

RESERVATION POLICY IN UTTAR PRADESH

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Uttar Pradesh is the heart of Indian Union for its geographical, historical and cultural characteristics and political influence.

According to 1931 census, among the Hindus the most numerous caste was that of Jatavas, who constituted 12.72 percent of the State's population and next to them were Brahmins (9.18 percent), Ahirs (7.85 percent), Rajputs (7.57 percent) and Kurmis (3.54 percent) *1. An approximate numerical division of Hindus in these three categories at present stands as - Forward Castes 25 percent, Backward Castes 48-50 percent and Scheduled Castes 25-26 percent.

The weaker sections of U.P. live segregated, stigmatized life and are educationally backward. They are yet to achieve proper representation in Jobs. However, since independence they are witnessing and functioning in a mixed atmosphere of adverse as well as supportive situations which has given the whole thing a new turn. Particularly, the Scheduled Castes have succeeded in capturing the newer positions of power because of reservations. It was claimed that congress got a permanent vote in them. But now it is not the case. Their upward mobility is a welcome feature of Indian Political System. They have succeeded in becoming Ministers, Mayors, Corporators, Village Pradhan etc. It is not anyway a small achievement considering the fact that they had been denied any share in power in the past. They are behaving in the politics as an entity in their political actions. Because of their numerical strength, all political parties have tried to pursue their demands and fulfil their causes. But the socio-economic dependency and lack of subsistence resources had made the political inroads difficult.

In U.P. Brahmins and Kayasthas were the first to take to modern education. The Kayasthas

particularly started dominating the public services as well as the professions. Later on, around the forties the Baniyas too started taking to the modern professions. The dominant landed gentry, the Rajputs never felt threatened by the Brahmin-Kayastha monopoly of education, profession and government services. The Rajput Zamindars of U.P. who were considered as the staunch supporters of the British Raj never felt threatened by the Brahmin dominance in the services and the national movement. The cultural distance between them and the Brahmins was not much, but they have been numerically inferiors to Brahmins. Their own consciousness of a high status and the ritual distance between them and the backward castes, which they relished, did not dispose them to lead only protest movement against the Brahmin-Kayastha dominance. The Zamindari abolition in 1952 did not completely upset the political economy of U.P. Brahmins and Rajputs still have considerable stake and share in the rural power structure and dispensation. *2

During the pre-independence days there were some discontent among the backward castes. Leaders like Swami Achutananda, Swami Ram Charan Mallah, and S.D. Singh Chaurasia were trying to politicize the backward castes. Backwards staying in the Hindi heartland could not be persuaded to reject Brahminism. In the forties the peasant castes of Yadavas, Kurmis, Koeris and Jats developed a high degree of affinity among themselves. Out of this affinity among them arouse AJGAR (Ahir, Jat, Gujjar) movement. Some annual conferences of Yadav Mahasabha also motivated opposition to the Thakurs, Kayasthas, Baniyas, Bhumihaar Brahmins and Brahmins who were considered as the exploiters of them, ill treated them and thwarted their attempts to progress. *3 the demand for the reservation of

jobs was there from the thirties, but the top congress leaders were not favourably disposed. *4

These were some movements but there was no unified political platform for the OBCs and SCs. The process of Sanskritization was adopted by the lower castes to achieve the status of upper castes. This produced the ability of the upper backward classes to land the smaller and weaker artisan castes and the Scheduled Castes and Tribes. But the social mobility by sanskritization was limited to only a few Backward Castes because of a pre-condition that a Backward Caste should have experienced some measure of economic prosperity and produced a few articulate and educated elite. They should have some religious knowledge to prove that their caste had once a higher status. This is not possible for the millions belonging to the Backward Castes. This thwarted a common movement among them. *5

Because of the congress role in the national struggle for freedom, the leadership of Gandhi Ji and later on the privilege offered by the constitution, the party became a permanent home of, particularly the Scheduled Castes of U.P. Gandhi Ji floated Harijan Sevak Sangh, Depressed Classes League, Anti-untouchability programme. Congress offered a good future plan for them even in the Nehru Committee Report. Their mass support to the congress in the post-independence period has made them a vital force. *6

