapping the noble Constitution and promulgating a backward constitution for a backward nation.

Mr. Nani Palkhiwala may consider the reservation policy as violative of Fundamental Rights and a fraud on the Constitution, but in our view the Mandal recommendations need to be implemented through an organised struggle, as, it is a timely opportunity to expose the greater caste oriented fraud perpetrated against the backward masses.

In our view the reservation policy is in keeping with the preamble and the protective articles - 15(4), 16(4) through which Constitutional obligation towards the socially and educationally backward classes can be fulfilled.

Ours is a self-governing society with a written constitution. In the Preamble to the Constitution, 'we the people' have sworn to strive for 'social, economic and political justice'. As far as we can see it, reservation is a powerful instrument that promotes backward class participation in decision making and unless OBCs participate in decision-making, neither the injustices practised against them nor their social-educational backwardness can be removed.
Identification and methodology

The methodology followed by the Commission in the research for data collecting has been vehemently dubbed as spurious and unreliable. However, no particular procedure or method was laid down by the Constitution or the Law. The Commission was free to adopt a methodology convenient and suitable for each individual area.

In order to identify OBCs the Commission conducted socio-educational surveys covering 17 States and 5 Union Territories. The Statewise identification of backwards showed a large number of castes. This in no way means that the Commission went to look for castes, but it definitely noted that people who were socially and educationally backward, were also the same people who belonged to a caste group.

Each survey covered just 2 villages and one urban block in each district; consequently, while a large number of castes was left out, the overall list showed duplicity. The Commission therefore felt it necessary to supplement the Survey based data by including in its OBC lists, the Statewise list of groups of primitive tribes, exterior castes etc. from the list of 1961 compilation of the Registrar General of India. Secondly, the Statewise list of OBCs was drawn up by taking into account public evidence, the personal knowledge of the members of the Commission as well as the views of voluntary organisations which were gathered by flashing questionnaires for general public in leading newspapers. However, with just 1872 entries that came in, it could not be possibly taken as the views of the general public.

The Commission concluded that groups like Kunbis of Maharashtra, Marwaris of Tamil Nadu, the Bengalis of Madhya Pradesh, the Keoris of Uttar Pradesh were also to be included in the list of OBCs, but nowhere does it provide any data in support of this conclusion.

Taking for granted that socio-educational surveys were conducted, and personal knowledge of the Commission members was solicited, the matter to be questioned is about the source of the particular entries, which is absolutely necessary for public scrutiny. Thus doubt is created in our mind regarding the identification of OBC. by the statements of S.S. Gill (Member Secretary) who claims to have used 31 scientific tables of the social scientists, prior to determining the status of OBC, and adds that the tables remained unpublished for want of space. The role of the eminent social scientists was presumably limited to that of designers of the plan, as they were kept totally in the dark about the interpretation of the processed data. There was no coordination between the managers and the social scientists who were used as ornaments so as to make the report appear very objective and impartial and to legitimise the preconceived views of the commission.
The Mandal Commission also suggested certain tests by means of which the OBC employees in the Central Government could be identified.  

First, in order to determine the backward classes among Hindus, social backwardness of the caste should be the main criterion. An employee will be deemed socially backward provided he is not a Brahmin, Kshatriya or a Vaishya. This will be in keeping with the main criteria ie. ‘caste or classes considered socially backward by others’. Second, those castes or classes whose livelihood depends on manual labour are to be deemed backward. Third, castes or classes in which 25 percent females and 10 percent males, above State average get married before 17 years of age in rural areas are to be deemed backward. The figures in urban areas stand at 10 percent and 5 percent respectively. Fourth, castes or classes in which the participation of females in work is at least 25 percent above the State average, are to be deemed backward.

The last three, however, cannot be taken as indicators of backwardness because in the Indian Society child marriages were practised first among upper castes and later on imitated by the lower castes. Secondly manual labour and female labour which was formerly restricted to lower castes, is now practised by the poverty stricken section of the upper castes also. It is criteria such as these, adopted by Mandal, that has dragged the Commission into the controversy of whether it correctly estimated the OBC population to be 52 percent.

In the Commission’s view caste is an important factor in identifying OBC among Hindus, because it is due to the low ritual caste status of a person that he is socially backward.

However, some critics correctly contend that a ‘backward class’ does not essentially mean ‘backward caste’. In other words there can be a backward class which may not necessarily be a backward caste (in terms of low ritual status).

Since most of the indicators made use of by the Commission were caste based, they could only be applied to Hindus. Unlike Hinduism, Christianity and Islam are comparatively egalitarian religions. Caste therefore cannot be used to identify the socially and educationally backward among Muslims and Christians. As such, for non-Hindus the additional criteria of conversion and poverty were suggested. Thus among the Muslims, those groups practising lowly and unclean occupations, could be deemed as Backward Classes. Similarly those from the Harijan Community converted to Christianity, could be deemed as Backward Classes.

The authenticity of the Mandal’s identification of OBC has aroused extensive debates on account of lack of up-to-date statistics of the castes and communities in India. The question has become still more poignant because the list of OBCs is based on the 1931 census of undivided
India, the only census report which details various castes. The Commission to have determined OBCs on the basis of the 1931 census implies that it took for granted that there was no social mobility over the last 60 years.

It is for this reason that the Supreme Court had rejected the 1931 census data for determining OBCs. The six decades old statistics can hardly be used to determine the number of existing backward castes. What was considered as one caste in 1931, may now stand split and find mention in three different groupings e.g. according to the name of the caste, a backward may fall under one category; according to the name of the occupation he may be placed in another; and there is still the name of the community according to which he may be placed in the third grouping.

Instead of this dubious identification of OBCs with reference to the 1931 census, it would have been wiser for the Commission to turn to the ethnic data offered by the 'Peoples of India' project undertaken by the Anthropological Survey of India, which is the latest (1985-1991) study, undertaken during the same period when the Mandal Commission Report was under way. The authenticity of this ethnic data lies in the fact that it is the handywork of about 300 scholars who scanned all the States and Union Territories, for the most trivial information not only about castes but all aspects of community life like cultural habits, language, religion, economic activities, etc. Their work was spread over 438 districts and 72 cultural regions as against the 2 villages and one urban block of each district surveyed by the Mandal Commission.

Again the People of India Project conducted an indepth study by means of surveys, interviews, workshops, field trips, references to earlier ethnographic accounts, and then checked and rechecked their data before synthesising their findings into a national list of the following communities: Hindu Upper Castes - 300; OBCs - 1026; Scheduled Castes - 439; Scheduled Tribes - 426; Muslims - 289; Christians - 20; Jains - 60; Buddhist - 10; Jews and Parsis - 10.

The Mandal Commission's identification of 3743 OBCs would have been rendered more authentic had it chosen to rely upon these 1026 OBC communities recorded in the recent voluminous work of the Anthropological Survey of India.

To sum up, though the Commission claims to have viewed backwardness from various angles like caste based social backwardness (as the key element), educational backwardness (as the linking element) and economic backwardness (as something derived from the first two), their views lack depth, principally on account of lack of reliance on upto date statistics of castes and communities in India.
GOA AND THE MANDAL REPORT

While the Mandal Report sent shock waves in various parts of North India, in Goa the agitation was thought of as an otiose exercise, and the public by and large chose to keep stoic silence. Except for some bickerings within the political camps, on the whole, Goa's approach to the Report was a cautious one.

According to the Second Backward Commission Report presented to the President of India by the Chairman of the Commission, B.P. Mandal in December 1980, fourteen communities in Goa were listed as Other Backward Classes viz. Bhandaris, Christian Chambars, Christian Mahars, Dhangars, Dhobis, Dhor, Gauda, Gosavi, Kumbhar, Kholi, Kunbi, Nathjogi, Nhavi and Velip.

Subsequently in May 1983 the Goa Chief Minister, Pratap Singh Rane, accepted in principle the Mandal's recommendation wherein 18 communities were identified as OBCs. But in the notification issued by the Goa Government, instead of accepting the Mandal list, only four communities, like Dhangars, Gaudas, Kunbis and Velips, were notified as backward. These four communities account for 20 percent of the State's population, but government provided only 2 percent reservation for them. Then in 1990 the Government of Goa identified another 10 communities as OBCs viz. Bhandari, Dhobi, Gosavi, Koli, Kumbhar, Nathjogi and Nhavi, all of which are Hindus; and Chambar, Dhor and Mhar in the Christian population.

However, the government list of 14 communities caused resentment among the Kansars and Satarkars who were left out. They have made a demand for inclusion in the OBC list but the same has not been entertained up to date. Their demand was supported by the North Goa MP, Mr. G. Mayenkar, who wanted a Committee appointed to study the possibility of including other deserving communities in the list.

The Gomantak Kshatriya Bhandari Samaj, on the other hand, welcomes the mandal list of 14 OBC communities since the Bhandari community, the single largest caste group in Goa, was included in the OBC list. The Bhandaris in Goa are not exactly a backward (in economic and educational terms) community, but they were included by Mandal in this list because the Bhandari caste figures as backward in the Daman (the Portuguese enclave in Gujarat) list which also included Alfati, Dublas, Naikas and Varlis.

The Goa Association of OBC has been critical of the inclusion of the Bhandari community which by itself constitutes about 30% of the State's population. The association fears that the Bhandaris, along with the Kolis, who constitute another 15 percent of the population, would together swap most of the benefits, side tracking the more deserving and genuinely backward.
communities like the Dhangar, Gauda, Kunbi and Velip. In fact some of the Association spokesmen have argued that since the Bhandari and Kholi are economically well off, they should not be considered for reservation. There seems to be much truth in this argument that the Bhandaris and Kholis are relatively better off than the 4 notified OBC communities: Dhangar, Gauda, Kunbi and Velip.

The legitimate fear of the four relatively more backward communities like (Dhangar, Gauda, Velip and Kunbi) that they may be side tracked by the comparatively better off OBC communities of Bhandaris and Kholis has made some of their spokesmen advocate, that these four be included in the list of Scheduled Tribes for whom a constitutional reservation of 7.5% exists. But this demand, actually first made way back in 1964-65 and reiterated by the V. Pai Gaonkar Report of 1987, has not been acceded to due to pressure from vested interests (the better off OBCs).

Like in other States, the issue of reservations for OBCs in Goa, is not without its problem. Fortunately for Goa, the number of notified communities is small, only 4 compared to say 272 in neighbouring Karnataka. This should make implementation administratively easier. However, the problem of financial constraint will persist, especially since the sum allotted to the Social Welfare Department is, as it is, too meagre. Thirdly conflicting group interests may create some hurdles. There is a genuine apprehension among the forwards that with so many posts reserved, there would not be left adequate scope for the General Merit candidates; and if the reserved seats/posts of previous years are carried forward, the backlog would reduce even further the seats available for open competition.

It is also to be noted that 27 percent reservation if implemented for the 4 notified OBC communities, would mean a reservation of 27 percent of the posts for 20 percent of the population. Effectively in Goa today (December 1992) the reservation for these four communities is only two percent. There is a case for the Government to raise the quota to 20 percent.

Fourthly, there is the question of whether the OBC list should include both Christians and Hindus. At present 2 percent reservation for the notified OBCs includes both Hindus and Christians. There is some criticism that Christians should not have been included on the ground that they are relatively better off when compared to their Hindu counterpart. This criticism would become irrelevant once it is accepted to exclude the 'creamy layer' of the 4 notified castes for reservation. In our view both the communities should be included for OBC reservation.

There are some critics who opine that caste based reservations will create vested interests and perpetuate casteism in Goa. This argument overlooks the fact that since caste has been in the past and continues to be in the present too, the instrument of exploitation, particularly of rural
masses, the same instrument must be used for their upliftment.

At the same time it has to be recognised that even if Mandal Report is accepted in Goa, the actual impact may not be significant. This is because the scope for employment in Government in Goa is very limited. The CM, Ravi Naik has himself gone on record to say that he cannot promise more government jobs and that he would like Goans to seek self-employment and was willing to help in this regard by way of starting vocational institutes, providing finances, etc.

If Mandal has generated less heat and excitement in Goa than in the Northern States, this is because Goa has had a unique intermingling of castes and comparatively less exploitation (untouchability is hardly practised). Again the opportunities to go to the Gulf and make riches there along with the Goa Government’s policy of encouraging self-employment will go a long way in blunting the hard feelings that reservations have generally tended to generate in the North.

MANDAL RESERVATION - a triumph for Social Justice

The Mandal Report, as already mentioned had identified 52 percent of the total population of India as OBC over and above the 22.5 percent, who are Scheduled Castes and Scheduled Tribes. The Mandal Report applied a) to all employment civil and military, under the government, b) to employment in all public sector enterprises; c) to private sector enterprises which in any manner receive any financial assistance from the State or any public sector undertaking; d) to admission and engagement in all universities and affiliated colleges and e) to promotions at all levels in the areas covered by (a) to (d) above.

The V.P. Singh government had proposed to implement the Mandal Report in phases and announced that the report was to be implemented ‘in toto’ and ‘without any dilution’. However it proceeded on the basis that in the first stage Mandal recommendations would not be adopted for promotions in the civil services, nor in armed forces, nor in educational institutions. It accepted immediately 27 percent reservations over and above 22.5 percent for Scheduled Castes and Scheduled Tribes.

After the exit of the V.P. Singh Government, the Narsimha Rao government issued an office memorandum dated 25th Sept 1991 accepting reservation of 27% for OBCs with the amendments that a) within the 27 percent reservation, preference would be given to candidates belonging to poorer sections of the backward castes and b) an additional 10 percent would be reserved for other economically backward classes of the people. However no criteria for determining the poorer sections or other economically backward classes was issued.
When the matter went to the Supreme Court, implementation had to be kept in abeyance. The Supreme Court gave its judgment on 16th November 1992. The Court first, held by majority, that reservations were permissible under Article 16(4) which permits 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. It therefore upheld the principle of caste reservation embodied in the 1991 memorandum of September 25th, but struck down that part which provided for additional reservation of 10 percent for other economically backward classes on the ground that while caste backwardness is relevant under article 16(4) economic backwardness is not.

However, while upholding caste based reservations, the Court added several important qualifications which must be taken note of. These are:

a) The "creamy layer" of backward classes should be excluded, because otherwise they would lap up all the benefits of reservations meant for that class;

b) Within four months the government should "specify the basis of exclusion - whether on the basis of income, extent of holding or otherwise - of the creamy layer";

c) The inclusion or exclusion of a caste or a section of a caste would have to be periodically reviewed to take care of changing circumstances.

d) Permanent commissions should be appointed within four months by the Central Government and by the State Government to decide regularly the cases which would arise involving questions whether a particular caste or a section of a caste was rightly included or excluded; and all further proceedings in such matters can be taken only in the Supreme Court;

e) "A backward caste cannot be determined only and exclusively with reference to economic criterion" and, therefore the ten percent additional reservation made by the memorandum of September 25, 1991 was illegal and void;

f) Armed forces and some higher civilian posts to be selected by the government should be outside the purview of caste reservations;

g) Reservations cannot be applied to promotions; "crutches cannot be provided throughout one's career". However the court directs that this decision, be not applied retrospectively so as not to affect the promotions already made prior to the judgement. But such reservations in promotions which are already in operation, must be revised and modified by the authorities concerned after a period of 5 years, so as to achieve the objective of Article 16(4).
Palkhiwala’s case against Mandal and the Judgement

The well known jurist, Nani Palkhivala has argued that the majority judgement in the Mandal case is erroneous in law and needs to be overruled in the national interest and in the long term interests of the Backward Castes themselves. Palkhivala argues: “The decision would revitalize casteism, cleave the nation into two, forward and backward, and open up new vistas for internecine conflicts and fissiparous forces and make backwardness a vested interest”. According to Palkhivala the progress of India has been from casteism to egalitarianism. It has been from feudalism to freedom; and equality is at the very heart of a free republic.

Palkhivala argues that there are crores of backward individuals in forward castes and crores of forward individuals in backward castes and accuses the majority judgement of excluding from reservations all members of forward castes, however backward and deserving. In short Palkhivala’s case is that the thread or link holding a class together should be backwardness of its members and that such a link or thread can never be supplied, by caste, since it is prohibited by the Constitution and as such must be erased from the society. Palkhivala also argues that accepting reservations would spell a disaster to the unity and integrity of India and will convert the country “into a paradise for lawyers” and the government will get enmeshed in unending litigations, wasting the nation’s time, energy and resources on an unimaginable scale.

Palkhivala Refuted

The first point to be noted is that the majority judgement was in favour of caste based reservations because in its view such a measure is necessary to offset the cumulative consequences of caste discrimination which has been practised for centuries. There is nothing like justice in abstract as Palkhivala seems to believe. What in the past for centuries, was accepted as egalitarian and merit based selection, was in fact caste based to the extent that education was a caste monopoly and caste taboos (pertaining to professions to be followed) were rigidly imposed by the higher castes (who were economically well off too) on the lower castes. A significant consequence of this pernicious system practised over centuries (and masquerading as open competition and merit) has been the monopolization of State power by the upper castes who even now as members of policy making and recruiting agencies continue to call the shots. The purpose of reservations is to redress this historic imbalance. In this sense it is a remedial measure, not a punitive one directed against the higher castes.

The objective underlying Art. 16(4) and reservations, according to Mr. Justice B.P. Jeevan Reddy (delivering the majority judgement in November 1992) is “the empowerment of the deprived backward communities.” The objectives is to give them a share in the administrative
apparatus, in the governance of the community. The idea, in other words, is not so much to give employment nor even to alleviate poverty, but rather to provide adequate representation in State service to communities hitherto kept out by design/custom. In fact the adequacy of representation must be judged not by their presence in the lower rungs of the service ladder, but by their entry into the higher echelons, the corridors of power. In short, as Justice Sawant indicated in his concurring judgement, Art. 16(4) mandates effective representation. Now surely even Palkhivala would agree that a system in which the majority of the population is denied its share in actual power, cannot be a real democracy.

The judgement takes into account the argument of general merit when it stipulates that reservations will not totally exceed 50 percent. Again, it accommodates merit when it says that on account of the nature of duties attached to certain posts and positions, where merit alone counts, there should be no reservations. Thus technical posts, in research organisations, in specialities and superspecialities in medicine, posts of professors, pilots in India Airlines and Air India, scientists and technicians in nuclear and space application, it correctly advises, cannot be subject to reservations. Concern and recognition of merit is again shown by the learned judges when they opine that promotions (even of SC/STs) should not be subject to reservations. Having said this, however, we would also like to say that barring purely technical and research positions, merit is not just a matter of being technically qualified and having passed examinations creditably, rather it is a broader sociological question raising such issues as, are equal educational opportunities available to all (rich and poor), who prescribes the qualifications and determines the sylabbi? etc. Then again, a distinction needs to be made between being qualified (in the formal sense) and deserving the post. The latter is a broader social issue raising questions of social justice such as need for representation, for equalizing competence, etc.

One of the most vexed questions pertaining to reservations is: how does one determine a backward class citizen? To us it seems clear that social, educational and economic backwardness are intertwined in the Indian context and therefore the economic criteria alone cannot be the sole or even best criteria for defining backwardness. In India caste often represents an existing identifiable social class or group which encompasses a vast majority of our population that exhibits this triple backwardness (social, educational and economic). Thus in the exercise of determining backwardness it is proper to begin with caste and then go to other groups, section, etc. No doubt, there may be a few advanced/forward among the backward class/caste, and this is why the judgement correctly speaks of excluding this "creamy layer" from the benefits of reservation in order to ensure that the really disadvantaged and deserving members of that backward caste/class are not deprived of the benefits. It should not really be difficult to determine and identify (within four months as the Court directed) this creamy layer which by definition would be individuals whose economic advancement has been so high that it necessarily signifies social
advancement. Nor here must we overlook the fact that in caste cultured-society, a rise in income does not necessarily imply rise in social status.

Since the question of determining backward caste/class is a complex and an on-going exercise, the Court correctly advised Government to constitute a permanent body for entertaining requests for inclusion as well as complaints of inclusion and under-inclusion in the lists of other backward classes of citizens. Palkhivala may consider this as creating a paradise for lawyers and endless litigation; but a historic and overdue measure of social justice cannot be stalled on the ground of it encouraging litigation or even "Rule of Law". The Court puts this idea forcefully by quoting Joseph Raz (Fellow of Balliol College, Oxford) thus... "one should be wary of disqualifying the legal pursuit of major social goals in the name of the rule of law. After all the rule of law is meant to enable the law to promote social good, and should not be lightly used to show that it should not do so. Sacrificing too many social goals on the altar of the rule of law may make the law barren and empty". 23.

In our view the policy of reservations as it is now emerging and shaping (under the guidelines of the Supreme Court) is a triumph of Social Justice.

Given our history and past caste-based culture, the modern Indian State cannot shrink from its duty of being a reformist State. Reservations is one transient measure of reform. Many others will have to be adopted if an abiding and ultimately a reservation free society has to emerge. Most crucial among these other measures will be attempts by the State to help citizens equalize competence. A common pattern of education must be evolved and made to replace the present highly differential one. Special standard raising programmes 24 must be implemented at all stages of education, right from the initial stage to the qualifying one. Only such a far sighted and sincerely implemented long term educational programme can hope to make reservations unnecessary in the long run.

A reformist State must help the underprivileged citizens to attain equal competence. The policy seeking to equalize competence is an obligation the State owes to the economically deprived and historically underprivileged sections of society as much as it is an essential welfare measure. Such a policy seeking to equalize competence through educational reforms and measures is a long term affair. Till then the Supreme Court judgement and the government's acceptance of the principle of reservations for OBCs must be hailed as a step in the right direction of correcting long perpetuated historical injustices and a step in the direction of establishing a truly democratic, egalitarian order.
NOTES

1. Article 340 provides that the President may by order appoint a Commission consisting of such persons as he thinks fit 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 steps that should be taken by the Union of India or any State to remove such difficulties and to improve their conditions and as to the grants that should be made for the purpose.


5. Ibid.


11. India Today 15th September 1990 pg. 102


14. For list of 17 States and 5 Union Territories see the Commission’s Report 1980 Volume I - II pg. 98.

15. For the ‘Questionnaire to the General Public’ consisting of 18 main questions requiring 33 answers, see the Report (1980)Vol.I - II pg. 75.


17. See Times of India Bombay 1st October 1990, ‘Ethnic data to bridge a gap’ ‘Times of India Research, Bureau.’

‘Statistics as per the Peoples of India Project’ by A.S.I.

19. ‘Preference’ interpreted as ‘Equitable Apportionment’ para 114 of the Supreme Court Judgement pg. 244.


21. ‘... the implementation of the impugned O.M. dated 13th September 1990 shall be subject to exclusion of such socially advanced persons - ‘creamy layer’ Supreme Court Judgement of 16/11/92 para 123(B).


24. We have many examples of the success of such programmes:

(a) The Tata Institute of Fundamental Research Bombay, tried out an experiment to help backward class students Prof. V.G.Kulkami conducted remedial classes in Science on voluntary basis, every Saturday afternoon, in order to supplement the regular studies. The gradual progress noted in the students was astounding and not only were they able to compete with the forward students but even beat some of them in the race and obtained seats in universities.

(b) Likewise Poona University has conducted such courses with very encouraging result. For details see Indian Express, Bombay 27th September 1990 and Indian Express Bombay 17th December 1983.
CHAPTER III

WOMEN AND SOCIAL JUSTICE
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A Historical Perspective - Traditional position.

Women, the disadvantaged lot of today, once enjoyed considerable freedom and privileges be it in the family or public life. Although the birth of a daughter was not much welcomed in the ancient period of Indian History, the Hindu Society showed great concern for women in different ways, right from early times.

Before the Vedic period (2500-1500 BC) the Indian subcontinent was matriarchal, where the mother headed the family and she was raised to a supreme position as a source of life sustenance and strength. Even during the early Vedic period women in India were held in high esteem and enjoyed almost an equal status with men in different spheres of life. Vedic studies were not the prerogative of men only and women were fully their equals, both as regards access to and capacity for the highest knowledge of the absolute or Brahma. There were even women philosophers known as ‘Brahmavadinis’, during the vedic period.1

Thus during this period the position of women in Hindu Society was quite an exalted one and many parents offered rituals for the prosperity of their daughters whom they gradually prepared to lead a contented life first as a child and later as wife and then mother.

In the sphere of education too, girls were given equal opportunities and many emerged as authors, poets and scholars. Girls married at a ripe age of 16-17 years and could have the last word in the choice of a husband. Love marriages too were not uncommon. Women occupied a prominent position in religious ceremonies and they could even perform rituals independently. Again, it was not customary for a widow to ascend the funeral pyre of her husband and she could easily contract a second marriage.

Women also commanded enough respect in property matters and they could be joint owners of property. The only injustice towards women was that they could not inherit property. This was however justified on the ground that women would not be able to defend the property against rivals. By this time, family ownership of land also came into existence which made the father the sole owner of the property. Apart from this discrimination in the matter of inheritance of property, women of the Vedic period were greatly respected and could freely participate in social and political life.
Then came the period of Brahmamananas and Upanishads between 1500-500 B.C. which saw some marked changes in the position of women. Though individual property rights were not yet recognised, moveable property could be gifted to the girl at the time of marriage. During this period too, the girls continued being initiated into Upanayana and were allowed to go through a 6 years course, which meant that their marriage age was still 16-17 years, the practice of 'Swayamvara' whereby the girl chooses her own husband, continued being in vogue, to a certain extent, among the Kshatriyas.

Female education however gradually declined and girls were taught at home by male members, except those from rich and cultured families who could pursue education outside the home. Thus with restriction on female education, curtailment of religious rights for women followed suit; which was a set back to women. However the odious injustice of Sati and perpetual widowhood were totally unknown and a widow could marry either her brother in law or even an outsider. The Purdah system was unheard of, and divorce, though not a common practice, was permitted.

It was therefore a satisfactory position that women held upto 500 BC and the reason for the same was that women had to head the activities of family life on behalf of their husbands who kept busy with activity outside the household. The major factor, however, responsible for their exalted position, was the influence of religion. The wife was an absolute necessity when it came to sacrificial offerings to God, which had to be performed jointly by husband and wife, thus, the wife's presence was absolutely indispensable. For instance the Ramayana highlights the incident when Rama, in the absence of Sita placed her image by his side and then proceeded with the sacrifice. A line from a Vedic passage runs thus: 'A man is only one half and he is not complete till he is united with a wife'. Such was the prominence given to women in the early society, specially in the religious sphere.

This privileged position demanded besides other things, that the girls should not be discriminated against, when it came to education. Upanayana for girls was therefore important so as to initiate them into a full training course, thus equipping them for the rituals. Well-to-do families saw to it that their girls received a fair amount of education and this later brought them on par with their male counterparts, particularly, when it came to religious privileges. In matters of marriage, their fate was not sealed by child marriages, Sati and permanent widowhood. Thus, right down to 500 BC there was no subjugation of women; they were respected in the home and had a free hand there. Women could move about freely in society, participate in public life and even pursue a career.

Considerable deterioration began setting in eventually beginning with the age of Sutras,
Epics and Smritis. The same religious influence which had earlier elevated women to a high position was responsible for the women’s downfall between 500 BC and 500 AD. This era marked the beginning of unequal position of women in a society which came to be increasingly dominated by Brahmin rituals. The family, which was the basic unit of the Rig Vedic Aryans, was a patrilineal one, but where the wife occupied a respectable position, though, subordinate to her husband. Gradually patriarchal superiority, the Vamas and the joint family, the very bedrock of Hindu Social Organization, developed, with separate codes for men and women. Women were secluded and confined to the male dominated home owing eternal loyalty to the husband and thus developed the gender gap and discrimination against women. The duties and scope of life for women was defined and restricted, as a result of which women themselves became traditionalists. For example, it is generally a woman (mother) who gives a son preference over a daughter.

Coming to marriages, they were monogamous and indissoluble, there was self choice of husband at a mature age and there were no child marriages. The early Aryans did not practice Sati and widows could re-marry.

The Aryan conquest gave rise to another class namely the Sudras consisting of traces of indigenous civilization that still existed in Northern India. The intermingling of the two races led to marriages between Aryans and Sudra women, who having no knowledge of Sanskrit and Hindu religion, could not officiate in rituals.

It was customary for an Aryan to have two wives - the non Aryan was assigned the role of ‘pativrata’ while the Aryan wife was his companion in religious, social and political life. Thus some women could participate in public life while there were some bound to the household chores only, and this meant discriminating woman against woman. Worse still this system glorified the evil of polygamy. In the process of struggle for adjustment between the Aryan and non Aryan culture, women lost their high status and became victims of injustices.

At the same time, vedic sacrifices became more and more complicated and required a thorough training of long duration. To remedy this situation all women, Aryan and non Aryan, were denigrated to a secondary status and declared ineligible for participation in religious rituals.

This move proved disastrous and a complete change was wrought in the position of women. Upanayana was discontinued, marriage age was lowered to 9 or 10. Free choice of husband came to be discouraged and being immature, they could not have an effective say in the choice of a groom. Widows however had a better deal during the earlier part of this period and widows could remarry. Subsequently this was interdicted by 500 A.D. due to mounting public opinion against
widow re-marriage.

Regarding divorce, while a man could cast away his wife and remarry, women had a differential treatment - marriage for them was irrevocable and they had to pull on even in the worst of situations. Lack of education kept women ignorant about the privileges available to women of earlier times. Widow remarriage and Niyoga were gradually being discouraged and at the same time a greater injustice crept in for the widows, with the emergence of Sati and its accompanying religious sanction. The practice was however, kept in check due to mounting opposition

Recognition of proprietary rights of women was the only just move favouring widows of this period (500 B.C. to 500 A.D.) in the sense that with the prohibition of widow remarriage and Niyoga, the young widow could have something to fall back on and have a decent source of maintenance. In this sphere, they were better off than the educated women of the early Vedic age.

In the age of later Smritis from 500 A.D. onwards, apart from proprietary rights and the right of the widow to inherit her husband's share, the position of women in all other spheres was one of degradation and their prestige was lowered to that of Sudras.

The turn of 7th Century A.D. brought about a complete erosion in the status of Women. Education for them became a taboo, child marriages prevailed. Widow remarriages were banned and widows were left entirely at the mercy of the husband's family. Women were thus victims of ignorance, superstitions and restricted to the privacy of the household. With the Muslim invasions in the 13 century A.D., there was further decline in education and training of women, resulting in illiteracy and ignorance which made them more prone to injustice. Women therefore hardly inspired any respect. For reasons of security women were denied opportunities in community affairs and being uneducated, they were devoid of any status and were treated like outcasts of society and dependent on men from birth to death. This gave rise to social evils like child marriages, permanent widowhood, female infanticide, polygamy, practice of Sati and even the Purdah. The practice of purdha (covering their face with a cloak or veil) was first introduced as a safety measure, but in due course became an instrument to curtail the freedom of women. With the establishment of Mohamedan rule the custom of purdah developed firmer roots in Northern India though it was turned down in the South.

Thus the general deterioration in the status of women was the result of prohibition of widow remarriage, revival of Sati, prevalence of Purdah system and above all polygamy by which wives could be superseded. On no account could women go against their marriage vows, as such divorce for them was a taboo.
The position of women deteriorated further during the medieval period because the economic
condition of the feudal lords deteriorated when they lost power to invaders. During this period too
there were strict limitations on widows specially of the upper classes. There was no widow
remarriage even for those widowed in childhood and whose marriage was not consummated.
Widows were expected to spend time in prayers and were looked down upon as inauspicious
and unlucky even by servants. They were under strict surveillance of in-laws lest they broke the
vows of chastity. Such were the mental atrocities faced by women that often they preferred to
immolate themselves with their dead husbands. Sati was a widely observed practice during this
period. All these conditions, however pertained to women of upper castes and these restrictions
were not experienced by lower class caste women who were free to participate in economic
activities, could remarry and divorce when desired. Among the lower castes the women enjoyed
relatively more freedom and there was less subjugation.

Position of women under British Colonialism

It was only under the impact of the British rule by mid 18th Century, that the cultural life
including the philosophical, ideological and socio-economic aspects of the Indian Society began
undergoing a change. Under the impact of western education and liberal ideas, the western
educated began to demand reforms and form organizations to fight against restrictions and
disabilities flowing from the past. The British used the low status of women as a pointer to the
backwardness of Indians and, supported by western educated Indian elites, took upon them-

selves the task of socially reforming the society.

Raja Ram Mohan Roy, hailed as the father of the Indian Renaissance, was the first to
powerfully raise his voice against religious and social maladies affecting the life of Hindu woman.
His concerted efforts to mobilize support for appropriate legislation against the custom of Sati
were ultimately crowned with success, when the British government abolished Sati in 1829.³ He
was also in favour of granting property rights to women, in particular to Hindu widows.⁴

Abolition of Sati however, was not the only solution to the problem of widows. It was the widow
remarriage, which was once a taboo, that had to get acceptance. Thus Raja Ram Mohan Roy,
the Brahmo Samaj, Iswarchandra Vidyasagar and others strongly advocated widow remarriage
and supported legislation to encourage it. 'Child marriages' was another evil prevalent in India
which was responsible for the ever increasing number of widows. As an outcome of various
attacks against child marriages launched by the reformers, the 'Age of Consent Act 1881' was
passed which raised the age of consent to 12 years.⁵ Later as a sequel came the passing of
Sarda Act 1929 which fixed 14 years as the minimum legal age of marriage for girls. Child
marriage was the principal cause for young girls abandoning education. The raising of the age
marriage for girls was thus a step that also helped promote girls’ education. With a view to provide education to girls, the first schools for girls were set up in the early 18th century by the Christian missionaries and Hindu reformers in Bombay, Poona, Ahmednagar and in Bengal Province. The Woods Dispatch, 1854, was a hallmark in history of Indian education, as its main responsibility was to promote primary education, particularly girls’ education. This marked the beginning of the expansion of girls education with schools, teacher training colleges and even centres of higher learning, such as an exclusive women’s university being set up in Bombay in 1916. Social reformers struggling for the political rights of women and for granting them adult suffrage, made repeated demands for women’s franchise as well as political representation for women in legislatures, and, finally these resolutions in favour of women were passed in 1927-28.

All these reforms, welcome as they were, were nevertheless, it must be noted, restrictive in nature, as they touched only a small section of the Society, for example, widow remarriage was applicable only to upper caste Hindus, so also Sati, which was a practice among the Rajputs and Bengali Brahmins. The aim of the British was not to do away with inequality between urban and rural women but to ensure that Indian women follow the same pattern of social morality as that of their British counterparts. During this period, patrilineal system was vehemently advocated. The British also favoured monogamous marriages and looked down upon the custom of easy divorce prevailing among certain rural communities in India, whereby women could end up a marriage without any social stigma and even remarry. Injustice was also done to women in the rural areas by the British, in matters regarding property relations. Tenancy rights were introduced for the owner cultivators of the State owned land, but women received a raw deal as they were excluded from these rights. The individual property rights of women were also disregarded.

With the gradual spread of education among women, they began to participate in public activities and political movements. Women’s movements also emerged. For instance the Seva Sadan, a brain child of Ramabai Ranade, was started in 1909 in Bombay and imparted training to women in different skills and even in teaching, nursing and medical career. In 1917 Women’s Indian Association was set up in Madras with Dr. Annie Besant and Margaret Cousins at the helm. The National Council of Women in India (1920), All India Women’s Conference (1926) etc. also took up the cause of Indian women, by attacking old customs, the thorny problem of dowry, women’s employment, encouraging women’s education and the like. With all the reform movements, women began to organise for political representation and the movement for emancipation of women became a part of the freedom movement.

Post Independence Period

With the advent of Independence we adopted a Constitution which offered all citizens Justice
(Social, Political and Economic) and Equality. Nonetheless, subjugation of women and inequality between sexes still persists.

Several reasons can be attributed for the continued subordination of women. There are the social and psychological controls that have relegated women to backstage. The notion that women being physically weak and hence defenceless without male protection is mainly responsible for this. Women are generally given lighter jobs outside the home. Secondly, women depend economically on men. Economic control is the root cause of their subjugation. Since women are denied opportunities to work outside the home, they have no money power and lack economic independence. Again since customs confine women to narrow spheres and unenviable functions in society, they are also deprived of social and moral leadership. Women are thus led to believe that they cannot face the world except through men. This indeed is real subservience but it would not be out of place to say this is partly a woman made problem.

Women being traditionalists are often the authors of their own subjection. Mothers show preference to a son over the daughter, in matters of rituals, education, etc. And then, is it not the woman (mother) who often wants her first born to be a boy? Again, it is the mother, who feels that much money should not be spent on girls' education, and the mother, who sits in judgment when finalizing the dowry demand for the son.

The notion that a daughter is 'paraya dhan' (someone else's property) is deeply ingrained in the Indian parents psychologically. She is just a transient, a passerby in her own father's home, where she hardly has a psychological space. Her fate is to live for others - for her father and brother when still unmarried and, after the nuptial knot, for her husband and in-laws. Thus, except for a few who having realised the part they ought to play in bringing about women's progress, a vast majority of women lead a life of indignity with hardly any legitimate space for themselves except that of total compliance.

Undoubtedly, women today have opportunities of education and of discovering their ability and intelligence. They can actively rub shoulders with men at their place of work and this has opened new avenues for them on the whole, a progressive step towards justice to women. Yet the unfortunate fact is that even today a social and psychological stigma continues to be attached to women who are employed and this in turn makes working women vulnerable. The case that hit the headlines in October 1992, in the Navhind Times, about a woman government employee being molested by her male colleague at work place (Mapusa), is typical of the dangers working women are exposed to.

Again the success of any woman at work is always attributed to her possible link with a male
but never to her personal potentials, dignity and integrity. Women thus find it difficult to evolve an integrated identity because undue emphasis to gain economic autonomy, brings in fears of social stigma, isolation and loneliness. They are still on the look out for a social and psychological space of their own which is not haunted by the ghost of discrimination, comparison with males, constantly forced to believe that their fate rests in the hands of men.

At present, besides education, many are the opportunities available to girls and women for their advancement. The various legislations passed, like the Dowry Prohibition Act, 1961, the Hindu Succession Act, the Special Marriage Act, the Indian Divorce and others have to a certain extent served as instruments of Social Justice to women. Thanks to modern legislation, today, one hears less about a barren woman being replaced by another wife; widows can safely display their long tresses and look people in the faces without the fear of being branded as inauspicious, while girls can opt for spinsterhood and yet remain socially accepted. There is no fear for a woman, of being thrown to the streets as the State today recognises her title to property and her claim for rightful share.

Yet, inspite of all the legal safeguards, women, are today, still short of social justice. We find women abandoned, deserted and discarded by their men on flimsy grounds. There are growing incidents of eve teasing, molestation and gang rapes in prison, in hospitals and even in rescue homes. Women are being exploited by commercial firms and film makers. Thousands of women are still victims of wife battering, dowry deaths and dowry related suicides, and all this at the whims and fancies of menfolk. There are even women who are abducted, kidnapped, sold to flesh markets and even minor girls sold to Arab countries under the guise of marriage. The latest such incident to be reported relates to Ameena, an eleven year old girl, who was married off to a 65 year old Shaikh on August 7, 1990, and was rescued by the crew of a Delhi bound plane from Hyderabad. The child bride was being escorted to Saudi.

The Indian woman today faces considerable insecurity, be it at home, in the streets or in the place of work, where they are often preyed upon by anti-social elements, by colleagues and bosses as also the police. A recent typical case is of Ms S (name concealed) an assistant in the Goa Government Office, who was molested by her employer when she was attending Office. An MLA had helped her obtain the job. It is indeed unfortunate that thousands of socially suppressed, economically insecure and mentally tortured women - the widows, the divorcees, the rape victims and the separated women are forced by their fate, to eke out a living by begging and prostitution.

Child marriages, Sati, temple prostitution, female infanticide which are considered as ancient forms of victimization of women are still practiced in some parts of the country. eg. Sati was
practiced in Deorali - Rajasthan as recently as 1987. The practice of 'devadasis' (women slaves of God) still persists in some temples in Karnataka, while cases of amniocentesis, a modern method of female infanticide, has been reported from many parts of the country. Across the centuries women have proved to be the virtue holders of society. In performing their roles in the narrow confines of being daughters, wives, daughters-in-laws, and mothers, they have maintained the stability of the cultural institutions of society even at the cost of their personal and social aspirations. Yet they continue being the victims of deprivation, drudgery and discrimination. Many are the women, for instance, who face the dilemma of being outsiders at their in-law's place, daughters of another house, as against the position of trust they held at their parents' home. Though there are new vistas opened to women and they are now able to take up careers like teachers, doctors, lawyers, social workers, engineers, architects, managers and even in administrative services, all of which mean economic freedom, the traditional orientation and attitudes towards them remain unchanged. Even today, victims of wife battering are surprisingly working women having economic independence.