The weakness of the mobilization of the Backward Castes is obvious from the caste composition of the various Ministers since 1937. In the 1937-39 cabinet, the Brahmins held three out of six posts and the OBCs were not represented even among the Parliamentary Secretaries. The same pattern prevailed till 1952. Charan Singh who was a Jat, was taken into the Cabinet. The backward classes made considerable gains in the 1967 elections and three Ministership went to the upper peasant castes. The decline of the congress also meant the decline of the forward castes representation in the Assembly also between 1967 and 1974, the share of the forward castes declined from 50 percent to 42 percent. The share of upper

peasant castes went from 15 percent to 20 percent. In the Assembly elections of 1977 when the Janta Party won the share of the Jats and OBCs increased considerably. *7

As far as the question of reservation is concerned, in 1945 the Education Department of the then Provincial government had prepared a list of 37 Hindus and 21 Muslims castes for providing educational facilities treating them as Backward Classes. After independence the government of India in 1950, asked for a list of Backward Classes. The matter was examined by a sub-committee of the State Government of Uttar Pradesh. The order of 1950, while reserving 10 percent jobs to the Scheduled Castes, only said that the interests of the backward classes shall in general be borne in mind. In 1955, two lists of OBCs were prepared one of 15 castes for recruitment to jobs and the other of 59 for educational concessions. In 1958 the State Government again prepared two lists of the OBCs, one a Hindu list of 37 castes and other a Muslim list of 21 castes for jobs and educational concessions. No reservation scheme was proposed. The U.P. Backward classes Commission was appointed in October 1975 to identify the backward classes and to suggest the remedies for their backwardness. It submitted its final report in June 1977. This Commission is known by the name of Chhedilal Sathi Commission which was appointed for considering the conditions of what are described as 'most backward classes of citizens as contra-distinguished from backward' simpliciter classes of citizens and to suggest means to improve their lot. On the basis of the criteria of poverty, illiteracy, dwelling, profession and demeaning profession, representation in caste, social inequalities, government, representation in trade and commerce, inadequacy of the commission prepared three lists of the OBCs. List A consisted of 36 castes, mostly having little or no control over land. List B consisted of 18 peasant castes having some connection with land, which included Yadavas, Gujjars, and Kurmis etc. List C included 23 Muslims Backward Castes. The Jats have never claimed to be backward due to their self-respect. The Commission recommended a compliment reservation scheme. It

proposed 17 percent reservation in government services and educational institutions for list A; 10 percent for list B; and 2.5 percent for list C. This total reservation of 29.5 percent would be in addition to 20 percent already in existence for SCs and STs. *8

What the Sathi Commission did was to enlarge the list of 'most backward' classes identified by the Kaka Kalelkar Commission, by adding a few more communities which deserved that appellation in as much as each of these was considered to be socially backward as a whole or is in its entirety.

In the Assembly elections of 1977 the Janta Party won and Ram Naresh Yadav became the Chief Minister. The representations of Jats and OBCs increased and the government mistook this increase for a durable rise of the backwards and was emboldened to issue the government order of August 20, 1977. It provided for the following scheme of reservations.

Under Article 16(4) for class I and II Services:-

Scheduled Castes	18%
Scheduled Tribes	2%
Physically Handicapped	2%
Dependents of Freedom Fighters	5%
Ex-military Officers (emergency commissioned)	8%
Other Backward Classes	15%
Total	50%

Same pattern was instituted under Article 15(4) for industrial training institutes.

The resentment among the forward castes resulted in the form of a widespread agitation. Even some government servants joined the agitation. The demand of the agitators was that class and not caste should be the criterion of social and educational backwardness. The Yadav government sought to establish smaller coalition of caste groups to enlarge the gains. The agitation continues by the adversely affected groups of Brahmins, Rajputs, Bhumihars and Kayasthas. Processions, Bandhs, agitations, boycott of classes, attack on public property became

the order of the day. There were counter-demonstrations also organized by the youths of Ahir, Kurmi and Koeri castes. *9 the parties like Janta and Janta (S) lost substantial part of their votes among forward castes. The Anti-caste slogan of Congress (I) was favoured by them in 1980 elections

To keep about 20 percent of entrenched forward castes out of the reservation scheme and to compel them to compete for only 50 percent of the Jobs in the open merit pool, tremendous political organization, mobilization and cohesion is required on the part of all the backward classes. Such conditions were not there and Ram Naresh Yadav tried to direct these changes in a short period. Due to the belated and imperfect mobilization of the backwards the attempt to combine the AJGAR movement with reservation for the backward classes failed. *10