Goan Women during the Portuguese Regime

Goa was under the Colonial sway of Portugal from 1510 to 1961. During this essentially Christian regime in the process of Christianisation and acculturation of the Goan people that followed, several laws were promulgated during different political eras of the Portuguese regime starting with 1510 up to the Republican Revolution of 1910, and then right down to 1961 when India liberated Goa. The codification of these laws influenced immensely the customs and lives of the Goan population as a whole and brought about changes in the position of Goan women specially in the spheres of marriage, inheritance and ownership of property.

A Goan Woman in 1510 had hardly any rights. Her's was a miserable life of service before self. It was all duties and no rights. The husband exerted absolute control, socially, economically and even psychologically. It was a patrilineal family under the sway of the father/husband, women being denied freedom. This applied not only to Christian women but Hindus and Muslims alike. Being confined to the four walls built on religion and tradition, education was denied to women, which meant that they could not develop their own individuality and their life had expression only through male dominance. It was a 'protector - protected' system that prevailed, especially for the Muslim women who were regarded literally as men's property.

In matters of property too, women stood denigrated. A widow who remarried lost her right to 'usufructo' of her minor children. If she remarried after the age of 50, she forfeited her claim to any title from the day of her second marriage, i.e. she lost her claim to two-thirds of the property to which she was entitled; nor could she have a claim to the gifts of her relations. A woman had
no right to administer the family properties, even her own property, which, by virtue of marriage belonged to the husband. She could however do so in case of his absence with his consent. She was not entitled to acquire new properties nor take loans. Political rights were also denied to women during the early Portuguese rule. A woman could not be nominated as an administratrix for the orphans nor as an attorney. When drawing up Public wills a woman could never be a witness. She could also not form a part of the jury in a Court.

Subsequently with the establishment of the Republican regime in Portugal and the passage of Family Laws, also known as the Civil Code, the status of women improved. According to the Civil Code, a conjugal society is based on liberty and equality, it being the duty of the husband to defend the person and properties of the wife and children, and, of the wife to maintain the house, provide moral sustenance and strengthen the family union. The Family Laws also conferred other benefits on women. For instance, under no circumstances could a man appeal to the Court, to hand over to him his wife in case she had left the marital home, while on the contrary, in case of abandonment, a wife could appeal that the husband should receive her back in the house. Many of the rights denied to her earlier were also granted to her through the Family Laws. These entitled an author-wife to publish her works without the husband’s consent. She could also stand witness in court without the authorization of the husband and could defend her interests and those of her children. Debts, if any, from the wife’s side, were considered a joint responsibility while the husband’s debts were not the liability of the wife. A temporary maintenance was also provided for a woman during the pendency of divorce proceedings.

Later with the proselytization that followed, many disabilities faced by women were further reduced. Sati for instance was banned by law (by Afonso de Albuquerque). All females converted to Christianity were blessed with ownership of property. They could also inherit property. All the other evil customs like tonsuring of widows, prohibition of widow remarriage and polygamy were done away with, for Christian women. The intention however was not to do justice to women but to attract Hindu women towards Christianity.

Although Hindu sentimentalism always idealized a woman, the positive laws of the land since the time of Manu, always relegated her to an inferior position which could not be questioned because of its religious base, which required that the legacy of the forefathers be propagated by male descendants only. The various schools of thought on Hindu law, spread all over India, are derived from the laws of Manu, according to which, a woman is dependent on her father from infancy till marriage, on her husband from the time she is married, and on her sons, on becoming a widow. In case she has no sons then she becomes the responsibility of the closest male relative of her husband or even her own father’s male relatives. This left the Hindu woman without any independent way of life. The same held good for the Hindu women of the then “India
Portuguesa”.

The Charter (Foral) of 1526 by Afonso Mexia, in trying to protect the religious and social customs and usages of Hindus left the Hindu women in chains. Women could inherit neither movable nor immovable properties, but were entitled to only a right to food. Inheritance came from father to the son and to the grandson and so on i.e. male descendants, women-mothers and daughters were totally excluded. They were denied ownership of any property except ‘Stridhana’. A widow and unmarried daughters were however entitled to one fourth of the income of the deceased provided of course, that he had no sons. Since polygamy was prevalent, the sons of the wife belonging to the husbands caste only, could get a share in the property; the sons of the wives of other castes were excluded. This was a caste based discrimination against women. Nevertheless, there was little hope for women: in case a man or his wife died without leaving a male heir, the movable property only could go to a daughter, and in equal shares in cases of two or three daughters. Moveable property was specifically defined to include only such household items like cattle, jewellery, personal belongings of women and some limited amount of cash. All the other properties would go to the State Government. This was therefore a limited right of inheritance for daughters.

A better idea of the spirit of Hindu law can be obtained from ‘O código de Usos e Costumes’ (Code of Usages and Customs) in the latter part of the eighteenth century i.e. from 1853 onwards. Women were still bound by restrictions. Simultaneously, polygamy was permitted among the Hindus and Muslims. Although there was no fixed age for marriage for men, women could not contract marriage after puberty. Hindu widow as a rule could not re-marry, whatever her age. In case a man took a widow for a wife (such a wife was called ‘kapdachi bail’) such union did not have the sanction of marriage, and the children so produced were considered as illegitimate for religious and civil purposes.

As for the division of property too, as per this code a woman had no right to succession except for food (the right to be fed). Even what the woman took to her husband's house at the time of marriage or acquired later, became a part of the husband's belongings and over which he got complete and exclusive administrative powers. Widows without heirs however, got better deal in that, they enjoyed 'usufruct' of properties during their life time and the same would later go to the State. Dancing girls (Bailadeiras and Bavinhas) who had a legal status, as also spinsters and widows, could look upon their descendants as heirs, and these could inherit property equally. Widows and dancing girls could also adopt children. However, great injustice was done to the mother of the child to be adopted, as her consent was not required while the husband gave away the child.
Finally as regards dissolution of marriage, a man could apply for one in case of adultery on the part of the wife. On verification of adultery the wife was expelled from the house and was considered as dead. She would thus find herself a complete destitute, after losing to the husband all that she had brought or acquired. She had no right even to ask for food. Women were thus still on the look out for a safe anchorage in society.

The Portuguese Civil Code of 1867 and the Subsequent Progressive Amendments

The Portuguese Civil Code of 1867 which came into effect in Goa between 1869-1870 brought a ray of hope to the Hindu women. This Civil Code maintained all the Hindu customs and usages provided they were in keeping with 'public morality and public order'. To emphasize further the spirit of tolerance towards the Hindu faith, the Decree of 1880 was passed. The decree clearly spelt out the legal safeguards available to the Hindus desirous of maintaining their special and private usages and customs. As against the earlier Decrees of 1826 and 1853, this Civil Code Amendment of 1880 was applicable to both Old and New Conquests.

One of the aims of this code was to preserve the family as a social unit. Thus joint family with patriarchal system was retained. Polygamy only in a restrictive form was allowed, on grounds of the first wife being barren upto the age of 25, or if the first wife did not produce a son by the time she was 30, or even if the wife was too young; and in any case consent of the first wife had to be obtained.

In 1910 with the advent of the Republican regime the Civil Code of 1867 was rendered more secular and liberal. Most important aspect was that it advocated 'equality of spouses' which was a promising sign of an elevated position for women.

In matters of 'Marriage' the Portuguese Family Law recognised all the civil effects of Marriage contracted by Hindus of Goa, according to religious rites, but since Civil marriage became compulsory in Portuguese Goa, it was enforced that civil marriage should precede religious marriage. Its twin effect was that, while it ensured the validity of marriage, it also meant lot of protection to the wife.

Since marriage was declared a civil contract, divorce by mutual consent was permitted. Divorce could also be legally contested by both spouses and the woman was entitled to provisional maintenance during the period of finalization of the dissolution. In case a woman was forced into marriage she could apply for an annulment of the same, provided she was able to furnish legal proof of a forced marriage.
The Portuguese law applied to all Hindus irrespective of sex in matters of succession and division of property. This by itself was a favourable step safeguarding the position of women. Even wives of simultaneous marriage (polygamy) had a joint right to 'meacção' (moiety half) except in case of a written antinuptial contract to the contrary. However, the illegitimate children of Hindu women were not entitled to succession; although those of 'dancing girls' and widows could get succession from their mothers or mothers' relations. In this respect Hindu women were worse off than the 'bailadeiras and bavinas' women who actually lived a life of dignified prostitution.

The higher caste Hindu women were unjustly dealt with when it came to widow re-marriage too. Widow re-marriage among all Brahmins and Vanis was forbidden. It was however permitted among the lesser castes like Bhandaris, Gauddas, Dhobis, Mallis, etc. but the re-marriage was performed without the religious ceremony and the re-married woman was called 'kapdachi bail'. This in itself amounted to discrimination.

Goa's Uniform Civil Code Analysed

Presently Goa's Family Laws often referred to as Uniform Civil Code, are based on the Portuguese Civil Code of 1867 and other amendments (decrees of 1910, 1930, 1940, 1946). Goa is the only place where an attempt had been made to introduce a Civil Code which made judicial procedure more comprehensive and at the same time created a feeling of unity among all creeds, communities and sections of the people.

Today Goa's Common Civil Code is uniformly applicable to all Indians born to Goan parents in or outside Goa and also to non-Goans married to Goans under the Goan Laws. It covers all the aspects of family laws i.e. marriage, divorce, succession, transfer of property, maintenance, guardianship and custody of children, adoption, etc. which have an effect on the personal life of people. Further it ensures that the practice, procedure and remedy is the same for all though this reality is yet to be fully realized.

Nonetheless, the Goan Uniform Civil Code is in keeping with 'Equality' inherent in the Constitution. It provides greater equality amongst spouses, than the various personal laws under which women still experience discrimination and injustice. It was the personal law that forced Roop Kanwar to become a 'Sati' thereby causing progressives to challenge the Rajasthan Sati Act which was very much in force. Again the personal laws proved to be discriminatory and anti-women in Shah Bano's case, who being the victim of an archaic and unjust tradition, was deprived of maintenance from her former husband. The result would have been otherwise, had the demand for a Uniform Civil Code for all women in India not been ignored.
However, a deeper analysis of the Civil Code (or Family Laws) of Goa reveals two things: Firstly, Goa’s Family Laws are not all that uniform in the matters relating to marriage, divorce, adoption, succession etc. Secondly, mere provision of law does not make it effective. It is rather the manner in which the law is implemented that brings out the effectiveness of the law, to a great extent. It is from this angle that we have to gauge the Goan Family Laws.

To begin with, marriage, for instance, under Goan Family Laws is actually a three tier system namely (1) the Canonical Marriage whereby all irrespective of religion must compulsorily register their intention to get married at a Civil Registrar. However, after the 1946 decree, known as Concordat (agreement) Catholics are permitted to solemnize marriage in a church (a sacrament) before a priest who registers the marriage and then transfers it to the Civil Registry to give it the Civil effect; (2) Then there is the Law of Civil Marriage and Divorce under which Hindus and other non canonical marriages take place. Here the parties register their intent to marry following which a civil marriage takes place before the Civil Registrar, who in turn records the marriage which now has a Civil effect. Catholics too can opt for this system. However, since the Roman Catholic Church does not recognize marriages registered under the Law of Civil Marriage and Divorce, the Catholic women are forced to marry under Canonical laws which disallows divorce. The Goan Common Law is thus not a uniform Civil Law; (3) Finally, there is the marriage under ‘Customs and Usages’, which applies to ‘Gentile’ Hindus of Goa. This type of marriage is performed under religious rites and then registered.

The Uniform Civil Code is again short of uniformity in matters of divorce. Divorce under Portuguese Code is governed on the basis of law under which marriage has taken place. For instance Catholics marrying under Canon Law cannot get a divorce as, marriage being indissoluble, divorce is not recognised by the Church. This is a grave injustice to women as they have to carry on with the suffering and misery even if there is a serious breakdown of marriage. No doubt, the Church recognises judicial separation or annulment, provided marriage has not been consummated. It is the Ecclesiastical Court of the Church that decides on the annulment. However, the grounds for granting annulment are different from those for granting divorce. The Decree of 1946 thus discriminates against Catholic women to the extent it permits the Church to control Catholic marriages (solemnized under Canonical Law) and in fact making it impossible for Catholic women to divorce, whereas non-Catholic women can. The author herself came across a case of Catholic woman married in the Church whose parents gave the husband a fat dowry and landed property besides other gifts. Trouble brewed up within months after marriage instigated by the in-laws and eventually the husband sought for annulment on fabricated grounds. In the meantime the landed property had been encashed by the husband while the fate of the woman is still hanging in the balance.
While Goan Catholic women marrying under Canonical Law cannot divorce, Goan women marrying under the Law of Civil Marriage and Divorce can get divorce on grounds of adultery, cruelty, absence from home for over four years without notice, incurable mental illness, mutual consent, sexual disease or even separation for 10 years. Goan Women marrying neither under Canonical Law nor under the Law of Civil Marriage and Divorce, but under the Law of Custom and Usage, can obtain divorce only on grounds of adultery. Thus it is clear that Goa’s Common Civil Code (Family Laws) is far from truly common or uniform.

Another instance of lack of uniformity and an injustice to women under the Common Civil Code (or Family Laws) of Goa, relates to the sanction given to bigamy. Under Goa’s Common Code or Family Laws, bigamy is not permitted in case of marriages solemnized under ‘Canonical Law’ nor in case of marriages solemnized under the ‘Law of Civil Marriage and Divorce’, but it is permissible in case of marriages solemnized under ‘Customs and Usages’. Bigamy is permitted in case of marriages solemnized under ‘Customs and Usages’ in case the first wife is unable to produce a son before she attains the age of thirty, or, if the first wife does not bear a child on reaching the age of 25 years. It is to the credit of the Goan Family Laws that they make it obligatory for the husband to obtain the consent of the first wife, before taking the second in these cases.

Dowry is permitted under Goa’s Family Laws, but it is understood differently from dowry under the Dowry Prohibition Act of 1961. Whereas under the Dowry Prohibition Act of 1961, dowry is ‘in consideration of marriage’ under Goan Law, dowry is a sort of trust, the husband being the trustee, on whose demise, his heirs must pay the widow the corpus of dowry (immovable property as well as cash). Thus dowry in Goan Law is more advantageous to women.

A few other instances of lack of uniformity and injustice in the Goan Family Laws can be cited. Thus, adoption is permitted only under the ‘Law of Usages and Customs’, for Hindus but not in case of marriages under Canonical Law and Law of Civil Marriage and Divorce. Secondly, illegitimate children of non-Catholics cannot sue their fathers for declaring paternity and cannot claim succession while the Catholic children have the right to do so.

Nevertheless, notwithstanding all these disparities, Goa’s Uniform Civil Code places Goan women in an advantageous position when compared to women governed by other laws like the Muslim Personal Law, the Hindu Law, etc., particularly in such matters like Registration of Marriage, Right to Inheritance (along with brothers), Right of joint ownership along with husband, right of administration, bequeathal, gift, etc. Goa’s Uniform Civil Code is more in consonance with Article 44 of the Constitution than the various Common Personal Laws.
Oppression of Women: The Dowry System

The Dowry system is an age-old practice in India and in recent times has caused much anguish to progressive Indians. Since time immemorial, in India, it was customary for a father 'to gift' (stri-dan) his daughter away, well decked with ornaments, together with cash or gifts one wished to give. Valuable gifts in the form of clothes and jewellery (dowry) thus became an essential part of every Hindu marriage.

In the ancient and medieval period dowry was not oppressive and the bride took with her what her parents could afford and gave voluntarily without creating debt. Dowry was not a condition nor an impediment for marriage. Non-commercial points like caste, horoscope and economic and social status of the family, were the main considerations governing suitability for marriage. The Dowry system in its more oppressive form developed during the later period of British rule not only among the Hindus but other communities as well.

With the breaking of a joint family and the emergence of the nuclear family, parents of girls became anxious to find husbands who could afford to set up an independent home. Good salary earners specially government servants, bank employees etc., became the most eligible bachelors. The demand for such grooms having the capability of setting up an independent home being greater than the actual available supply, the only way of making a marriage proposal acceptable, was to offer financial inducements to the eligible bachelors. There was unhealthy competition among girls' parents for securing boys with decent education and good jobs, by offering 'dowry' which would help the newly weds to set up an independent home.

Dowry was further encouraged because of the status of women in society. Since there was a blind submission to the male dominance, she did not assert her right to the father's property, instead dowry was paid to her as a pre-mortem inheritance, a sort of compensation for foregoing her right to succession, and thereby keeping the landed property of the father intact, for the sons, without being fragmented.

Nevertheless, what was meant to be a gift to the daughters at the time of marriage, voluntarily given, gradually assumed frightening dimensions. Not only dowry came to be demanded and appropriated by the in-laws, it became the deciding factor for marriage, involving a lot of bargaining for cash payments. Demands are made directly, or indirectly by the husband-to-be and the members of his family. A fat dowry could even over ride horoscope and family status. Signs of this can be read in the matrimonial advertisements ending in 'caste no bar'. It was the middle class families with limited income, that were worst affected by dowry demands and a growing girl meant a great worry for the parents. Herein lies one of the reasons why the birth
of a girl child is not welcomed by many poor families.

In Goa, the practice of dowry prevails among Christians too. It was the parents inability to pay which saw many promising and blooming Christian brides, turning into old 'wall flowers' in their parents' homes. While there is a big number of old maids because of the parent's inability to give dowry, there is a bigger number of those, whose parents did not want to bring about fragmentation of property due to dowry payment. This author was once told by a rich spinster in her late seventies, that her parents got only one of their three daughters married with a dowry and preferred to let the other two stay unmarried rather than fragment the ancestral property by making dowry payments.

To put an end to the oppressive dowry system the Dowry Prohibition Act of 1961 (elaborated in a subsequent section) was passed.

According to it, giving or agreeing to give any property or valuable security, by parents, before or after marriage became an offence punishable with imprisonment, fine or both. However, the implementation of the said Act has posed difficulties, as jewellery, clothes, etc. do not fall within the meaning of the Act. From this flows the demand for 'tolas' of gold, copperware, furniture, electronic goods, two wheelers, cars and even flats. Many in-laws have the audacity, while making these demands to console the parents by saying: 'It is all for the use and comfort of your daughter'.

The spread and increase in dowry is an important symptom of the advancing devaluation of women. Inspite of much propaganda by social welfare groups, political parties and women's organisations, demands for dowry are spreading even among groups which hitherto were free from the pernicious custom. Dowry has now become a pre-requisite for the solemnization of marriage and among the lower and poorer castes it has led to growing indebtedness. In cases where dowry has not obstructed and prevented the solemnization of marriage, the after-effects of inadequate dowry have been dreadful. In order to get a better view of the dynamics involved in dowry violence, I have interviewed 2 victims.

Case Study I

The victim, Ms. K.N.of Salcete, a teacher from a Hindu Middle Class family was married in the year 1984 to another teacher. Problems cropped up one and a half month after marriage, over a demand for more dowry, the oppressors being her husband, his mother and his widowed sister living under her mother's roof. Harassment consisted of verbal abuses, physical torture and even starvation. It even took an uglier turn when the husband brought in his former friend, a woman
of 'ill fame' and had affairs in the house.

The dowry demand before marriage was a number of gold items including a gold chain of 8 sovereigns for the husband, all totally worth Rs.80,000. Other demands were, steel utensils for 40 men, which demand was satisfied. The girl had also taken along household linen sets, one and half dozen saris and gifts in gold worth Rs.30,000 from relatives. There was a further demand for 2 dozen more saris, more bed linen, more gold and a scooter. This demand was not acceded to, hence the victimization began. The girl went with her tale of woe to her parents who readily gave her shelter. In the meantime the husband sent threatening messages warning her not to come back unless she fell in line with his demand. The girl did neither of the two, instead she filed a suit for divorce which she won within 3 months, but she lost everything that was part of her 'stri-dhan', but there was no brooding over it and with all nobility the parents chose to think of the lost amount as a charity to a temple. All that mattered was that the girl was snatched from the jaws of the 'Dowry Monster'.

Case II

Another prey of the 'Dowry Monster' is young Ms. M.T. a student of the author and from a Gujarati family settled in Goa. Unfortunately, her marriage was arranged in December 1988 with an avaricious engineer Mr. R.M. based in Bangalore and owning a flourishing business firm. Initially there was no dowry demand made and he went to the extent of declaring that he wanted no dowry. However, in keeping with the tradition a substantial amount in gold, cash, furniture, steel utensils and expensive clothes, was given by her parents as affectionate gifts, she being the eldest child in the family.

Unexpectedly, tensions developed within four months after the marriage. There were demands and counter demands from the husband and his mother, for a flat, a shop, a share in the business of the wife’s father and luxury items, due to which a lot of indifference was shown towards the victim by the oppressor’s family. In the midst of all these tensions, the young wife who was by then in the family way, had to come to Goa for the delivery of her first born girl child in 1990. The ruthless man did not spare her the mental torture, even when she was in hospital and in the family way, due to which, there was fear of the young mother going in for a nervous breakdown, and the husband was warned about it. Two months after the birth of the child Ms. M. went back to her in-laws’ home with the child, inspite of the earlier raw deal meted to her, only to suffer increased torture and harassment. This time there was physical assault, starvation, loneliness and she was denied the use of the items she had taken as dowry. Even the innocent infant was not spared from maltreatment. Her parents on receiving a secret message, rushed to Bangalore and rescued their daughter and grand daughter and brought them to Goa.
Subsequently with the hope of keeping the marriage going, at least because of the child, they tried for a reconciliation by putting the matter in the Family Court in Bangalore. Unfortunately, nothing came out of it, as whenever the dates were fixed for hearing, the husband chose conveniently to stay away on some pretext or the other. Obviously, he was not in favour of a patch up, as it was reliably learnt that there was another woman (a married relative) in his life. Quite obviously the young man was looking forward to clearing the decks for another marriage, another dowry haul, and in all probability another unfortunate victim.

Since 1990 she has not gone back; according to her, the harassment, however continued in 'absentia' and the wife was kept under secret surveillance, spies followed her even when she accompanied the child to the nursery school. While there was a demand for the custody of the child, the man’s aim was to paint his wife as an ‘adulteress’ and thus create a valid ground for divorce. All this made the victim live in fear and extreme tension and she could not even continue her studies for self dependence.

In June 1993 at a joint meeting of the oppressor’s family and that of the victim’s in the presence of advocates, the husband finally decided in favour of a divorce and forced the wife to sign the papers ‘unconditionally’, which she refused unless she got back the ‘corpus’ of the dowry, which amount she needed to maintain herself and the child. The husband is not inclined to return the same, on the false contention that his wife is a partner in the father’s business.

In the meantime, Ms. M. who does not contemplate another marriage, is determined not to clear his way for a second marriage. This she feels would save another woman victim from this dowry hawk.

It may be noted that the evil of dowry is often strengthened by the givers themselves. Most parents offer dowry even though there may not be a direct and specific demand. This is because of the deep rooted belief that certain traditions and customs must be upheld. I could cite here some examples based on some data I have collected.

According to Ms. S. coming from a Saraswat Brahmin family and married off in 1992, there was no demand whatsoever from her husband’s family. However, she did take gold worth one lakh of rupees besides the customary household items like bed, cupboard, dressing table and house linen. These, being traditional, could also be termed as willing and affectionate gifts as her family fortunately could afford it and there was no reminder for more, or any comparison with other sisters-in-law, she feels no injustice has been done to her or her parents.

In another case study, I have interviewed Ms. R. from an upper middle class family who was
married in 1987. Here too no dowry demand was made, but by way of upholding the tradition and custom, she was given about Rupees seventy five thousand in cash and gold, besides utensils, linen and the customary furniture. It was quite a drain on her family as she was the last of the six daughters. There was no indebtedness in the real sense, she says, as her relatives rose to the occasion. In my opinion if a ceiling is prescribed even on these 'willing gifts', then tradition would be taken less seriously and the chances of likely distress could be reduced.

The demand for dowry can be before or after marriage, direct or indirect, or, even tradition bound. Demand after marriage is generally to express discontent at the given dowry or even to compare it socially with the neighbours or other relatives. Commonly demanded items are jewellery and hard cash either to expand business or buy luxury goods, like sofa sets, refrigerators, washing machines, scooters or even cars. There are also other demands like a wedding reception where a large number of the grooms guests have to be entertained may be even in Five Star Hotels. I was told by a friend that the dowry of her relative who is recently married to a doctor, settled in USA included the groom's and bride's ticket to the USA.

A reference may here be made to a similar case of Anita Jadhav, a Science graduate, who was married to Pradeep Pawar a highly qualified engineer from Bombay working in USA. There was a demand from the boy's father for an amount of Rs. 50,000, to transport the couple to the States. On the demand not being met, there was a threat to stop the wedding ceremony; this ugly situation was avoided due to the intervention of some respectable people. However, the next ugly turn was that Anita was left behind with her in-laws while her husband proceeded to USA. The complaint under Dowry Prohibition Act filed by the girl's father was challenged in the Bombay High Court where the victim failed to get justice. However, the Supreme Court reversed the ruling of the High Court and held that the demand itself was an offence and the very object of the Act is to stamp out the practice of demanding dowry.

Social Factors in Dowry

There are several social and cultural factors linked with dowry which sanction and justify the practice. The first factor springs from the traditional belief that a man always occupies a higher position on the social ladder, therefore, the family of his wife-to-be must appease him with rich gifts in cash and kind.

Secondly since the 'social' position of the groom is dependent on his education and job prospects, his status in the dowry market rises in proportion to his academic degrees. For example in Kerala, if the demand of a matriculate LDC is about Rs.10,000, that of a doctor is anything between Rs.50,000 to Rs.2 to 3 lakhs. Although today, quite some women are highly
educated and have a potential to earn their own living and some even hold enviable positions, yet they lack the confidence and courage to free themselves from the deeply rooted social attitudes. To cite a glaring example, we have the case of Dr. Ms. S. Arora, a Hindi lecturer in Delhi, who died of burns on 5th June 1985, after having been subject to incessant harassment for more dowry.\(^8\)

Another factor is that the custom has now assumed a status symbol. What used to be a custom among the better off upper and middle classes, is now adopted by the working classes as a matter of prestige even if it leads to indebtedness.

In Goa, even among the poor working class Christian families, one often hears of lavishly vulgar and glittering wedding celebrations in posh halls, with the bridal couple being driven in a contessa car, etc., just to meet the demands of the groom's family, who would like to have a wedding comparable to their richer Christian brethren.

In the case of the well to do, pompous ceremonies serve as an outlet for black money. Often the rich invest unaccounted money in constructions, houses, flats, etc. with the intention of later giving these in dowry to the daughter. This serves the twin purpose: while the daughter gets a befitting dowry, it is also a means of symphoning illegal wealth.

The rapid spread of consumerism is today responsible for the development of an appetite for modern gadgets and comforts of good life. Given this fact, quite naturally, the bride's people look towards consumerism as a bait to attract grooms, while the latter exploit the situation to acquire cars, fridges, fans, T.V. etc., which may otherwise be beyond their reach.

Another social factor that gives legitimacy to dowry practice is the perception of dowry as the woman's right to property. According to Islam, a claim to dowry safeguards the daughter's right to inheritance. Similarly in Hindu Law the daughter's share in the joint property included her marriage portion which ensured that she should be married properly. Besides, dowry is also considered as an 'insurance', in the sense that the daughter should have something to fall back on in case of crisis. Ornaments in gold spell 'security' and it gives the daughter-in-law a special position in her marital home, as the prestige of her family is associated with the valuables she brings. In some upper caste families in Tamil Nadu, Karnataka, Maharashtra and Goa, therefore, it is customary to top off the dowry with a complete diamond set. This has exhibition value too, since it is displayed for scrutiny by relatives and friends, whose comments can augment the prestige of the bride's family. It is because of the exhibition value, that often Savings Certificates, valuable utensils, teakwood beds, cupboards, dressing table, etc. are included as a part of dowry. In Goa among the lower middle class families, huge copper vessels are gifted and displayed by
the in-laws as a status symbol. There are also the land owning castes who in addition to jewellery also give land. This is a healthy practice and since the land is registered in the daughter's name it remains her secure property. However, there are divergent views on the merits of this custom. Some amount of injustice can creep in as, the land is looked after by the father or the brother of the girl and as such, the entire share of income from her property may not reach her. Since there is much inequality in our social milieu, at times parents who desire to give the best to their daughters in their marital home, and who desire to ensure that their daughter enjoys the same or better standard of living in the husband's home, feel it necessary to give a dowry at time of marriage.

**Dowry and its extent**

In North India, whatever a bride brings as dowry along with her, becomes a part of the possessions of the groom's family and the bride loses possession of the same. The in-laws may even dispose of the valuables brought as dowry. In the South there is more respect for 'stri-dhan' (which includes not only the bride's contribution but also the gifts from the husband's side) and the bride is allowed to retain possession of the same, except when divorce or separation is customary, when the wife is deprived of the valuables from the husband's family.

Dowry which was once a sign of affection, has today become a market transaction and the roots of this evil have penetrated even among communities where the custom was unheard of. It has now become a well graded system, depending on the socio-economic status of the bridegroom. For instance in States like Bihar, Orissa, Uttar Pradesh, Punjab, the minimum expectation of an IAS or IFS officer, in cash and kind is about 2 lakhs, and this goes on decreasing by stages for business executives, to be followed by doctors and engineers and so on. The idea of marriage is, while you get a wife for a personal attendant, you also fill your home with consumer goods. If it is refrigerator, car, video, a kichennette in upper middle classes, it is nothing less than a scooter in the middle classes. Even a peon will demand a wristwatch, a bicycle or a transistor.

Recently in big cities there have been dowry demands in the form of residential flats, financial support for studying abroad, finance to set up a business or even a demand for cars to be converted into taxis.

The custom of dowry is also prevalent among Muslims but to a moderate degree, in the form of cash to the bridegroom. It may be a few thousands among the middle classes, to meet the wedding expenses, while some put it down to money, enough for the groom's outfit.
It is customary among some Muslims, to give some cash to the bridegroom soon after the 'Nikah' ceremony, and which is known as 'salami'. The amount whatever, is determined keeping in mind the socio-economic status of the bride and the bridegrooms' families, their education and capacity to earn.

Among the Christians too, specially in Kerala, Mangalore, and Goa, the dowry menace has put heavy pressure on the girls' parents leading to indebtedness. The demands include cash, gold and all sorts of luxury goods. Many a times these demands push marriage far out of reach for some maidens who are forced to get cloistered or to migrate to other States and even countries like Gulf, Germany, etc. in search of jobs, specially the nursing career, in order to earn their dowry. This is particularly true in Kerala. There are many middle class family girls who take up clerical jobs, teaching or work as sales girls, in order to acquire, some part atleast, of their dowry. It is unfortunate that some girls even take up indecent jobs like prostitution, to meet this avaricious dowry demand. The author herself has come across one such case in Goa, in the red light area of Baina, Vasco da Gama. A certain Ms. R. hailing from Karnataka, on being asked the reason for her getting into flesh trade, revealed that she was sent by her mother in order to earn money for her elder sister’s dowry. Such is the degradation a woman is pushed into all for the sake of the cancer called 'Dowry'.

It is distressing to note that very often, it is the bride to be and her parents who are themselves responsible for the dowry menace. It is the girl’s aspirations to set up a stylish new home, that will force her to make demands on her parents for costly items with which to boost her status at the in-laws. She also aspires to excel when it comes to a comparison with other daughters-in-law, and this weightage of course would ensure her a preferential treatment. Her parents desirous of both prestige and happiness of the daughter, readily fall a prey to the demands, however fantastic. There was an instance when a bridegroom’s party demanded that a helicopter be arranged to fly them down to the site of the wedding.10

Another reason for demanding dowry for the son is to make good the dowry paid for his sister. Further, the boy may be highly qualified, thus his parents want to get back the amount spent on his education through dowry.

Unfortunately, education has not helped to emancipate the woman and curb the dowry custom. On the contrary, the higher the educational level of the boy, leading to a higher station in life, greater is the dowry demand. Girl’s education is equally responsible for the increased dowry demand. A highly educated girl needs an equally well or better educated boy. Consequently this necessitates greater dowry. In this case it is injustice to the girl’s parents who have already spent a colossal amount on the girl’s education. This injustice is however neutralised,
when the girl, on the strength of her education, secures a lucrative job, in which case the dowry
demand may be relatively small.

Although dowry may be a status symbol for girls from well to do families, on the whole it is
an instrument which perpetuates inferiority of women in society. The traits of this inferiority begin
in her own parental home, where she is looked upon as a liability. Girls are traditionally
discriminated against when it comes to food, medical care and education as it is felt that this
money can instead be saved for better use including paying dowry to get her ultimately married.

Of all the atrocities perpetrated against women, the phenomenon of 'Dowry deaths' is second
to none. The subjugaion of a woman in Indian Society begins at her birth and culminates
catastrophically in dowry death.

Analysis of Dowry Deaths

Marriage which was always considered the surest way to a woman's happiness has today
in many cases proved to be a passage through misery and violence which can almost blow a
woman out of her very existence, thanks to the dowry menace.

Today dowry has ceased to be a gift, but is instead a never ending demand from the groom's
side, not only for cash but luxury goods, T.V., Cars, Two Wheelers, etc. The financial loss,
indebtedness and tensions caused by dowry demands has made many young married women
take the drastic step of committing suicide. These have come to be known as 'dowry deaths'.

In Maharashtra State there were 120 dowry deaths in 1984 while in 1985 the number went
up to 211.11 Orissa which had just 2 dowry deaths in 1987, reported as many as 63 dowry deaths
in 1991.12 West Bengal also reported an upward trend - from 97 dowry deaths in 1987, the figure
rose to a shocking 538 in 1992.13

There have always been deaths linked with dowry but in the absence of dependable
information they were put down to accidents eg. a stove burst and the daughter-in-law's sari
catches fire. A second thought on the matter makes one wonder whether the mother-in-law or
sister-in-law use 'fire proof' saris. The Mahila Dakshata Samiti (Bombay) took up investigation
and follow up of suspected 'dowry deaths' in 1977-78. It was revealed through one of the reports
that many of the reported accidental deaths and suicides were in fact dowry murders.14
Surprisingly most of the victims were from urban middle class and many were highly educated.

Many voluntary organizations and well meaning citizens have, no doubt, come forward to hold
debates and protest marches, in order to voice their concern and to bring pressure on
government to act. The issue has even found a place in Parliament in the form of Official as well as private member bills. The Social Welfare as well as the Police Department have set up cells to keep a check on this gruesome menace. Inspite of all these measures the phenomenon of dowry and money related deaths have gripped even the poorer sections of society.

A recent case of suspected ‘dowry death’ reported from Goa, is a typical example. Mrs. Asha P. Dessai, aged 30 seven months pregnant, committed suicide on 7th May 1993, at Vagator Beach (Bardez, Goa) along with her one and half year old daughter.

In a letter addressed to her husband and found in a purse at the site, Asha informed her husband about her suicide due to constant harassment by him, which she could no longer endure. As per the Police investigation, Asha who was married in 1986, had strained relationship with the husband and in-laws over money matters. The man had taken to the bottle had sold some of Asha’s gold. Though the suicide could not be put down to dowry harassment for certain, there is considerable circumstantial evidence to suggest that the suicide was a ‘dowry death’. The police have however filed a case under Section 498(A) and 306 of Indian Penal Code against the husband and in-laws as abettors to the suicide and the outcome is awaited.

Here is another profile of a young married woman who died an unnatural death. Sudha Goel, a 21 year old woman resident of Delhi and eight and a half month pregnant, was murdered hastily before her delivery in May 1983 by her husband and some family members, the motive being the insufficient dowry brought by her. The Sub-Inspector of Police and the doctor from the hospital colluded in fabricating a dying declaration wherein the victim claimed her death to be accidental. However, the Session Judge S.M. Agarwal used the evidence given by neighbours who rushed on hearing the cries of the victim, as proof of murder and sentenced the mother and two sons to death. However the judgment was reversed by the Delhi High Court and the threesome were acquitted. Most citizens feel that an injustice was done in this case to the dowry victim. But worse was to follow. The convicting judge who aired his views on Doordarshan about the historic judgment as well as the members of the Mahila Dakshate Samiti and Janwadi Mahila Samiti who protested against the acquitted, were all charged with contempt of Court. Unless the law becomes truly harsh on suspected perpetrators of dowry deaths, the menace will continue unabated.

One of the greatest obstacle to punishing ‘dowry murders’ is the reluctance of the police to thoroughly investigate dowry deaths. In most of the cases when reported, the police connive with the accused family or many a time the police refuse to register the case. If registered they are indifferent and dub them as fatal accidents, suicides or domestic disputes, rather than murder. They even ignore them as ‘ordinary matter’ on the grounds that dowry is a socially accepted
Thus due to the apathy of the police and the law courts, who indirectly encourage the families to indulge in dowry harassment, it is impossible to seek justice. Men can get rid of their wives and get away with it.

Anti-dowry agitations often focus on the callous and perfunctory role of the police which betrays the people and creates a feeling of mistrust specially among women of the middle class. Take the case of Vimala Devi of Hyderabad who was allegedly burnt to death by her husband, Raghu Kumar, an employee of a public sector unit, on 22nd August 1982. According to the Stree Shakti Sanghatana and 'Saheli', two women's organizations, the police openly colluded with the well-to-do family of the husband. Instances have been reported where even the CBI have rejected important items of evidence incriminating the husband.

In spite of petitions in the Supreme Court regarding inaction of the police, and orders of the courts to them to carry out their mandatory duties, pretty little has been done. However, the setting up of special cells in the Police Department to deal with offences against women is hopefully a new step in the direction of Social Justice. It may be added that women who have now begun to get organized must be vigilant to see that the special cell works in the interest of the dowry victim and not in collusion with the husband and in-laws whose interests naturally lie in projecting the death as accidental. The husband and in-laws are always keen to avoid the stigma of a suicide in the family; and certainly they will move heaven and earth to avoid being charged with harassment and murder. In addition to this, the victims themselves are responsible for 'non-reporting' at the harassment stage. Victims harbour fears about their security as reporting may aggravate further the violence in the home or even fracture beyond repair the sacred institution of marriage. They also consider themselves powerless and vulnerable and believe that life's events are unchangeable for women, as such reporting will get them no where. Over and above they fear police harassment and the loss of time, money and peace of mind, that a police complaint usually entails.

It is the combination of all the above factors that are responsible for the large number of dowry deaths, few of which reach the trial stage.

All the occurrences of unnatural deaths need not essentially be linked with dowry. There are many other factors that are also responsible for such tragic events. In the highly traditional Indian Society, when a newly married woman leaves her parental house, she has to make myriad adjustments living in a new joint family and brushing shoulders with a range of in-laws. She soon finds that pre-marriage fantasies do not keep tune with the post marriage realities. Some may have to face frustration and despair as a result of which they commit suicide.
Some Goan Case Studies

I cite below a few cases of young Goan women, who were victims of violence and societal indifference to their plight, based on records available with the Goa Medical College.

Case I

Ms S.S. 22 years old, married woman from Sawantwadi, belonging to the Bahujan Samaj community was admitted to the Medical College Hospital on 30th January 1991 with 20 percent burns. Investigations revealed that the young woman was being harassed by the mother-in-law for money. At first the husband was very nice to the wife but the mother-in-law kept on demanding money. So the husband, who did not want to displease his mother, joined hands with her in harassing the wife, which finally culminated in the burning incident. The patient with 20 percent burns was freed from the flames and brought to the hospital by neighbours. Initially the case was registered but later (after 4 days) was withdrawn by her under the pressure of the husband and his relatives. The burning was put down as an accident.

Case 2

In yet another case of unnatural death by burning, a 34 year old Ms. S.P. a Christian married woman from Quepem, was admitted to Goa Medical Hospital on 12th October 1992 with 60 percent burns, to which she subsequently succumbed.

At the root of the marital discord was her husband's affair with another woman, due to which the wife had issued several threats including, committing suicide. Finally when the wife could take it no longer, she doused herself with kerosene and set herself ablaze. The case was registered as a Medico-legal one but closed as this case was also considered, accidental.