The G.O. of 1977 enumerated the Backward Classes as comprising Ahirs, Kurmis and some other castes. In the case of Chhotey Lal and others V. State of Uttar Pradesh *11 the petitioners alleged that many belonging to these castes were not economically and socially backward. Many were doing well, some were highly educated and occupying high offices, while others were in professions such as Lawyers, Doctors etc. Hence the entire caste mentioned in G.O. could not be termed 'backward class' within the scope of Article 16(4). Therefore, there is no rational basis for creating reservation for them. The questions were about the determination of backward classes and whether the G.O.s issued in 1955, 1958 and 1977 were a fraud on the constitutional powers conferred on the State by Article 16(4) construed in the light of Article 15(4) and therefore void. The G.O. and the counter-affidavit filed on behalf of the State revealed that no survey or data collection in any manner was done by the State government. No fact finding inquiry was alleged to have been made.

The Court was of the view that in the recruitment to State services, three basic principles emerged from the Supreme Court judgements - (1) the State has power to lay down classifications or categories of persons from whom recruitment to the

public service may be made (ii) the principle underlying Articles 15(4) and 16(4) was that a preferential treatment could validly be given because it was needed by the socially and educationally backward classes so that in the course of time they could stand in an equal position with the more advanced sections and (iii) this principle could be applied to those who were handicapped and not to those who fell under Article 15(4).

The Court found that the inclusion of certain castes among both Hindus and Muslims as Backward Classes by the State government was based ultimately on the list prepared by the pre-independence Provincial Government in 1945, which was presumably prepared on the basis that those castes were at that point of time educationally backward. To assume them as also socially backward and give them preferential treatment is not constitutionally justiciable. Moreover, agriculture was not considered as lowly occupation, though classes of agriculturists were educationally, economically and socially backward before independence. But later due to land reforms and adult suffrage their position changed considerably. Shifts of centres of influence of prestige in the society are inevitable.

The Court observed that if a large number of members of a caste are economically well off, that circumstance would have an impact on both their social and educational advancement and indirectly on that of the caste. Once a petition pinpoints his challenge with reference to a particular caste, it is for the government to show that these particular castes, the backwardness of which is disputed, were in fact backward.

After reviewing the case-law, the Court summed up the law regarding determination of "Backward Classes" as follows -

- (i) the bracketing of socially and educationally backward classes with the Scheduled Castes and Tribes in Article 15(4), and the provision in Article 338(3) that the reference to Scheduled Castes and Tribes were to

be construed as including such backward classes as the President may by order specify on receipt of the report of the commission appointed under Article 340(1), showed that in the matter of their backwardness they were comparable to Scheduled Castes and Tribes,

- (ii) the concept of backward classes is not relative in the sense that any class which was backward in relation to the most advanced class in the community must be included in it,
- (iii) the backwardness must be both social and educational and not either social or educational,
- (iv) Article 14(4) refers to 'Backward Classes and not backward caste', indeed the test of caste would break down as regards several communities which have no caste,
- (v) Caste is a relevant factor in determining social background but is not the sole or dominant test,
- (vi) Social backwardness is in the ultimate analysis the result of poverty to a very large extent. Social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens,
- (vii) A classification based only on caste without regard to other relevant factors is not permissible under Article 15(4); some castes are however, as a whole socially and educationally backward,
- (viii) the occupations followed by certain classes (which are looked upon as inferior) may contribute to social backwardness; and so may be habitation of people for, in a sense,

- the problem of social backwardness is the problem of rural India,
- (ix) The division of backward classes into backward and most backward classes is in substance a division of the population into the most advanced and the rest being divided into backward and most backward and this is not warranted by Article 15(4). Article 16(4) does not confer any right on a person to require that reservation should be made. It confers a discriminatory power on the State to make such a reservation if in its opinion a backward class of citizens is not adequately represented in the services of the State. Mere inadequacy of representation of a caste or class in the services is, however, not sufficient to attract Article 16(4) unless that class (including a caste as a whole) is also socially and educationally backward;
 - (x) The object of reservation would be defeated if on the inclusion of a class in a list of backward classes, the class is treated as backward for all times to come. Hence the State should keep under constant periodical review the list of Backward Classes and the quantum of the reservation of seats for the classes determined to be backward at a point of time;
 - (xi) The aggregate reservation of posts for various categories (including Backward Classes) should be less than 50 percent; and
 - (xii) The Courts jurisdiction is limited to deciding whether the lists applied by the State in determining the Backward Class citizens are valid or not. If the relevant tests have not been applied it is not open to the Court either to modify the list of "Backward Classes" prepared by the State or to modify the extent of reservation but it must strike down the offending part leaving it to

the State to take a fresh proper decision after applying the correct criteria.