Case 3

Ms. S.Z.B. a young Muslim woman from Vasco, in the prime of her youth (barely 20 years old) was admitted to Goa Medical College Hospital on January 24, 1993, with 50 percent burns. The oppressor was her drunkard husband who constantly demanded money from his wife. He also had illicit relations with other females. The patient succumbed to burn injuries on January 30th 1993. It was a case of homicide, but since she did not have any relations in Goa the case was not registered with the police. However it was registered as a Medico-Legal Case (M.L.C) by the hospital as is routinely done.
Case 4

Ms. L.N., a young Hindu married woman aged 27 from a middle class family in Tiswadi Taluka, was brought to the hospital on 25th January 1993 with 40 percent burns. Her husband was known to have illicit relationship with another woman. The relatives failed to register the case with the police, but the hospital registered it as a routine medico-legal case. The relatives claim it was a gas-stove accident. The patient fortunately is on the way of recovery at the time of writing.

The above sample cases shed much light on the despair and frustration experienced by young married women. The 4 cases either reinforce the theory that young married women are more accident prone or there is something more sinister than a mere accident theory behind the increasing incidents of violence against women.

Analysis of the Dowry Prohibition Act, 1961

In the Indian Society today, dowry related deaths (either murders or suicides) have become a day-to-day affair, inspite of the Dowry Prohibition Act 1961 and the subsequent Amendments. The Government of India having recognized dowry as a social evil, taking toll of young lives, attempted to curb its practice by introducing Dowry Prohibition Act 1961, which made both giving and taking dowry a punishable offence.

According to Section 2 of this Act dowry is defined to mean “any property or valuable security given or agreed to be given either directly or indirectly (a) by one party to a marriage to the other party to the marriage, (b) by the parents of either party to the marriage (or any other person) to either party to the marriage (or to any other person) at or before or after the marriage `as consideration for the marriage' but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies.” As the act stands, it makes it necessary not only to prove that dowry was given but also that it was in `consideration for the marriage'. This implies that the man would marry only on condition that the bride's people agreed to pay the demanded price, yet in case of prosecution the husband's side could get away by conveniently arguing that the dowry was a voluntary, affectionate, gift. Secondly how is one to prove that the husband had in fact extracted the promise that a fixed amount would be paid by the bride's family; the fact is that inspite of the Dowry Prohibition Act 1961 there has been a sharp increase in dowry deaths which goes to prove the weakness of the Act and its futility in checkmating the social menace. In order to overcome the weakness in the law, women's groups have been demanding that the only way to curb extortionate demands, is by imposing a ceiling on the amount given by way of `affectionate' gifts.

The Dowry Prohibition (Amendment) Act 1984 effected nominal changes in the definition of
dowry by introducing the phrase ‘in connection with marriage’ instead of ‘in consideration of marriage’. This is hopefully intended to bring relief to the bride’s parents as it will preclude all post matrimonial demands made on the bride and her parents for luxury goods like cars, fridges, tickets for foreign trips, etc. However, the Amendment does not promise much relief, as demands can still be made after marriage and yet not be proved as ‘in connection with marriage’. Besides the phrase itself would be a cause for ‘justice delayed’, as one would have to get involved in protracted litigation in trying to arrive at the meaning of ‘in connection with marriage’.

Secondly the 1984 amendment does not set any ceiling on the value of gifts, inspite of demands from Womens’ Groups that a ceiling be imposed on gifts given as dowry. No doubt the Act states that the gifts should be of ‘customary nature’ and not of ‘excessive value’. In other words, it is expected that the financial status of the giver be kept in view, so as not to create indebtedness. This is often overlooked and unlimited amounts are gifted to the brides for after all ‘customary gifts’ can be liberally interpreted to include many unaffordable items. The absence of any fixed upper limit for gifts gives society a free hand in deciding what is customary and what is excessive. The amended Section 3 also stipulates that presents given at the time of marriage must be entered in the list maintained according to the rules and the same must be signed by the bridal couple; but again, who is to question the exercise of deliberately omitting some presents specially the costlier ones?

The Amendment also holds demanding of dowry an offence under Sec.4 but it is often contended that it could be an offence only upon agreeing to pay the dowry. This is absurd as it would defeat the very purpose of the Act, according to which a demand itself is punishable as a crime, whether the demand was complied with or not is immaterial. One may cite here the instance when one Pradeep Pawar demanded Rs. 50,000 from his in-laws, the Jadhavas, towards the plane fare for two, to the U.S.A. The Supreme Court held that a mere demand is sufficient to constitute an offence.22

A noteworthy feature of the amended Section (6) is the stringent provision regarding returning the dowry to the wife in cases where she is forced to leave the husband’s home. An explicit provision has now been made which states that if the dowry has been received by any other person on behalf of the woman, then, it has to be transferred to the woman or her heirs within 3 months, as against the earlier one year period, failing which a punishment of minimum 6 months up to a maximum of 2 years, could be made applicable, in addition to a fine of Rs.10,000. These are indeed very welcome changes of far reaching importance and are likely to bring a lot of hope for women, particularly those who are forced to leave the matrimonial home. However difficulties could arise in ascertaining the value of the dowry, unless there is a legal registration of all gifts. Only then can justice be done in getting back all the dowry.
Another welcome development has been the amendment to the Indian Penal Code, which now has an additional Chapter dealing with 'Cruelty by husbands or relatives of husbands' Section 498(A). Under this provision those guilty of torture and cruelty towards women can be jailed up to 3 years. Cruelty as per this Section implies any willful conduct which can drive a woman to suicide or cause her any injury, including mental. It also includes harassment of women, to coerce them to meet any unlawful demand for property or valuable security, as also harassment on failure to meet the demand'.

Besides, an additional section (113A) to the Indian Evidence Act, also gives the Court the discretion, in case the wife commits suicide within 7 years of marriage, to presume that cruelty by husband and his relatives was the cause and that they were the abettors to the suicide. This should indeed be an advantage to the law enforcing agencies to trap the guilty. Today, the Dowry Prohibition (Amendment) Bill 1986, includes dowry deaths in the list of offences in the Indian Penal Code. It provides that if a woman dies an unnatural death within 7 years of her marriage, her property would go to her children and in case of no issue, the entire dowry would go back to her parents. This is seemingly a very progressive piece of legislation.

Inspite of all these legal safeguards, sad to say, dowry has not been uprooted from the social psyche. Thousands of women still continue to commit suicide or are burnt to death by husbands and in-laws, in order to extort more dowry and satiate their lust for easy money. It is unfortunate that not even the parents of the girl come to her rescue by giving her shelter, in her natal home which today, by virtue of 'equal inheritance right to girls' should be taken as a right without askance. Even educated middle class women are victims of violence inspite of being aware of the laws. But they are aware also that the existing laws are not efficacious enough in their implementation, as a result, they lead to more harassment to women than render justice.

Some suggested remedies

Since the evil of dowry is a deep rooted social evil having considerable moral and social approval, the real battle against dowry will have to be fought at the moral and social plane. The bane of dowry can be wiped out from society only through changing the moral outlook of individuals and society. The primary task is therefore to arouse a new moral and social consciousness.

Secondly, laws must be strictly enforceable or else they would be dead laws - 'Paper Tigers without teeth,' Law enforcement must be honest and effective. Law is an instrument of justice, as such it should have no loopholes which would make justice a distant dream. For instance the law stops at saying that the dowry should not be of 'excessive value', when it should in fact spell
out, definitely, this value by way of fixing an upper limit.

There will not be any social progress unless drastic steps are taken against those who demand dowry. If society is to be purged of this scourge, deterrent and ruthless punishment must be imposed on the abetter even to the extent of imprisonment and death penalty. Manu, the law giver, had prescribe capital punishment for the offence of killing a woman. It is worth appreciating and supporting the fact that we have a person like Mr. S.M. Agarwala, the Additional Session Judge of Delhi, who, as if in keeping with Manu’s prescription, ordered on May 27th 1983, that the husband of Sudha Goel, his brother and his mother be sent to gallows for the menace of bride-burning. This was the first historic judgement and many of the like are necessary, provided of course that they are executed in order to arrest such crimes.

Accepting the fact that certain amount of gifts to the bride are permitted by law, all such gifts in cash and kind given to the bride must be registered solely in her name so that she is the ‘de facto’ owner and has control over them. There should also be a ceiling on these gifts, unmindful of the financial status of the giver.

It is customary in Goa as also in some other parts of the country, to display publicly the dowry items. This practice tends to encourage comparison and competition in obtaining a dowry. This custom should therefore be banned if necessary through a legislation. It may be mentioned here that in West Pakistan the Dowry Prohibition Act of 1967 provides for punishing those guilty of such public display with imprisonment extending to one year or a fine upto 5 thousand rupees.

Social and Reform Organisations should take a lead in not only exposing but also publicly condemning those encouraging and involved in demanding dowry. These organizations must undertake conscience-rousing campaigns and encourage women to get educated and marry only at a mature age and out of free will. These organizations must encourage and support women. They should strive to boycott dowry seekers with a downright refusal to marry them, thus focussing public attention on dowry mongers.

A fine example was the demonstration on 8th February 1983, by the Forum for Muslim Women in Bombay, in protest against the brutal maltreatment of 3 young married women (who subsequently fled for safety) by the Ayub Quereshi family. Besides the demand for eradication of dowry, the Forum stressed on the need for a commitment that no mother would marry her daughter to Ayub Quereshi. Intensive campaigns on these lines would certainly go a long way in making dowry difficult if not in eradicating it altogether.

Educated girls must be encouraged and supported by Social and Womens’ Organizations to
defy, if necessary, parents who put pressure on the woman to marry a man who demands an unreasonable dowry. Many parents prefer to go in debt and coerce their daughter to marry so that they do not have to face the social criticism of still having an unmarried daughter in the house.

It is high time our educated girls made a resolve to remain true to their commitment and refuse to be sold as a commodity. It is worth drawing a lesson from Ms. Shashi Sail of Chattisgarh, in Madhya Pradesh who defied all the marriage proposals arranged by the parents, as she had decided that she would marry for what she was and not for what she possessed and so her marriage budget would be Rs.500/- only, which she was able to save and nothing more, not even new clothes. Her strong conviction and personal abhorrence to being considered merely as a piece of property, did prove to be worth the test. Ultimately she did find a taker. Like Shashi, the young girls of today, must refuse to be caught in the web of ‘Dowry’ which exposes them to the most humiliating experience leading to the loss of identity. It is heartening to note that many of them have begun having a new outlook in this direction. Thus when I interviewed Goan young girls (a sample of 50 from Higher Secondary School where I teach) regarding their views on dowry, I was happy to note that 44 young girls considered dowry (demanding payment before or after marriage) to be an evil that had to be fought and eradicated. The same 44 also opined that their education and earning potential should be able to satisfy a husband who truly loved them.

Four respondents had no answer to offer or no opinion to express. Only two expressed views in favour of dowry. One could offer no reason for so doing, while the other claimed that if she as a girl was equally important as her brother, then she should be given a share in the family wealth, equal to her brothers’. She said, she would take it, in order to assert her importance as a woman. Obviously she saw dowry not as forced extortion by in-laws, but as her claim to inheritance.

We strongly advocate voluntary organizations and colleges carrying out vigorous conscience-rousing campaigns which would make every young woman feel that dowry not only discredits his or her education but also dishonors the country and the entire womanhood.

It is left to the youth to take up the challenge and, the signs are that they will do so in the near future.

RAPE: The Inhumanizing gender injustice

No crime against women weighs as heavily on the human moral conscience than does the heinous crime of rape. It is the vilest form of male violence, targeting women solely because of
the so called gender weakness, exposing them to a treatment far from humane, whereby a woman is stripped of her most precious belonging 'her dignity and modesty,' that too without the slightest remorse, while more often than not the society looks on, tacitly condoning the crime with its silence. The outcome is that the victim is rendered totally degraded and unacceptable to the society.

Gauged from this angle I would say that rape is by far the greatest of social accidents, resulting, so to say, in 'Multiple Fractures', as it inflicts mental injuries not only on the already physically injured woman victim, but also on every member of her family who has to share the brunt of the stigma and humiliation of the rape victim. If the 'unfortunate one' is of a single status, her chances of marriage become remote, and in the event of a married woman-victim, the consequences of a 'marriage on the rocks' cannot be ruled out. Herein lies the major cause of 'rape cases' going unexposed and unreported. Often when rape cases are reported, not even the courts have done justice to women, although there is a provision for punishment theoretically. Thus women being aware that recourse to legal justice rarely helps their cause prefer to suffer and endure the agony in silence, than approach the law enforcing agency, in search of justice. Coupled with this is the fear of aggravating the situation further, when the victim will have to be exposed to public eye, in order to prove the rape. It would be like pulling out a scab forcefully from a healing wound. This explains the 'mini' figures of reported cases, inspite of the constant upward move on the rape-graph, which has in fact assumed a near 'epidemic' stage. As per the Indian Penal Code, a man is said to have committed rape when he had sexual intercourse with a woman under any of the following circumstances: Firstly, when it is against her will; Secondly, without her free and voluntary consent; Thirdly, when it may be with her consent but the consent is obtained under duress, by putting her or any other person in whom she is interested, in fear of death or of hurt or even by criminal intimidation as defined in section 503 of the Indian Penal Code. In the fourth place, it may be with her consent, when the man knows that he is not her husband, but he gets consent as she believes that he is the man to whom she is lawfully wedded. And filthily, it could be with her consent, by reason of unsoundness of mind, intoxication, or administering some unwholesome substance which would make her unable to understand that she has given her consent while the man knows that the consent was given as a consequence of misconception. Finally, with or without her consent, when she is under sixteen years of age.

Thousands of innocent women continue being the victims of the scourge of rape. One hears of rapes within middle classes and upper classes, caste Hindus raping Harijans, students being raped by teachers, or students raping their colleagues, many a times doctors raping patients and nurses, and worst when the guardians of law, rape the very people whom they are supposed to protect. It is not essentially young men only who are the culprits. A rapist turns practically into an animal and, as such respects no age when it comes to giving vent to the pent up urge. A young
man may rape a woman in her sixties or even an old man brutally deflower a child of 5 or even 2 years of age.

Secondly the rapist is not necessarily a stranger to the victim. She can be trapped by a familiar person in a familiar setting like the office, college, a hospital or even in her own home. Again the abettor could be the boss, doctor, teacher, neighbour, fiance or even a close member of the family, for surely we have heard of incest. In most of the cases, it is the men in position who commit the crime and the victims are generally women who are affected by the power of these men in high position. It is most unfortunate that working women have often to put up with the sexual harassment of their bosses or senior colleagues. Of course there are many with some financial means who can face the challenge and even throw up their jobs, but it is often the poorer lot that has to bear up this injustice as their income is indispensable for the upkeep of the family. However, most of such cases go unreported due to the sanction imposed on rape victims and the tremendous amount of pressure on women to remain silent even in the face of acute exploitation. Reporting a rape is indeed doubly expensive for the victim, as it involves not only financial cost, but worse still the social cost she incurs, for, over and above the emotional and physical stress resulting from the offensive experience, a rape victim becomes a ‘sore’ in the eyes of our society. Another important reason why many rape cases go unreported is the fear of retaliation that grips the rape victim. Once she goes through the ordeal of identification of the rapist, a very real fear is bound to lurk in her mind that the rapist will bid his time to retaliate.

What causes rape

The injustice of rape has no doubt assumed menacing dimensions, but the fact remains that ‘rape’ has several other injustices as a base. For instance, acute unemployment, rising prices and economic stress, force many men to remain bachelors but try to find sex satisfaction. Again in our traditional society one has to marry within his caste where he may not find a suitable match and so has to remain unmarried and at the same time give vent to sex promiscuity. Slaves as we still are to dowry, while the man waits to get suitable dowry offer befitting his family status, his sex urge may go beyond his control. Moreover with the galloping pace of industrialization and urbanization, men may have to flock to cities and live apart from their wives due to lack of accommodation. This sex-starvation is also responsible for many rapes. Industrialization also creates slums where due to overcrowding premature sex curiosity is aroused among the youngsters who witness the sex activity of parents. Modern Cinema, another cause for alarm has a pernicious influence on the young mind and is to a great extent responsible for arousing sexual desire leading to rape. The most damaging effect on the society is felt through the advent of video
culture and the screening of blue films without any age restriction.

A rape may not always be an outcome of sex desire, but also of revenge to punish the victim. We have heard of rapes by dacoits after looting, or rapes after communal disturbances or even after family disputes. In our society undue importance has been attached to virginity. Thus, as much as a woman fights to preserve it, the rapist who seeks revenge goes all out to outrage it.

It is believed that an average of 2 million women are raped in India every year but it is disheartening that only ten percent of these have the FIR (First Information Report) lodged, the basic reason for this being the fear of the social stigma which is usually attached to the rape victim.

Thus it is a continuous cycle, one injustice leading to another, but none as acute as the injustice meted to the rape victim who virtually becomes an outcaste or a reject in her own family and is often left with no other alternative than to commit suicide or be whisked away into prostitution.

Rape by Police

An extremely distressing feature of the Indian scene is custodial rape or rape by policemen who are supposed to be the custodians of the law and protectors of women.

Two widely publicized police rapes namely the Rameeza Bee case and the infamous Mathura case, are highlighted herein:

The first case has it that the unfortunate Rameeza Bee, a 21 year old woman who lived with her mason husband in Hyderabad, was one day picked up by some policemen, while she was returning from a late night movie, along with her husband; the fabricated allegation was that she was loitering around in the late hours, that too unveiled, and having been suspected of being a prostitute, a fine was imposed on her. While the husband was sent home to fetch the money, the woman was raped by 3 policemen, the whole night. When the husband protested on his return he was beaten to death. Further, the police had even conspired with the forensic department to alter the report. This incident, infuriated the people and in the riots that sparked off, several people lost their lives.

It was an irony of fate that, despite of protests the Sessions Court acquitted the rapists. The Government did appoint the Mukhtadar Commission to conduct an impartial investigation, which, on finding the facts, passed strictures against the police. As expected, the State Government set
the rapists free thus endorsing the public opinion that Government protects the ‘police morale’ at all costs, even at the cost of justice to the rape victim. Government perhaps felt that Rameeza Bee was too insignificant and that too a woman therefore, undeserving of justice. The police who were bent on eliminating Rameeza Bee, went to the extent of even planting 3 unknown minor girls by her side with the intent of accusing her of enticing girls for prostitution. On 15th November 1978, Rameeza Bee was convicted by the District and Sessions Judge of Kumool (Mr. M. Sreerama Rao) on a charge of kidnapping minor girls. She was, however released later under the provision of ‘Probation of Offenders Act’. Inspite of the fact that the inquiry ordered by the government into the incident in 1978 held the police responsible for the rape and the death of the husband by beating, sad to say, the police used every possible manouvre to circumvent justice (including getting the case transferred to Raichur District Sessions Court). Finally in 1981, the policemen succeeded in getting acquitted of the charges of rape, murder and extortion and were charged only with the minor offence of wrongful confinement.

Then we have the custodial rape on a young, adolescent, illiterate girl by 2 police constables on duty. The story goes that, Mathura a young village girl who had escaped from her brother’s house was called to the police station to register a complaint regarding her kidnapping, and was raped by the two policemen Tukaram and Ganpat, at Chandrapur Police Station in 1972.

It was argued against the rape victim that she did not raise an alarm, and this implied that she did not resist and had therefore consented to sex. What was conveniently overlooked was that Mathura, just 16 years of age, was frail as against the weighty policemen and that her case was of frightened submission rather than consent. That she did not raise an alarm is not at all a sound ground to think that she offered no resistance and in any case intercourse even with consent at a police station must be deemed a grave offence since the police are meant for protection and not repression. The police case was that Mathura was not a virgin and was used to sexual intercourse. But the question persists: can policemen on protection duty have sex with a woman, just because she is not a virgin?

Mathura’s case shows how little protection women can expect from the custodians of the law. She was branded as a bad woman and ‘willing party’ when in fact the very act of calling her to the police station and detaining her was a gross violation of the law of the land made by the Parliament.

Unfortunately in our male dominated society in most of the rape cases, the accused tries to prove that the victim was a woman of loose character. But can her past history be taken as a relevant factor for the act of a rape? It is the fear of raking the past that prevents the victims from reporting the rape and prosecuting the rapist. On no account should the accused be permitted
to make references to the past life of the victim. This case had sent shock waves throughout the
country and there was a forceful demand for a new law on rape, as it was amply evident that the
existing Rape Law had many built-in injustices and flaws, which often protected the rapist
rather than the victim.