The Court observed that in the very nature of the things, it is not possible for private citizens to make detailed investigation and survey all over the State or to supply the relevant data. It is only with the resources of government that such data can be collected and supplied to the Court.

The Supreme Court on 6th March, 1979 stayed the Order of the Allahabad High Court. It granted the State Government special leave to appeal against the High Court judgement as well as interim stay of the order.

In the elections of 1985, Congress (I) achieved majority. There was an important role of the sympathy wave. But in the elections of 1989, caste consideration played crucial role. The implementation of the Mandal Commission Report for 27% jobs for OBCs was included in the manifesto of the Janta Dal. The Mulayam Singh Yadav government came to power. Most of the OBCs and scheduled castes were with them. Within one week of coming to power he faced a widespread anti-reservation stir in the whole State which also spread in other parts of the country and created problems for the Centre. Bihar, Madhya Pradesh, Andhra Pradesh, Orissa and Jammu Kashmir were affected by the stir. The cause of the stir was proposed 62nd constitutional amendment to extend the reservation of seats in Parliament and State legislatures for further ten years for SCs and STs and Anglo-Indian community. The agitation became violent in districts of Eastern U.P. The Janta Dal government was in an absurd condition because it proposed the implementation of the Mandal Commission Report and the agitators were demanding that the reservation should be based on economic criteria instead of caste. Yadav was insisting that he would keep his promise about Mandal recommendations. But due to the intensity of the agitation on December 21, he declared that he would consider granting some reservation on economic basis irrespective of caste. *12

To 1985 the Supreme Court dismissed the appeal of the State government. The congress government in 1989 passed an act - U.P. Public Services (Reservation for Backward Classes) providing 15 percent reservation for OBCs in class I, II and III services and 10 percent reservation in class IV services. The list of OBCs was slightly changed.

When Prime Minister V.P. Singh announced the implementation of the recommendations of Mandal Commission on August 7, 1990, the U.P. Chief Minister Mulayan Singh Yadav fully supported him. He himself a leader of the Backward Class told in Lucknow that Mandal report would bring revolutionary changes in the country's socially and economically backward classes. He appealed to people belonging to upper castes to accept reservations for the backwards as leaders of upper castes had accepted it for SCs and STs. He said the reservations for the backwards will be implemented despite the widespread agitation against it. He blamed both the Congress (I) and the BJP for going to the streets against the reservations. He reiterated that there was no force in the country which could prevent implementation of Mandal Commission recommendations. *13

As the further fragmentation of the society was feared, the Chief Minister denied it. In his opinion implementation of the recommendations aimed at ensuring social justice to those who have been denied it for ages. The measure would in fact strengthen democracy. So far, a large section of society had felt neglected when it come to getting government jobs. This section would have the satisfaction of getting its deserved and due share in the administration. The government could not afford to ignore such vast segment of society which feels proud at having a government of its choice. *14 But the announcement about the reservation for OBCs triggered massive and widespread protest.

In Assembly elections of 1991, a saffron wave was evident in U.P. The BJP won 211 seats in the house of 425 and Kalyan Singh, a Lodhi by caste became the Chief Minister. In his selection for the post the caste factor was imminent. The Congress got 46 seats while the Janta Dal 91.

After becoming Chief Minister, Kalyan Singh supported the 27 percent reservation for OBC and promulgated an ordinance for the purpose. While the Supreme Court gave its verdict in the Mandal case in November 1992. The U.P. government appointed committee to redefine the OBCs and exclude the creamy layer. The committee was headed by Justice (Retd.) Umesh Chandra Srivastava, but in December 1992 the Kalyan Singh government fell on Ayodhya issue.