The Indian Express of 10th July 1983 reported a heart rending case of Malti Devi, a 32 year
old married woman of Amritsar. Malti, who had already been a victim of dowry harassment and
had fortunately survived after burn injuries, was on a hunt for a job to earn a living. On June 20th
1978, her bus broke down at Taran and Mohinder Singh a male acquaintance offered her a night
shelter in his sister's house. To her dismay she found herself in the house of a registered medical
practitioner. There she was gang raped by 17 persons including some policemen in mufti dress.
Malti Devi turned many a stone in search of justice but alas found herself totally shattered.

Rape cases in Goa

As in other parts of the country rape is definitely on the increase in Goa and of which we are
painfully unaware. We often tend to be optimistic by presuming that the rapes which are reported
are the actual figures. I would reject this as something unrealistic. It is high time we accept the
fact that rapes in Goa too have become a stark nightmare reality, trapping the women in an
ambience of terror. Infact, the rapes which are reported is only a fraction of the actual rapes.

Nevertheless, I shall detail here a few of the reported cases in Goa, which will highlight the
increase in the incidence of this ghastly crime. The names of victims are withheld.

Case studies

I. A gang rape by 3 persons: Rehana, a Muslim widow, worked as a domestic, on daily
wages for several families at Vasco. On that fateful day in December 1989, one of the accused
called her to his house at Naval Colony, Mangor, at around 4 pm for washing up. There she was
trapped by 3 persons who ripped of her clothes and repeatedly raped her for 3 long hours after
which she managed to escape stark naked. She then approached some people in the next
house who gave her some clothes to hide her shame and on hearing her tale of woe
accompanied her to the police station to report the matter where the case was hesitantly
registered. Then the usual rigmarole followed. Rehana was taken to the nearby health centre
and then referred to the Medical College Hospital for a medical confirmation of rape. Her clothes
were sent to Bombay for chemical analysis by the police, which is another time consuming factor,
since Goa does not have a Forensic Laboratory. This delays further the process of justice. The
police arrested the 3 culprits but they were soon released on bail on the weight of their money
power and their links with Godfathers in the political circles. The degree of brutality of this case is revealed in the fact that the young widow was 9 months pregnant at the time of the rape. When the incident was brought to the notice of the ‘Bailancho Saad’, the latter provided her a lot of moral support and also sent several reminders to the Forensic Laboratory in Bombay to speed up with the report of the chemical analysis, without which the case could not be filed in the court. In the meantime the victim delivered a male child on the 1st of February 1990, after a delayed and complicated delivery due to the brutal attack. The case is rendered still more pathetic because besides the rape victim, her two innocent children were also victims of the injustice; while the mother lay in a critical state in the hospital for several weeks, children had to remain hungry and neglected. Finally after a six month long wait the report arrived in June 1990. On hearing about the same, some women acquaintances of the rapists offered her Rs.3,000/- requesting her to compromise and drop the case. She could of course feel the need for this tempting amount, but it was her dignity that was more important. She had to get justice and so she dauntlessly got the charge sheet and the case filed. Unfortunately, the climax of the whole ordeal was that, one fine day, Rehana got summons asking her to appear in Court. On producing the copy of summons to the “Bailancho Saad” she learnt to her shock and dismay that the summons were for a case of criminal trespass into Naval Quarters, filed by a naval officer, against the rape victim. What is most painful to note is that, the police delayed in registering the rape case and instead gave priority to the Criminal Trespass case, though the police were approached with the former case first. This was no doubt a deliberate attempt to kill time and shelve the rape case. As if the horrible atrocity and the subsequent harassment was not enough to add insult to injury, the victim was declared as being of ‘loose character’. Thus while Rehana is going through the ordeal of Criminal trespass, the ‘Bailancho Saad’ has been trying all along to get the trespass case dropped as it has no basis. In the meantime her fate in the rape case is still hanging in the balance.

II. Rapes on minors: In the infamous Chandor rape case on 13th February 1990, a 72 year old man, in trying to pose as a ‘Good Samaritan’ raped a 13 year old minor, maid servant of a neighbour. He is supposed to have given shelter to the girl on humanitarian grounds as she was being harassed by her employer. According to the report filed by the lady employer, the girl who had been missing from her house since 13th February, was traced in the house of the accused on 15th February, after which she was sent for a medical check up and the rape was confirmed. Unfortunately for the victim, the police neither registered her statement nor got the rapist arrested even after a fortnight had elapsed. This is a clear reflection of the usual role played by the police, whereby they consciously and deliberately neglect their duty in order to protect the accused because of his status. In this case the accused holds a foreign passport. Inspite of the repeated representations by the ‘Women’s Collective’ the police as well as the judiciary have been lethargic in expediting the case. The neglect is all the more deplorable because the victim was not only
a minor but also a 'nobody's child', an inmate of an orphanage and so, doubly deserving protection and justice. After an overwhelming media response and persistent demands by the Bailancho Saad, to deal with the case expeditiously, the culprit was eventually arrested on 1st March 1990, taken to Goa Medical College for a medical examination and then remanded to 2 days custody but later released on a bond of Rs.10,000/-. Nothing is expected out of this case in favour of the minor as the culprit is happily settled in Canada and the girl back to square one - in the orphanage at Belgaum.

Following close on the heels of this case, 1990 saw several atrocities on minor girls. In April, a youth of 14, waylaid a girl of 15 who was on her way to the market and raped her in the fields at Baga, Velim. In the same month, a minor girl from Nessai (Salcete) was kidnapped and raped, and the culprit was arrested at Old Goa on 26th November 1990. On 28th May 1990 there was the case of another 15 year old raped at the jetty, Vasco, by a driver who was arrested on 29th May, 1990. In Vasco again there was the case of a 14 year old girl from Dandeli who was raped in a city hotel. July 3rd 1990, saw a ghastly rape cum murder of a minor girl at Calangute and yet another rape and murder at Cuncolim; then there was the Bastora rape case where a minor girl aged 13 years was raped. On 24th June, 1993 a minor maid servant, aged 14, from Velim was gang raped at Colva beach, where she had gone to commit suicide and free herself from one misery only to find herself plunging into another. These are just a drop in the vast ocean of rapes on minors. Unfortunately in all these cases the victims have not come anywhere close to justice.

III. Rape on a mentally retarded: This case dates back to 1991 and relates to Nisha, a mentally retarded girl in her teens (18 years 5 months at the time of the incident) hailing from Aldona-Bardez, who was raped by her 65 year old employer on several occasions over a long period of time. Being mentally abnormal, she could not understand the meaning of the advances nor the consequences of the act. Alarm set in when the girl began experiencing some changes within her - she was pregnant. On hearing about this Nisha’s mother who lived in another village rushed terror stricken to the daughter’s work place only to find the story shockingly true. The innocent victim was under threat but the mother managed to get the exact facts inspite of the assault on her by the accused old man. With all determination to obtain justice, the mother went to the police station to lodge a complaint but to her dismay the police refused to register the same, the reason being the big gap of time between the actual incident of rape and the date of registering the complaint. The woman in her despair approached the Bailancho Saad, who were prompt in coming to her rescue and helping her to get the complaint registered. In refusing to register the case on the grounds of time lapse, the police showed ignorance of law. The girl being mentally retarded, she naturally gets covered by description five in the I.P.C. regarding the circumstances for rape viz. 'a man is said to commit rape, who has sexual intercourse with a
woman, with her consent, when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Since there was lack of understanding on the part of the victim, about the act, the question of complaining on time did not arise. It was however very unfortunate for the victim that she was denied justice on many counts. To begin with, due to the mental handicap, there was a delay in discovering the consequences of rape which was responsible for the delay in registration. Secondly, it is against the principle of natural justice to make a mentally retarded person furnish evidence and this was done in this case, when in fact the onus of proof of innocence should be on the accused. Further, even after the complaint was registered, it could not be expedited quickly, as, the after effect of the onslaught left the victim in a delicate physical and mental condition. So it was a halt to the proceedings till the baby arrived. Another set back was that during the time when the police were trying to ascertain the paternity of the new born, through blood tests, etc. and which is rendered quite difficult in Goa, Nisha’s baby died, thus wiping evidence and with it all hopes of justice for the victim. Finally as expected, the police considered the rapist, too much of a ‘gentleman’ solely because of his 65 years, so dubbed the case as a baseless fabrication. Nisha’s mother abandoned the case in sheer frustration. Here was a young woman exposed to total destruction. Born unfortunate as she was with a mental handicap, she was further destroyed physically by the brutal act of the rapist leading to emotional and psychological damage; destroyed also socially with the societal stigma usually attached to a raped woman and as a consequence there was economical destruction of her family who depended on her job which she had now lost. Justice was not at all her destiny. She was left to the mercy of an institution for unwed mothers.

The frustration and despair experienced by rape victims can be revealed from the cases described so far. Our legal system with all the shortfalls and red tapeism is mainly responsible to keep the deliverance of justice at bay, never mind how vigourously the various women’s organisations may press the issue. Ultimately it is the woman who is held responsible for the assault on her person (e.g. Rehana was dubbed as a woman of loose morals) provided of course she does not come from a family with a clout, in which case only, she attracts sympathy and justice. It is to be noted that most of the victims of rape are generally women from the dejected strata of society - (eg. Rehana and Nisha were both domestic servants). The legal machinery grinds so slowly that the whole procedure becomes tediously lengthy and with the drain caused by the traumatic experience, the women feel they are fighting in vain and therefore abandon their quest for justice to the advantage of the lawgivers and the accused.
Legal safeguards against Rape analysed

As a sequel to the controversial Supreme Court judgment in the Mathura Case, discussed above, Section 375 of the Indian Penal Code was amended. The widespread criticism and protests that the Court's judgment provoked, culminated in the introduction of a Criminal Amendment Bill in Parliament in 1980 to amend the rape law. After being scrutinised by the Select Committee, the Lok Sabha passed the Criminal Law (Amendment) Act in 1983.

The three main features of the amendment act are that:-

1. the burden of proof of consent is on the accused, in custodial rape.

2. minimum punishment of 7-10 years imprisonment for different types of rapes.

3. curb on publicity of rape trials.

The Criminal Law (Amendment) Act also deals with all offences of sexual intercourse by persons in custodial positions like Superintendent of Jails, management and staff of hospitals, policemen on duty at police stations, as also gang rapes and marital rapes. Theoretically speaking the Act of 1983 seems to be 'justice packed'. For instance Section 228(A) makes the publication of the name of the victim or any other matter likely to identify her, an offence. The legislators may have considered this to be in the best interest of the rape victim, but in our view it may go against promoting the overall ends of justice since withholding the name of the victim and related matters likely to lead to her identification, may succeed in scuttling free and frank debate and prevent organized social action against the rapist as also aid to the victim of the offence. Secondly, the provision of a secret trial will prove a hindrance to mobilizing public opinion. We consider mobilizing public opinion more important (than protecting identity of victim) since the mobilization of such opinion not only provides socio-moral support to the victim but also acts as a deterrent to future (and would be) rapists against repeating the crime.

One significant and progressive feature of the amended Act is that by introducing Section 114-A, in the Evidence Act 1872, the victim can now depose before the court and state that she had not given consent to the sex act, and that would suffice for the court to presume that she did not consent and thus decide in her favour. This is the best way to facilitate the proof of rape and will ensure that the rapists do not go unpunished. However, if the accused refutes the victim's statement, then he would have to prove the consent. Section 114-A is a kind of protective discrimination to Indian Women. Furthermore, there is a provision for holding trial in camera as per Section 327(2) of Criminal Procedure Code.
Though legal safeguards are necessary to help rape victims, the unfortunate fact remains that a raped woman has to wait in vain for justice as she goes through the double crisis of 'Rape and trial.' While the first one hurts and undermines her dignity, the latter makes her re-live the trauma anew, with all the public attention focussed on her as she exposes herself to the apparatus of criminal justice. Another acute discrimination against a raped woman is that she can be charged of loose character but the rapist cannot be accused of the same. It is thus a one sided privilege which is often used to tarnish the reputation of women. Rameeza Bee for instance was declared a 'Prostitute' and Mathura a 'non Virgin'.

Something also needs to be done to create a general public opinion more sympathetic towards rape victims. For instance, when the forum against rape, in Bombay, demanded reopening the Mathura case through mass signature campaigns, it had to face many hurdles. The Forum consisted of people of varied shades - politicians, lawyers, public figures, MPs, members from all the women’s organisations, but to no avail. A determined Supreme Court turned a deaf ear and rejected the Maharashtra Government's petition by using 'time bar' as the axe, contending that the Government had demanded a review after storing away the same for 17 months. So here Mathura was denied justice because of the callous attitude of the Government. Mathura was however fortunate in that, her case atleast reached the High Court. There are many who do not even have the F.I.R. filed, or medical investigation made, or even get public support.

To sum up, a few suggestive measures to deter rapes are listed. Most of the rape cases have to be dropped because of delay at different stages. Therefore 'time bar' should not be used, neither for reporting, nor furnishing evidence. The fact that rape has been committed never mind when, meets all the requirements to seek justice. On no account should the accused be granted bail. This will ensure that he does not pressurise the victim to change her stand. Constant transfers in the police departments also cause delay in trials. Thus, the investigating police officers should not be shuffled when they have a case in hand. The creation of a ‘crime against women cell’ at Panjim under the stewardship of P.I. Anita Rodrigues is a timely step and an answer to the long standing demand. There should be such cells in all the important towns and a strong linkage must be established with these and the Women's Organisations. When it comes to Court trial and cross questioning, as far as possible the presence of the victim should not be insisted upon. After a rape has been proved, the photographs of the rapists must be flashed on Doordarshan and select papers. This will be a warning to future rapists. Some permanent and visible handicap may be inflicted on the accused such as branding the forehead (of shortening the middle finger be considered primitive) which will be a constant reminder of the evil deed. After all the rape victim too bears a permanent stigma. Since the amended Act 1983 has reduced the term of imprisonment for the rape accused, I would suggest a way of prolonging the punishment
whereby the accused will be free yet confined. For this the State must create specific job avenues where the accused must compulsorily serve at least for five years after serving the term in jail. These jobs must be graded to suit young and old rapists. The same yardsticks must be used when dealing with policemen-rapists as his uniform in no way reduces the gravity of crime. We could take a lesson from the U.A.E. (Fujairah) Criminal Court which served a death sentence on a cop for raping a Sri Lankan maid on 9th June 1990. This was the first death sentence in the Emirates, for a rapist, and the first time that a policeman was the rape accused.41

When it comes to gang rapes the punishment should be extremely severe, even the death penalty should be considered. This punishment was even suggested in Parliament in July 1980, when Mr. Zail Singh was the Home Minister. If death penalty be deemed too harsh, public flogging may be considered. My thoughts here go back to Jyoti, a tribal girl from Bihar and a student of Std. IX, who was raped while washing clothes. During her T.V. interview she gave to Ms. N. Singh (1992), she stated that even the doctor asked her ‘why do you misbehave?’ Further she added that bribes have set the accused free but she is ruined. When asked what punishment she would suggest she retorted: ‘They should be killed inch by inch’, a right expression for slow torture.

Finally, all these punishments will in no way render real justice to the victim. Not even compensation will heal her infirmity and the devastating effect on her person. It is therefore necessary to pave a way for the victim’s smooth rehabilitation. Well meaning people and institutions must rise to the occasion and find opportunities for these women to serve in areas away from their places of origin, where only they know their past with no one to remind them of it or give accusing looks, so that with time everything will heal. The victim will then emerge as a new being, accepted and respected, with the realization that after all, she was not to be blamed. This social rehabilitation is of paramount importance, for rejection from society will find her exposed to further injustices. If she does not find escape through suicide, it is invariably ‘Prostitution’ which becomes the immediate avenue open to her.

Devadasi system and Prostitution: Origins of Devadasi system

Of all the problems that need the attention of society, none is as acute as the condition of prostitutes. Practically nothing much has been attempted up to date to redeem them from their sorry plight. The votaries of the Devadasi system claim that this particular form of prostitution had a divine origin emerging from the practice of a religious obligation whereby young girls were dedicated to the service of gods and were looked upon as sacred harlots practicing ‘Sacred Prostitution’. The custom also emerged from the attempt, supposedly, to secure fertility of young woman through the favour of gods i.e. through sex with the temple priest or the first pilgrim. These
unfortunate young girls were the daughters of common citizens. Sometimes daughters of former devadasis, 'married to the deities' and their service to pilgrims was regarded as serving god and therefore they commanded great respect from people.

Later the Devadasi system became a commercialised institution, a profit making avenue by the temples that employed them. They danced and sang during festivals and having sex was not looked upon by the society, as a sin. All the same they were gradually forced to lead an indignant life thus reducing the temples to centres of vice.

The Devadasi, being herself a victim of the social and religious system in which she is born, her very existence is considered a constant threat to the morality of society, which on the one hand permits her existence and on the other condemns her beyond redemption to her miserable way of life. The Devadasis, formerly known as 'Bailadeiras ' and 'Bavinas' in Goa, formerly lived by the side of the temples and had dancing as their profession while at the same time indulged in prostitution, becoming of their caste. The salient features of their miserable life are denoted by 3 names and professions namely (1) the Devadasis or the servants of God, (2) the Kalavant—the artist-dancer, (3) Vishvaioshita the worldly woman. They were taught to read, write dance and sing at religious festivals (to the tune of Gandarva music). Some were assigned inferior tasks like temple cleanliness, etc.

History records that devadasi prostitution originated from many superstitious religious beliefs. For instance, we know instances where girls were offered to 'god' by their parents so as to evade the dowry monsters. In other cases, parents, under the influence of superstitious beliefs, make vows of offering their first female child to 'god' in return for some boon granted as the birth of a male child. Still others claim that they received 'a call' from god and therefore cannot resist offering the child to god. There is also the case of widows and even married women who had strayed from the right path, and their parents fearing the possible dishonour they could bring to the family through adultery, pushed them into this 'sacred prostitution' as a punishment. This was also the fate of some widows who refused to perform Sati. Such widows in Goa, used to be housed at 'Mahalsa-Devi Temple in Vema (Salcete). All these women were known as 'religious employees' of God and whatever may have been the reason of their initiation, they had to be beautiful and well organised. Inspite of the low social status, the devadasis were regarded as sacred. Since a devadasi never becomes a widow, her presence at births and marriages was considered as auspicious. Watching her perform a dance was like worshipping god and she received rich gifts from pilgrims at the end of the dance.

The Devadasis thus came to be regarded as priestesses and were looked upon as both
servants of god as well as the instruments of lust. These poor creatures were deprived of their
virginal purity and the comforts of a family life. They could not marry and painfully enough their
daughters too had to be initiated into the monstrous system. These creatures hardly know any
happiness as brutal desires of men, pluck these flowers without any respect, with not the slightest
sign of affection or gratitude. Their days are numbered and as long as they remain active and
beautiful they are in demand only to be later considered as the waste paper baskets of society
and many may end up as menials or beggars.

Another sorry plight is that of Devadasi women in the later stage of their life, when they cannot
avail of any benefit from the various Government schemes for the widows, as they cannot
produce a death certificate of the husband, who in their case is immortal ‘god himself’. Furthermore, Devadasi women are also denied justice when it is a question of deriving benefits
from the caste-based Welfare Schemes, as a Devadasi woman cannot furnish a caste certificate
too, for, as per the customs, she may disclose publicly only the name of her mother. Such is the
injustice meted out to young girls whom the family offers to God.

Young girls hailing from rural areas near Kolhapur, Solapur and Sangli in Maharashtra and
Belgaum, Hubli and Bijapur in Karnataka, are still offered as devadasis to God annually during the
festival of goddess Yellama. The enactment of laws has proved futile. In pre-Independence India
the Devadasi system had flourished to such an extent that legal measures became a necessity.
Thus came the Madras Devadasi Prevention and Dedication Act of 1947, and the Bomby Devdasi
Protection Act of 1954. Yet the practice continues even today amongst the lower castes in Tamil
Nadu, Karnataka, Andhra Pradesh and Orissa. This is mainly due to economic reasons.

In Andhra Pradesh for instance it is customary to dedicate young girls from the Scheduled
castes known as ‘Jogins’, to Goddess Yellama every year, for reasons varying from poverty to
seeking miraculous cures for incurable diseases. Among the illiterate, rural, low castes, the belief
still persists that the family can get relief from tensions, and attain prosperity by offering a girl to
the Gods. These girls were reduced to bonded labourers and only their parents benefitted
financially from this practice and were also given land to cultivate while these girls catered to
the master’s lust and were later even abandoned.

In order to put an end to this unjust system, the State Assembly of Andhara Pradesh adopted
the Andhra Pradesh Devadasi (Prohibition of dedication) Bill in the early eighties. There were also
several Rehabilitation Homes funded by the Social Welfare Board and the Scheduled Caste
Finance Corporation meant for this purpose.

The religious belief of temple dedication has developed such deep roots in Karnataka too,
that inspite of the Karnataka Devadasi (Prevention of Dedication) Act of January 1984 thousands of devadasis were offered to Yellama at the Hill Temple. and it is said that there were about 500 policemen present watching both, the ceremony as well as the violation of the Act.

Whatever the origins of the devadasis, there is no denying that they are the most unfortunate creatures, beyond redemption. They may have never imagined what they were heading for and surely there will be moments in their lives, when they curse the very day they ventured into the devadasi world, revolting inwardly against the cruelty of their destiny, of being condemned by the 'Right of Birth' to this sorry life. There is no doubt however, that the family of the devadasi woman is the prime conspirator in exploiting her, may be just for the sake of daily bread. Of late one finds that many devadasis, having been abandoned by the temples, have gone to cities like Bombay and Pune to earn their livelihood by prostitution. Thirty percent of Bombay prostitutes and fifty percent of Pune Prostitutes were found to have been former devadasis.

**Measures to Fight Devadasi System**

It is high time voluntary organizations took up the matter of fighting the devadasi system on priority basis, by organizing awareness programmes among the temple prostitutes to highlight the evil effects of this custom. Their problems need a thorough study through a specially appointed Commission which could suggest schemes for the rehabilitation of these forlorn creatures. There is need to educate them and this is the best way to make them aware of the degree of their deprivation and denial of a decent life as equal citizens. For this purpose residential schools could be opened where devadasi children could be provided free education and given training in such fields as nursing. Schemes could also be devised to train them in self-employment and assistance given for starting their own small scale units which would ensure a respectable income to them. Unfortunately however, the Devadasis are against the programmes set up by the Government for their benefit as they feel they get better returns through the Devadasi System than the government schemes. Hence the rehabilitation programme must combine reformative education along with economic assistance for rehabilitation. Schemes like the 'Niradhar Yojna' should be extended to all areas where the practice of offering young girls as 'devadasis' prevails, with a view to disuading children of devadasis from following the mother's footsteps. Government must also waive the requirement of a husband's death certificate for being eligible for various rehabilitation schemes. These measures, together with concerted efforts by different voluntary agencies to create awareness through suitable programmes, along with the stringent application of laws by the State concerned, would go a long way in wiping out this evil custom.
A Sociological Analysis of Prostitution

In India prostitution has existed from time immemorial. During the Vedic Age there were prostitutes known as Veshyas, Sanikas, etc. The educated among these were wealthy and even enjoyed honour and fame. There were of course the poorer ones who were workwomen, menials and even beggars.

According to Kautilyas Arthashastras a prostitute was protected and supervised by the State. There were Superintendents of prostitutes appointed and entrusted with supervision of palace courtesans, inspection of brothels and a collection of 2 days earnings from each as a professional tax to the government. Thus even kings and chiefs retained several prostitutes who were salaried servants and did all sorts of work for the Kings besides satisfying their sexual urge. They were, however, protected in their old age and a post created for them in the kitchen, storehouse or as a nurse.

Though the problem of prostitution was supposed to be on the increase during the British period, in different parts of India, it had lost the State patronage it had enjoyed during the ancient and medieval period.

During the two world wars there was an added impetus to prostitution. Prostitutes were exploited by foreign soldiers, and as a result even educated women, both married and unmarried, fell a prey to this lucrative employment, due to economic distress and craze for fast and fashionable life. Gradually there was further deterioration in their condition, and in spite of the services they rendered to the society they became victims of social injustice. They were despised and considered as outcaste and even now can associate with people only in the course of their business.

Prostitution is the worst form of exploitation and inequality and can be classified into 4 types:
(a) The hereditary prostitutes, which form a community by themselves with set customs and social patterns. They indulge in singing and dancing at marriage parties and social functions to earn their livelihood, but generally do not solicit sexual relationship; (b) The Second type are the religious and traditional prostitutes namely the Devadasis. This type have been dealt with in the earlier section; (c) Then there are the victims of sociological condition, mainly poverty which forces them to live in brothels or selected houses and indulge in sexual intercourse on hire; (d) Finally, there are the highly sexed women, may be respectable at that, who call clients to their house or visit on being called for sexual pleasure. It is the second and third type that constitute what may be called ‘professional prostitutes.’ The professional prostitutes generally live in brothels or red-light areas.
The main reasons for women turning to prostitution are social as well as economic. While referring to prostitutes, Gandhiji had once remarked that man is primarily responsible for the existence of these unfortunate members of society. These unfortunate women, victims of exploitation, are viewed as an outlet for man's baser instincts. Men need and are willing to use women as sex objects, instruments for satisfying their lust. The male dominated society condemns these women, yet regards prostitution as a necessary evil which must be endured.

Prostitution is often born from poverty. Due to poor living conditions and socio-economic insecurity women with no means of earning a living, are driven to prostitution. Here the role of the economic factor such as poverty, low wages, unemployment, overrides the traditional factor, thus forcing women to embrace prostitution.

Another factor which contributes to exploitation and degradation of women is the institution of marriage, which emphasizes on chastity of women prior to marriage. Due to this stress on virginity, innocent girls who have been deflowered have no where to go, hence they take to prostitution for their survival. Then there are the dowry demands which are responsible for dehumanising women. Young women unable to meet the dowry demands are forced into prostitution due to frustration. For instance in Andhra Pradesh, college girls and young women practice prostitution just to save money for their dowry.

In addition, polygamy among some communities and the decay in the joint family system, often resulted in undue harrassment to women. On being thrown out of their marital homes they turned bitter and revengeful, and on the rebound plunged into prostitution so as to survive.

Due to the injustice of child marriages, many women became widows at a very young age. Since widow remarriage is discouraged many child widows are recruited as prostitutes specially in villages.

With the rapid pace of industrialisation and urbanisation in the later part of 19th century and the early part of 20th century, economic exploitation set in, and this factor became conducive to prostitution. The migrant workers flocked to cities leaving their wives behind due to lack of accommodation. These men therefore became customers to prostitutes.

Furthermore, increased alcoholism leads to family indebtedness. Drunken husbands and gamblers beat up their wives for money and so the women are forced into prostitution to pay for the liquor. This has resulted in the emergence of more exploitation in the form of allied trades carried on by pimps and touts often having women procurers for their allies.
It is also common knowledge that young women are meted injustice at their work place whereby they are forced to submit to sexual exploitation in order to survive. Some are so driven to desperation that they take to prostitution either out of despair or to make a fast buck.

Besides the causes enumerated above, prostitution is also taken as a traditional or caste occupation in certain areas. For example, in the Naik community of the hilly region of Uttar Pradesh, women are the bread winners through prostitution. Inspite of the U.P. Naik Girls Protection Act 1929 more than 43 percent of the prostitutes in Bombay come from the Naik community of U.P.  

Thus, the causes of prostitution are many and varied, ranging from poverty to sexual activity. There is mostly the economic element leading to prostitution, but besides there is the family disharmony, shocking experiences like rape, incest and of course hankering for luxurious standard of living. Then there is the case of abandoned wives, widows and unmarriageable women who turn into prostitutes. Prostitution has today taken a commercialised form where profit motive is the guiding principle, and no emotional attachment is generally involved. However, there are rare cases when the customers bring about a change in the life of a prostitute, where the sexual-favour results in emotional attachment; for example Neela—a prostitute at the red-light area of Baina Vasco (Goa) and a mother of 3 illegitimate sons, pointing happily to one of her customers told me that he had taken her as his registered wife along with her 3 sons. That seems to have ended on a happy note.

Some case studies from Goa.

To drive home to the readers, the plight of prostitutes and to give the readers a peep into their unhappy lives and what caused them to take to prostitution, I give below some case studies from Goa. The information given below has been personally collected by me by visiting the red-light areas of Baina (Vasco) and Khareband (Margao) and interviewing and chatting with them.

Case 1

Rina a spinster hailing from Hubli, barely 20 years of age, lives in a dingy room in the red light area, with her mother and a 2 year old illegitimate daughter. She came to Goa to work and found a job as a labourer at the airport, where she earned only Rs.70 per month. When the brother deserted them, they could not make both ends meet so her mother forced her into prostitution 3 years back. She contends that had she been paid justly she would be able to live comfortably. She now earns a minimum of Rs.100/- per day on which her family can survive. When asked if she was happy with this sort of life, she admits that she has to pretend that she is. She now leads
Case 1

Rina, a young girl from Penang (Goa), has been living a secluded life within the 4 walls, as the society looks down upon her. There is no way out from prostitution for her, she says, as nobody will employ her now. Her mother who was employed as a servant was turned out after 8 days when the employers found out that she was the mother of a prostitute. Rina is illiterate but means to send her daughter, and also the child she is carrying at the moment, to school. There is a ray of hope as she says she does not intend initiating her children into prostitution. If her children are educated and get suitable jobs, she intends leaving this place.

Case 2

R.N. a pretty Hindu girl in her teens (just 16) originally from Banastarim (Goa) but settled in Vasco for the last 5 years, with her mother and father who is a TB patient. Her mother worked as a domestic servant in Vasco, while R.N. was employed as a maid in Chinchinim (Goa) where she was accused of robbery and thrown out into the streets. It was a great injustice towards a poor, innocent young woman. The mother brought her back home and being illiterate she had to embrace this profession. She earns about Rs.200/- per day, but there are days when she earns nothing. With this money she buys food and medicine for her father, and also supports her little brother who is studying in Banastarim. R.N. feels bad to carry on this business but her mother will not send her to work as housemaid again. 'We are not robbers' she says. R.N. is now expecting a child but plans to go in for an abortion. On my suggestion that she should go back to her village and seek employment in a factory there she retorted she would surely go if she got a job and would like to get married if that was possible.

Case 3

Then I came across the sad case of Rani, a married woman 26 years old, who came to Goa from Andhra Pradesh two years back expressly for this profession, after her husband deserted her and her child. She earns about Rs. 60 per day which she has to send to her mother and child in the native place, after she has paid a part to the landlady as a commission. Rani is not at all happy with this type of life and would be happy to take up any other job on which she and her family could survive. She can read and write Telegu, she says, and will remain here temporarily, until such time as she is able to earn a decent amount, and then she will definitely go back to her home and start life again. It is only hunger that drove her to this profession.

Case 4

Maria, a spinster of 26 years, from Baradi (Goa) who was originally selling fish in Margao market, was brought to Vasco by a friend on the pretext of providing a decent lucrative job. Maria was deceived and she found herself dragged into this trade. She was just 16 years old then. Her
earnings per day range from Rs. 150/- to Rs.200/- out of which she pays Rs.300/- as monthly rent to keeper, for the poky room which she shares with a man she has kept, purported to be for support and protection. Maria's people do not know the source of her income and she says she visits her father's village, Fatorpa, often, accompanied by this man she has kept. Maria who is illiterate says she will carry on this work as long as energy permits after which she hopes to settle down to a family life back home.

Case 5

Neela, hailing from Kamatka, came to Vasco in search of work at the young age of 15 but instead landed into the trap of prostitution and has carried on this business for the last 15 years. She is now 30 years, a very prosperous looking woman, she dons a mangalsutra and pointing to her former client says: 'we have registered our marriage.' She is the mother of 3 sons two of whom have died and one goes to an English school as she does not want him to be illiterate like her. She has practically given up the practice except very rarely with the consent of her man and she does not intend leaving the place.

Besides these individual cases the author also conducted group interview of prostitutes with the help of interpreters knowing Kannada, Telegu and Malayalam. I found that there was not a single case of women indulging in immoral traffic for the sake of mere sexual pleasure. What had driven these women to prostitution were various forms of social injustice. Such as ill-treatment by husbands, being discarded or divorced by husbands, poverty, hunger, large families with no bread winner, too many girls in the family to be provided with dowry, illiteracy, unemployment, etc. For instance there was a pathetic case of a young divorcee whose husband was a bank manager. Having been used to a good standard of living, she feels this is the only profession which can help her to maintain that standard. She earns upto Rs.400/- per day. Another woman confessed that she had taken to prostitution in order to earn money for her father's hospital expenses. The lives of these women are indeed pitiable. I actually saw young men forcing their way into their rooms and all this in the presence of innocent children. It was painful to see tiny creatures crawling in and around this only world they know, blissfully ignorant of what the future holds for them. None of the women I interviewed had anything except sorrow writ large on their faces as they looked towards a bleak horizon with no sign of 'light' in sight.

Prostitution and Law: Institutionalization v/s Internalization

For centuries now, prostitution has been a bane of our society. Article 23 of the Constitution prohibits traffic in human beings, as also according to the provisions of the Indian Penal Code (Section 366A, 366B, 372 and 378) it is an offence to procure minor girls for prostitution. Inspite
of all such provisions the evil has escalated to frightening heights, with the culprits able to commit the offence with impunity while the victims have to struggle against insurmountable legal hurdles to get justice. The Act for the Suppression of Immoral Traffic in Women and Girls 1956, was enacted to provide protection to women and girls and to safeguard them against social exploitation and moral degradation. The Act of 1956 which is in terms of the International Convention signed in New York in 1950, prohibits and prescribes punishment for: 1) running brothels, 2) living on the earnings from prostitution, 3) procuring, inducing or taking women for prostitution, 4) letting out or permitting the use of residential accommodation for prostitution, 5) seduction of girls in custody, 6) detaining a woman or a girl in premises where prostitution is carried on, 7) publicly soliciting customers and 8) carrying on prostitution within a distance of 200 yards of any public place, religious worship, educational institutions, hospitals, hostels, nursing homes, etc.

The Suppression of Immoral Traffic in Women and Girls Act, 1956, sought to suppress commercialized prostitution within a distance of two hundred yards of public places. This section is difficult to comprehend. It seems to give a green signal to individual prostitutes provided they move 200 yards away from public places. Consequently pimps have shifted to bungalows in distant colonies and carry on their profession with added vigour. Thus the purpose of this Act is defeated. What may have been designed as a solution has only added to the problem. For instance, the requirement of 200 yards distance has strengthened the arms of pimps, it has also provided the guardians of the law (police) with an added opportunity to collect more hafta (regular cuts) from the pimps and prostitutes.

Another difficulty is posed by Section 15(2) of the Act which provides that the Special Police Officers conducting the raid should take along two or more witnesses, one of whom should essentially be a woman from the locality. This is a very impractical suggestion to say the least. Which women from the neighbourhood would volunteer to venture forth, knowing the embarrassing nature of the task and the likely police 'harassment' in the form of attending police station, signing panchanama, etc.? It makes more sense for the police to bring a woman constable as witness at the time of the raid. The Act also provides for the shifting of prostitutes rounded up from brothels to rescue homes. This too seems to us to be an impractical suggestion especially since the number of such homes are few and have limited accommodation.

Another limitation or weakness of the Act is its limited scope. Instead of addressing itself boldly to the wider task of discouraging, abolishing and rehabilitating the prostitutes (especially those coerced or forced into the profession by circumstances or humans), it merely stays content with providing for such offences as brothel keeping or prostituting within 200 yards of any public place like religious workship, educational institution etc. However, those found guilty of the
above, are liable to imprisonment of a minimum of one year or maximum 2 years and a fine of Rs.2000/- on first conviction. There is also a provision for the magistrate to rescue women who are forced into prostitution, as well as order deportation of the women concerned, where the activity becomes intolerable. All these provisions have so far proved futile. The rate at which the ghastly trade flourishes unchecked, with the ever increasing army of procurers, pimps, call girls, etc. renders the very Constitution of India with all the relevant Fundamental Rights, the Directives and the Act itself, a collection of hollow words. My study visit to the red light area of Baina, Vasco, was a revelation of the morbid state of affairs, at the sorry sight of those 630 and odd humans, equal citizens of an independent India, yet entangled in the morass of vice for no fault of theirs.

Mere legal provisions and institutionalization are inadequate. There is greater need for both, society and women, to internalize reforms. Since prostitution is partly a solution to the larger economic problem of poverty one way to combat it would be by adopting policies and programmes to eradicate poverty and ensure full employment. Avenues for self-employment of women need to be opened up. Next, the various government and voluntary agencies must seriously take up the task of rehabilitation of prostitutes who desire to give up the profession, especially facilities for educating the daughters of prostitutes must be provided so that they may not fall into the trap of prostitution. If necessary the young daughters must be separated from the mothers who have adopted prostitution as a profession, by starting special boarding schools for them. According to the report of the Secretary of the Indian Health Organization, Dr. Iswar Prasad Gilada, II to 15 thousand minors are forced into prostitution in Bombay city alone. Constant medical checks of prostitutes and their children is also necessary, especially since it is a well known fact that Sexually Transmitted Diseases (STD) are widely prevalent in most brothels. For instance, in the Baina red light area in Vasco (Goa), out of the 630 prostitutes, 401 tested positive to signs of STD. Of these 99 prostitutes were tested HIV (Human Immuno-deficiency Virus) positive. In short, the battle against prostitution has to be fought on many fronts. There is need for a drastic change in the existing reality, not only in the legal sphere but also in the political, economic and social, if women have to be provided a fair deal and a fair chance in life. In the absence of such efforts, Indian women will always find themselves cruising in rough seas in search of 'gender justice' waiting for the day, which is yet to dawn, when they can hopefully wake up truly emancipated.
NOTES

1. Gargi Matreyi, Vachanaika, to name a few, were well known philosophers of the Vedic period. For account of women in Ancient India see Shastri Shakuntala Rao, 'Women in Vedic Age', Bhavani Book University, Bombay 1969. Also see Altekar A.S. 'Position of Women in Hindu Civilisation', Banaras 1956. p.410-411.


3. In 1829 Lord William Bentinck, the then Governor General in British India abolished Sati and declared it a crime against women. Vide Kotwala N.G. 'Raja Ram Mohan Roy and the Indian Awakening', Gitanjali Prakashan, New Delhi 1957.

4. In his pamphlet 'Modern Encroachments on the Ancient Rights of Female', he pleaded for a change in Hindu Law of Inheritance so as to improve the lot of Hindu widows.

5. The Parsi Social Reformer Behramji Malbari's vehement attack on child marriages was mainly responsible for the passage of 'Age of Consent Act 1881'.


8. See 'Women Lecturers Mobilize against Dowry Death' in the book 'In Search of Answers.' pp 213-214 and also Blitz 27th July 1985, pg.20.


10. — as per the findings of the Committee on Status of Women in India, Op.Cit. Delhi 1974. This incident took place on the outskirts of Delhi city.


13. Ibid.


15. This case study is based on reports published in local newspapers - *Navhind Times* 8th and 10th May 1993 and *Herald* 9th May Panjim (Goa) 1993.


18. The large number of cases where the lower court convicts but the higher court acquits also encourages dowry harassment. Take the case of Manjushree Sarda who was done to death in 1982 at Pune, by husband Sharad Sarda, a chemical engineer, by administering potassium cyanide. The cause was the strained relationship of the couple as a result of which there was another woman (may be richer one) in the life of Sharad. The High Court sentenced the husband to death but the Supreme Court acquitted him on the ground that the woman was psychologically disturbed with the illicit relationship and hence may have committed suicide. Vide *All India Reporter, 1984,* Government of India, New Delhi SC 1622.

19. See Sunday (magazine) Bombay, issue dated 22nd April 1984 the article entitled 'Heeding Women's Appeals'.

20. This Act came into force on 1st July 1961 vide notification in Gazette of India Extraordinary, Part II, Section 3 (11) pg. 1005.


22. See *All India Reporter,* L.V.Jadhav v/s Shankarao Pawar 1983 (4) SCC 1219.
23. Unfortunately in the Sudha Goel case, the sentence was not carried out, the three some were acquitted by the High Court.

24. **Manushi 1983** (Delhi) 'Forum Against Oppression of Women'.

25. Cited in the book *In search of Answers*, pg. 298 based on letters to Manushi. This incident dates back to early seventies.

26. Figures as per the findings of the Marie Stopes Institute, Delhi, Cited in *Indian Women through the Ages*, by S.K. Ghosh, Ashish Publishing House, Delhi 1989.

27. Ibid.


31. Section 160(l) of the Criminal Procedure Code.

32. **Indian Express Bombay 10th July 1983:** ‘Rape Victim Seeks Justice’, by Sanjeev Kumar.