In 1992, the Allahabad High Court, in a landmark Judgement declared that caste based reservation in the scientific field, whether for admission in educational institutions, including medical and engineering colleges, or for appointment in the science departments of schools and colleges, were arbitrary and violation of Article 14 of the Constitution. The Court said that the time has come when it must be boldly and clearly said that there can be no compromise in the field of science and technology. A line has to be drawn somewhere to the policy of caste-based reservation.

The caste equations are very important in U.P. The results of 1991 assembly elections shows that despite saffron wave, there was clear effect of caste considerations on voting behaviour. The SC candidates come from reserve seats but OBCs constitute 34 percent of the population of State, there were 109 candidates from them out of the 425 Members house, while the member of SC candidates was 111. Every political party wanted their support, so they supported the recommendations of Mandal Commission. Except the hill areas, the ratio of OBCs is significant in the whole state and there are only 19 seats from hills. The population of Yadava, Kurmis, Lodhis and Gujjar is significant in Muzaffarnagar, Bulandshehar, Aligarh and Ghaziabad (western part) and in Ruhelkhand area of central U.P. and again in Agra, Mathura, Etawah and Mainpuri of western U.P. they are in big numbers. In eastern U.P. their proportion is even bigger in Azamgarh, Allahabad, Mirzapur, Basti and Gorakhpur. Two candidates for Chief Ministership Mulayan Singh and Kalyan Singh were from OBCs, which explicated the importance of these castes. *15

In the meantime the Kalyan Singh government was dismissed on the issue of Ayodhya in December 1992 and 1993 witnessed another assembly election. Every political party tried its best to obtain the maximum support of OBCs. The BJP continued the quota of 93 candidates and Congress increased it from 51 to 74. The SP and the Janta Dal gave 40 to 45 percent tickets to OBCs. *16 The results of this election were amazing. While in 1991, the SP and BSP had together won 42 seats but in this election, the combine won 176, just one short of the BJP's tally, demolishing the widespread prediction that the BJP would be the only party able to form a government. The SP-BSP combine represented a huge vote-bank comprising around 1 crore Yadavs and 1.58 crore Harijans. It did not take for Muslims to realise that this was a winning combination which they could not afford to ignore. So they voted for it en bloc. The turnout of Muslims votes was 70 to 80 percent, the highest ever in the State. Among Harijans too, there was a real enthusiasm for voting because they saw a definite chance of Kanshi Ram ending up sharing power with Mulayam Singh while the Janta Dal had long ploughed a lonely furrow on its twin planks of social justice and secularism, it was the SP-BSP combine that reaped the benefits. Being a leader of an upper caste V.P. Singh image was not of a real votary of social justice. Janta Dal got only 27 seats while Congress (I) one ahead 28.

The SP-BSP combine had gained across all five regions, but the major gains were in the previously BJP-dominated eastern U.P. with 87 seats. *17

There was an apprehension that this victory represented the increasing hegemony of the powerful Yadav community over the backward class movement and that it had in the process, bypassed the Mandal agenda for improving the lot of the OBCs. But neither the OBCs nor the SCs and STs are homogeneous aggregate. The surest way to loosen the hold of caste is to allow free play to democratic forces. But in a traditional society even such forces have to act through the established channel of social communication and mass mobilisation. These, unfortunately, happen to be the channel of caste

which give the people an immediate sense of identity and solidarity. Here, the caste associations may have a useful role in the process of democratic secularisation. What Mulayam Singh Yadav done was to take the OBC movement far beyond the Mandal parameters? Mandal's job reservation scheme was a slow reformist measure and it is yet to show results. Indian democracy lacks real substance and an improvement can come about only through structural changes which give great play to the invigorating forces of liberal democracy. *18

There is also inherent contradictions in Kanshi Ram's political formation. In 'building up the joint of SC-OBC electoral unity, he has ignored that at the ground level. There are deep differences in the interests of the largely landless Dalits and the landed and upwardly mobile intermediate castes. It is not only upper caste backlash that is hitting the Harijans but that the caste apprehension by the Kurmis and others has in reality the manifestation of a class war, *19

Soon after becoming the Chief Minister, Mulayam Singh Yadav announced on December 8, 1993, the restoration of reservation in government Jobs for the OBCs as per the recommendations of the Mandal Commission. The U.P. legislature passed a bill to this effect thereafter. The committee constituted by government under Justice U.C. Srivastava according to the directions of the Supreme Court gave its report before it. *20 The government also increased the reservation for SCs to 21 percent. The government also announced that it was considering the restoration of the Minorities Commission. The government order of 17 June, 1994 and notification of 28th July, 1994 provided 27 percent reservation for OBCs in educational institutions in the State.

The U.P. government decided to set up a State SC and ST commission armed with judicial powers. The objectives of the commission were to ensure implementation of the reservation policy and take action against those found guilty of lapses on this count. The commission was also empowered to investigate the complaints of atrocities on members of the SCs and STs. The commission would submit

suggestions regarding steps taken for the socio-economic upliftment of the SCs and STs and review the progress of various, schemes undertaken for their welfare. The commission would suggest ways and means for ensuring the protection of their rights and welfare. The commission would also investigate cases referred to it by the government and submit its recommendations over such matters. . *21

The declaration of reservation for OBCs created some crucial problems in the State. The proportion of OBCs is not equal in the State. It is different in different regions. That was the cause behind the anti-reservation stir in Uttarakhand region. When the provision of reservation in educational institutions was declared, a large scale agitation started in hill region. The population of OBCs is 2.64 percent here and the biggest fear of the hill people apparently was that they would be swamped by outsiders taking advantage of the small population of OBCs here. Reservation policy would deprive them of whatever limited educational and employment opportunities they have. The people of hill areas have serious grievances and significant demands which had not received their due consideration either at Lucknow or in Delhi. *22

The anti reservation stir got enmeshed with the demand for a separate Uttarakhand State and emerged into a powerful mass movement led by the ex-servicemen, students, women and even the government employees were actively involved in the agitation. Local resentment had also brewed because of poor political representation. There are 4 seats of Parliament and 19 seats of State legislature. Activists saw a separate State or a special delimitation of hill constituencies by waiving normal population criteria, as the only way to political empowerment. A separate State would give the people the means to decide their own future. Psychologically secession had already set in and the two issues Uttarakhand and reservation were intrinsically linked. *23 the feeling of being discriminated against had taken firm root in the collective psyche of the people. Economic problems such as lack of development, scarcity of jobs and

seats in colleges and poverty clearly got entangled with identity problems.

According to one estimate, nearly 4, 00,000 ex-servicemen live in this region which hardly has any family which has not sent at least one man into the armed services. The regiments in the Army, Garhwal and Kumaun draw upon mainly these hill districts and it is said that over 3, 00,000 men from this area are still serving in the armed forces. Uttarakhand is contiguous with China border and in this respect happens to be a sensitive region. The movement against reservation had inter-twined with that of Uttarakhand mainly because of the realisation that if the region attains full statehood the laws of U.P. would not apply on it and its own elected Assembly would be empowered to take decision in such matters. The other suggested solution was that since entire hill region is socially and educationally backward, it should be classified as backward and covered by the 27 percent reservation. *25 First the question of separate State. It was suggested that the reservation for OBCs should be kept in abeyance till the formation of Uttarakhand. The agitation went through several phases from peaceful demonstration to violent clashes and curfew. It was a tedious task for hill people to continue the agitation in hardship for four months. Due to the subsistent economy and the agitation by government servants, their discontent has grown from the fact that Uttaraskhand which is the birthplace of three Chief Ministers of U.P. still lags behind in economic development. Despite the claims of liberalisation, their economic problems have remained unchanged for centuries. Despite growing hardships, the demand for statehood became a passionate concern in every household. The people were anxious about the fate of their children. Apart from students, women participation was tremendous in the agitation. They were supported by the State government employees who continued the agitation despite the fact that they stood to lose their salaries and even face suspension. But during this period, a unanimous leadership capable of leading the movement had not emerged.

There was also no proper strategy to deal with various obstacles. *26

Higher rates of literacy as well as lack of awareness for employment in the mountain region led to the emergence of a unique political economy which has some times been termed as the 'money order economy'. A disproportionate number of males worked as soldiers, clerks, domestic servants, teachers, lawyers and so on in the plains, while their families remained in hills. According to a survey 60 percent of the financial needs of the people were met by these money orders. *27 New towns, tourism, hospitals, schools and administrative centres have generated a number of jobs in the mountain areas. But many of these have gone to migrate from the plains with no restriction on the right to purchase of property, unlike the other mountain areas. There had been a guarantee of sorts that hill people would corner most of the jobs in their own region because most plains people viewed such jobs as punishment postings and avoided them. What marks out Uttarakhand was not just its geography but its history, culture and social Anthropology. The pattern of caste distribution is very different from the plains.