33. This information was collected from the cases recorded with the ‘Bailancho Saad’ and from a flash in the Navhind Times dtd. 7th August 1990.

34. See Navhind Times 28/2/90 and also 1st March to 6th March, 1990.


36. Information collected from the cases recorded with the ‘Bailancho Saad’ and Navhind Times 7th August 1990.

37. **2-SCC 143 - Tukaram v/s State of Maharashtra 1979.**
38. This Bill sought to modify the Rape Law i.e. the Indian Penal Code 1960, Criminal Procedure Code 1973 and the Evidence Act 1872.


41. Navhind Times, Panjim, Goa, 10th Dec. 1992 p.9, Story entitled 'Cop sentenced to death for raping maid'.

42. Correia Afonso P., 'A mulher na India Portuguesa', Tipografia Bragança, Nova Goa, 1933.


44. Punekar, S.D., and Rao, K. - 'Study of Prostitution in Bombay', 1962 pp 91-92. See also Ghosh S.K., 'Indian Women through the Ages', pp 265-268 and Indian Express, 14th February 1984, 'Plight of Devadasis'.


47. Sunday Observer, Bombay, 2nd January 1983.

APPENDICES

Appendix I

The Questions posed to the Principals of Colleges affiliated to the Goa University, in order to ascertain the extent of implementation of 'Reservation' for Scheduled Castes and Scheduled Tribes in teaching positions:

Questionnaire

1. What were the number of vacancies from 1985 to 1992?

2. How many posts were reserved?

3. Were these posts advertised as 'reserved'? Yes/No.

4. How many of these posts were filled up by Scheduled Caste and Scheduled Tribe candidates?

5. If unfilled, what was the reason?
Appendix II

In order to test the sense of political efficacy of the lone MLA, representing the SCs in Goa from the Pernem constituency, Shri Dev Mandrekar, the following questions were posed:

1. Do you think that the Officials do/not care much about what you think, because you represent the Scheduled Castes?
   YES       NO

2. Is voting the only way people like you can have any say in running the Government?
   YES       NO

3. Do you think people like you have absolutely no say in what the Government does?
   YES       NO

4. Do you find Government and politics complicated and difficult to understand?
   YES       NO

5. Besides being a Scheduled Caste representative, you also belong to a party. Do your party bosses stop you from raising Scheduled Caste issues in the Assembly Sessions?
   YES       NO
Appendix III

The case studies pertaining to dowry in Goa were studied with the help of the following questionnaire:

1. In which year were you married and at what age?

2. Where was your husband from?

3. What was he by profession?

4. What was his financial status?

5. Was your marriage a proposed one or a love marriage?

6. Was there a demand for dowry?

7. If yes (i) How much in cash/gold?

   (ii) What were the items in kind?

8. Was your family in a position to meet the demand?

9. Did the dowry demand lead to indebtedness?

10. What was the debt incurred?

11. How did your family meet the demand?

12. Which part of the 'Stree-dan' was given to you voluntarily?

13. Is there any further demand now or a reminder for more?

14. Is there any different treatment given to you compared to other daughters-in-law, on grounds of dowry only?

15. After how many months did the problem in your marriage crop up?

16. Was dowry the only cause?

17. What was the type of harassment meted to you?
18. Who was/were the oppressor(s)? Husband/mother-in-law/sister-in-law.

19. Is there any child out of this marriage?

20. If yes, who has the custody?

21. How many times did you leave his house and how many times did you re-unite?

22. Has a case been filed? YES/NO
   (i) in Court for divorce?   (ii) in Family Court?

23. What are your chances?

24. Do you think reconciliation would be better so as to do justice to the child (if any)?

25. Given the divorce, would you contemplate a re-marriage?

26. Do you think justice has been done to you, to your parents?
Appendix IV

Data was collected from the Goa Medical College Hospital, regarding 'Women Victims of Burns', with the help of following questions.

1. Name of the Victim:

2. Age:

3. Date of the incident:

4. Place:

5. Date on which the victim was admitted in the hospital and by whom:

6. Was it an (i) attempted suicide; (ii) attempted homicide?

7. What was the cause? Dowry/any other?

8. Who was the oppressor? Husband/mother-in-law/sister-in-law?

9. How was the injury inflicted? What was the percentage of burns?

10. Fatal/victim survived.

11. The victim was from: a) Hindu Upper Caste; b) Middle Class; c) Bahujan Samaj; d) Christian; e) Muslim;

12. Was a case registered? a) with the Police? b) as a Medico-legal case?

13. By whom? a) neighbours? b) relatives?

14. What was the version of the relatives?
   a) admitted being a party to the crime?
   b) declared it accidental (stove burst)?
Appendix V

The Questions posed and discussed with the fallen women at the redlight area at Baina Vasco on the 2nd February 1993, are listed below.

(Note: Questions were posed and discussed in Hindi, Konkani, English)

Questionnaire

1. What is your name?
2. What is your status? Married/Widow/Spinster
3. Where do you hail from?
4. When did you come here? What was your age then? How old are you now?
5. How did you land here? a) Voluntarily; b) Under duress; c) Deceived with a promise of employment.
6. If voluntarily, in order to earn money, then, was there no other way of earning?
7. Does your family (in your home town) know the source of your income?
8. What is your income per day/per week?
9. Have you to give any cuts? a) to the keeper b) police c) officials in charge?
10. What happens if you get no customers?
11. Are you really happy in this trade? Can you work without remorse, fear?
12. What are the difficulties you face when exposed to society?
13. Have you any children? What does the future hold for them? Do you not think that it is unfair to children, for you to carry on your activity in their presence?
14. Do your children go to school?
Do your children complain of any indifferent treatment, or injustice, because of their home and parentage?

15. Have you a daughter? Do you intend initiating her also in this trade?

16. Given an opportunity, are you prepared to leave this place and start a new life far from this drudgery?

17. Does the society not look down upon you with indignance? Don't you feel bad?

18. Society forgets everything gradually. Are you willing to take a bold step and venture far out of this rut (solely because of your children) even if you have to remain poor, rather than barter away their decency and self respect?

19. Have you to put up with any harassment from people like the police, Government officials, etc.?

20. Do you get any help from the Government?
   What sort of help?

21. You surely have a home somewhere, do you not at times feel a strong desire to go back for good, to where you belong?

22. Taking for granted that you wish to become, once again, a respectable member of the society, what help do you expect from the society and from the Government towards this goal?
BIBLIOGRAPHY


Baig, Tara Ali - *Women in India*; Publications Division; Delhi, 1958.

Balasubrahmanyan, Vimal - In Search of Justice; Shubhada Saraswat Prakashan; Pune, 1990.


.......................... - Introduction to the Constitution of India; Prentice Hall of India Pvt. Ltd; New Delhi, 1976.


.......................... Castes: Old and New Essays in Social Structure and Social Stratification; Asia Publishing House; Bombay, 1979.

Bharadwaj, A.N, - Problems of Scheduled Castes and Scheduled Tribes in India; Light and Life Publishers; New Delhi, 1979.

Bhatt, Anil - Caste, Class and Politics; Manohar Book Service, Delhi, 1975.

Biker Julio Firmino Judice - 'Collecção de Tratados e Concertos de Pazes, Tomo XIV, Imprensa Nacional Lisboa, 1887.'

Bingley, A.H. History of Caste and Culture of Jats and Gujars; Ess. Ess Publications (Ed); New Delhi, 1978.


Bose, N.K, - Culture and Society in India; Asia Publishing House, Bombay, 1967.
Bose, P.K., - *Caste, Conflict and Reservation*; Ajanta Publications; Delhi, 1985.


Caplan, Patricia - *Class and Gender in India*; Tavistock Publications; London and New York, 1984.

Census of India (1931) - Government of India; New Delhi, 1931.

Central Institute of Research and Training in Public Cooperation *Women in India*; International Women's Year, 1975.


Chawla, Prabha - *Equality and Justice in East and West*; Classics India Publications; Delhi, (India) 1989.


Cormach, Margaret L., - *The Hindu Women*; Asia Publishing House; Bombay, 1961.

David Lane - The End of Social Equality; George Allen and Unwin; London 1982.

De Souza, Alfred, - Women in Contemporary India, Traditional Images and Changing Roles; Manohar Publishers; Delhi 1975.

Desai, A.R., - Rural Sociology in India; Popular Prakashan; Bombay, 1959.

Desai, Neera - Women in Modern India; Popular Prakashan, Bombay, 1957.

.......................... - A Decade of Women’s Movement in India; Himalaya Publishing House; Bombay 1988.

Dessai, Neera and Patel, Vibuti - Indian Women - Change and Challenge in the International Decade 75-85; Popular Prakashan; Bombay 1985.


Devasia, Leelamma and Devasia, V.V.: Female Criminals and Female Victims; Published by Vinod Nangia for Dattsons, Nagpur, 1989.


Everett, Jane Matson - *Women and Social Change in India*; Heritage Publishers; New Delhi, 1981.


Galanter, Marc - *Law and caste in Modern India*; Asian Survey No.3(II) 1963.

Gallagher, Margaret - *Unequal Opportunities: the Case of Women and the Media*; Unesco Press; Paris (France) 1981.


Gavai, R.S., - *The Caste War Over Reservations*; Maharashtra State Republican Part Coordination Committee.


Ghurye, G.S., - *Caste and Class in India*; Popular Book Depot; Bombay 1950.


Government of India - Constitution of India; New Delhi, 1950.


Gulati, Saroj, - Women and Society; Chanakya Publishers; Delhi, 1985.

Gupta, Dipankar - Social Stratification; Oxford University Press, Delhi, 1991.


Gupta, K., - Social Status of Hindu Women in Northern India (120-1707 AD); Inter India Publications; New Delhi 1987.

Haspel, Eleanor C., - Marriage in Trouble; Nelson Hall; Chicago 1979.


Hooja, S.L., - Dowry System in India: A case study; Asia Press, Delhi, 1969.


Indian Constitution - Govt. of India, Publications Division, New Delhi.


International Women's Year - Newsletter No.2; Women's Welfare Division, Department of Social Welfare, Govt. of India, New Delhi (April) 1975.

Issacs, H.R., - India Ex-Untouchables; Asia Publishing House; Bombay 1965.


Jain, Devaki, - Indian Women; Govt of India, Publications Division, (Ministry for Information and Broadcasting), New Delhi, 1975.


Jain, Jagdish and Walli, Margaret: Women in Ancient Indian Tales; Mittal Publications, Delhi 1985.

Jain, Shashi - Status and Role Perception of Middle Class Women; Puja Publications, New Delhi, 1988.


Joardhar, B., - Prostitution in Nineteenth and Early 20th Century Calcutta; Inter-India
Publications; New Delhi, 1985.


Kane, P.V., - A History of Dharmashastra Vol 1 - 5; Bhandarkar Oriental Research Institute; Poona 1930-72.


Kanhere, Usha, - Women and Socialism; Mittal Publications; New Delhi, 1987.

Kapadia, K.M., - Marriage and Family in India; Oxford University Press; Calcutta, 1966.

Kaur, Amrut - To Woman; Navjivan Publishing House; Ahmedabad, 1948.

Kaur, Inderjeet - Status of Hindu Women in India; Chugh Publications; Allahabad, 1983.

Kelsons, Hans - What is Justice? University of California; Berkley/Los Angeles, 1957.

Khan, Mumtaz Ali - Scheduled Castes and their Status in India; Uppal Publishing House; New Delhi, 1980.


Kidwai, M.H., - Polygamy; Muslim Book Society; Lahore, 1920.

Kishwar, Madhu and Vanita, Ruth - In search of Answers; Indian Women's Voices from Manushi; Horizon India Books; New Delhi, 1991.

Kothari, Rajani - "Introduction" in Caste in Indian Politics; Orient Longmans Ltd.; Delhi, 1973.

Footsteps into the Future; Orient Longmans Ltd.; New Delhi, 1974.


..................... - Indian Social Justice in Crisis; New Delhi, 1983.


Krishnamurthi, J.K. - Women in Colonial India; Oxford University Press; New Delhi, 1989.

Krishnaswamy, S., - Glimpses of Women in India; Ashish Publishing House; New Delhi, 1983.


Kumar, Manju - Social Equality: Constitutional Experiment; S. Chandra Company Ltd.; New Delhi, 1982.

Kuppuswamy, B., - Social Change in India; Vikas Publictions; Delhi, 1972.

..................... - A Study of Opinion Regarding Marriage and Divorce; Asia Publishing House; Bombay, 1957.

Laing, Margaret - Women on Women; Sidgwick and Jackson; London, 1971.


Lohia, Ram Manohar - *Caste System*; Ram Manohar Lohia Samata Vidyalaya Nyas; Hyderabad, 1964 (rept. 1979)


Mahar, Michael J., - *The Untouchables in Contemporary India*; The University of Arizona Press; Arizona, 1972.


Maurya, S.D., - *Women in India*; Chugh Publications; Allahabad (India), 1988.


Mehta, Rama - *The Western Educated Hindu Woman*; Asia Publishing House; Bombay, 1970.

*Social Legal Status of Women in India*; Mittal Publications; New Delhi, 1987.
Mehta, S., - Revolution and Status of Women in India; Metropolitan Book Co. (P) Ltd.; New Delhi, 1982.

Mies, Maria - Women: The Last Colony; Kali for Women; New Delhi, 1988.


Mukerjee, Santosh Kumar - Prostitution in India; Inter-India Publications; New Delhi, 1986.

Mukerjee, S.N. and Maddern, Marian - Chatterjee Bankim Chandra: Sociological Essays; RDDHI - INDIA; Calcutta, 1986.


Murthy, B.S., - Depressed and Oppressed; S. Chand and Company; New Delhi, 1972.

Muthuswamy, P. and Brinda V., - Establishment and Administration for Central Govt. - Officers (Verification of Claims of Scheduled Caste and Scheduled Tribes), Swamy Publishers (P) Ltd.; Madras, 1991.

Nair, P.T., - Marriage and Dowry in India; Minerva Associate Publications; Calcutta, 1978.


O'malley, L.S.S., - Indian Caste Customs; Vikas Publishing House; Delhi, 1974 Ed.

Pal, B.K., - Problems and Concerns of Indian Women; ABC Publishing House; New Delhi, 1987.


Paul, Madan Chandra *Dowry and Position of Women in India*; Inter India Publications; New Delhi, 1986.

Peres de Lima, Fernando Andrade and Varela Joao, de M. Antunes, *Código Civil Português*; Editora Limitada; Coimbra, 1956.


Ram, Jagjivan *Caste Challenges in India*; Vision Books Pvt. Ltd.; New Delhi, 1980.
Rao, B. Shiva (Ed.) - The Framing of India's Constitution; Indian Institute of Public Administration; New Delhi, 1972.


Rego, A. da Silva - “Le Patronage Portugais de L'Orient” (translated from Portuguese by Jean Haupt), Published by “Agencia Geral do Ultramar; Lisboa, MCMLVII (1957).

Reshercher, Nicholac - Distributive Justice; Bobbs Merrill; New York, 1966.


Roy, Shibani - Status of Muslim Women in India; B.R. Publishing Corporation; Delhi, 1979.


Sahai, S.N., - Women in Changing Society; Mittal Publications; Delhi, 1985.
Saletore, B.A., - Ancient Indian Political Thoughts Institution; Asia Publishing House; Bombay, 1963.

Sanger, Williams W., - The History of Prostitution Throughout the World; Inter-India Publications; New Delhi, (1937) Ed. 1986.

Sapru, R.K., - Women and Development; Ashish Publishing House; Delhi, 1989.

Saraswati, Pandita R., - The High Caste Hindu Woman; Inter-India Publications; New Delhi, (Reprint) 1984.

Saxena, R.N. (Ed.) - Sociology in India; Agra, 1965.


Shah, Ganshyam - Caste Association and Political Process in Gujarat; Popular Prakashan; Bombay, 1975.

Shah, Kalpana - Womens Liberation and Voluntary Action; (Historical Antecedents), Ajanta Publications; Delhi, 1984.

Shah, Vimal and Agarwal, B.C., - Reservation Policy, Programmes and Issues; Rawat Publications; Jaipur, 1986.


Sharma, K.L., - Essays on Social Stratification; Rawat Publications; Jaipur, 1980.


Shastri, Herambe Chatterjee - Forms of Marriage in Ancient India; Vol. I; Sanskrit Pustak Bhandar; Calcutta, 1972.

Shastri, Shakuntala Rao - Women in Vedic Age; Bhavani Book University, Bharatiya Vidya Bhavan, Bombay, 1969.

Shoba, V., - Rural Women and Development; Mittal Publications; Delhi, 1987.

Showeb, M., - Education and Mobility among Harijans; Gandhian Institute of Studies, Vohra Publishers; Allahabad, 1986.


Singh, K.K., - Patterns of Caste Tensions; Ashish Publishing House; Bombay, 1967.

Singh, P., - Equality, Reservation and Discrimination in India; Deep and Deep Publications; New Delhi, 1982.


Sivaramaya, B., - Inequalitites and the Law; Eastern Book Co; Delhi, 1984.

Smith, W.C., - Modernization of Traditional Society; Asia Publishing House, Bombay, 1965


Srinivas, M.N., - Caste in Modern India and Other Essays; Asia Publishing House, Bombay 1970.

Srinivas, M.N., - Social Change in Modern India; Allied Publishers; Bombay, 1966.


The Goa Daman and Diu Advocates Association - *Glimpses of Family Laws of Goa Daman and Diu*; Goa Seva Samiti; Magao (Goa) 1982.


Thomas, P., - *Indian Women through the ages*; Asia Publishing House, Bombay, 1964.


Tripathi, P.K., - *Some Insights into Fundamental Rights*; University of Bombay, Bombay, 1972.

Trivedi, Harshad R., - *Scheduled Castes: Studies in Exploitation with Reference to*
Superstitions, Ignorance and Poverty; Concept Publishing House; Delhi 1977.


Usagokar, M.S. - Family Laws of Goa, Daman and Diu, Vol.II; Vela Associates; Panaji (Goa), 1988.


Verghese, Jamika - Her Gold and Her Body; Sahidabad, Vikas Publishing House, Delhi, 1980.

Verma, H.N. and Verma, Amrit - Indian Women through the Ages; Great Indian Publications, New Delhi, 1976.

Vimal, Chandra - Handbook on Scheduled Castes and Scheduled Tribes; Govt. of India, Delhi, 1981.

Vivekananda, Swami - Caste, Culture and Socialism; Advaita Ashram; Calcutta, 1963.


REPORTS AND ACTS CONSULTED:

Brochure on Reservation of Scheduled Castes and Scheduled Tribes in Services (IV Edition), Ministry of Home Affairs, Delhi, 1982.


First Five Year Plan Report; Government of India, Planning Commission; Delhi 1951.

Indian Evidence Act, Delhi Law House, Delhi, 1872.

Indian Penal Code, Delhi Law House, Delhi, 1860.


Report of the First Backward Classes Commission (1953); Ministry of Home Affairs; (Chairman - Kakasaheb Kalelkar); New Delhi, 1956.


Supreme Court Judgment dated 16th November, 1992 - Salient Issues and Orders of Court, Delhi, 1992.

The Hindu Marriage Act, 1955 (Act No. 25 of 1955) - ‘Bare Act’ (As amended upto date); Delhi Law House; Delhi, 1988.

The Probation of Offenders Act, Delhi Law House, Delhi 1958.
NEWSPAPERS, JOURNALS, ETC:

Blitz, Weekly, Bombay.

Bombay, Fortnightly, Bombay.

Eve’s Weekly, Bombay.

Femina, Fortnightly, Bombay.

Frontline, Fortnightly, Madras.

Navhind Times, Daily, Panaji (Goa).

Gomantak Times, Daily, Panaji (Goa).

Herald, Daily, Panaji (Goa)

Hindustan Times, Daily, Delhi.

India Today, Fortnightly, Thompson Press, Delhi.

Indian Express, Daily, Bombay.

Journal of Indian Law Institute, Quarterly, Delhi, 1969.

Manushi, Manushi Trust, Delhi.

Navhind Times, Daily, Panaji (Goa).

Parade, Monthly, Bombay.

Savvy, Monthly, Bombay.

Society, Monthly, Bombay.

Statesma, Daily, Calcutta.

Sunday Observer, Weekly, Bombay.
Sunday Standard, Weekly, Bombay.

The Hindu, Daily, Madras.

The Illustrated Weekly of India, (Times of India Press), Bombay.

The Times of India, Daily, Bombay.

Women's Era, Monthly, New Delhi.

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