The four main problems in the hills are: the productive sectors of the economy - agriculture and allied activities, and the manufacturing industry have remained weak and underdeveloped; the economy produces very little for re-investment in productive activities: so that the process of deepening of the economy base hardly takes place; productive base of the import of goods from outside flourishes; and more than four-fifths of the people locked in a subsistence economy do not derive any tangible benefits. *28

The causes of the backwardness of hill region are the lower per capita income, unemployment, migration, lack of resources of irrigation, unused natural resources, the discriminatory behaviour, by the plains people, habit of intoxication, inefficiency in administration by outsiders and so on. While the demand of separate state was raised in 1952, due to these problems, it could not be materialised but gradually people

became aware that their problems are directly related to politics. The decision about this region are taken in Delhi and Lucknow by the people unaware of the local difficulties which accelerates the feeling of alienation. The per capita expenditure in this region was less than half in comparison to Nagaland, Manipur and Meghalaya, while their population is 1/4 to 1/10 of the hill region of U.P. The 2/3 part of the region is covered by forests, but there is no forest based industry or the opportunities of employment for the hill people. In the sphere of business and transport the monopoly of plains people is evident. There are very little professional institutions and almost no small scale industry to absorb the trained persons. *29

The backwardness of the region is not due to the lack of natural resources, but the neglect of their development and lack of collective efforts keep them submerged. The exploitation of the raw materials by the outsiders should be checked and collective efforts should be made to establish industries and occupations based on natural resources for the hill people. *30 while the population of the hills is 4.3 percent and the area is 17.4 percent of the State, the expenditure on plans is only 4 to 5 percent.

The main source of the income of hill people is agriculture. Due to the uneven land and lack of the means of transport only 14 percent of the land is suitable for cultivation and the process of agriculture too is very difficult. Agriculture is possible only in valleys and slopes of the mountains. The size of agriculture is small. Means of irrigation are very limited, they are particularly available in tarai region. The density of population is much below the state average. The reason of lack of the means of the transport is that the roads are not suitable for all seasons and there is no facility of link roads. The development of the region is hindered by the lack of the basic infrastructure such as electricity, irrigation, loans etc. The scarcity of potable water, slow pace of industrialization is evident. The problem of unemployment is severe due to the lack of industrialization and under-exploitation of minerals, orchards, forests and tourism. It is also certified by

the fact the average of the employees in registered factories was 258 in comparison to the State average of 418 in 1970. *31

The problem of the migration is due to the lack of the infrastructure and the lack of the use of the natural resources. Industrialization is slow. The demand is low due to the disturbed balance of the agriculture product, animal husbandry and lower income. The money orders sent by the domestic servants and the employees of government and non-government institutions are used in subsistence and they are not invested in productive works. The suitable land for agriculture is limited and there is lack of the alternative system for the labour. The administrators and the staff declined to serve in this region. *32

The population of 57 percent villages is less than 200. About 70-71 percent labour is involved in agriculture and only 13 percent land is suitable for agriculture. The demand of investment in infrastructure is comparatively greater. The completion of plans takes longer time due to the inaccessible places and adverse circumstances. There is scarcity of potable water, education, technical education, health, electricity and irrigation etc. *33 only 10 percent land covered by irrigation and 60 percent villages are without potable water and electricity. In India, 63 percent people are involved in agriculture, 10 percent in industries and 27 percent are in services while in the hill region of U.P. 13 percent people are in agriculture, 3 percent are in Industries and only 5 percent are in services. *34

The judiciary also favoured the reservation for the residents of this region as socially educationally backward people. In the case of Dalip Kumar V. Government of U.P. *35 the distribution of seats in the Medical Colleges of U.P. under para 10 of the Instructions issued by the Registrar, Combined Pre-Medical Test, Agra University was challenged as violation of Article 15(4). The issues were whether the reservation of seats for rural hill and Uttarakhand areas was constitutionally permissible and the criteria adopted for determining educational backwardness were constitutionally valid. The Court

observed that in case of candidates from Uttarakhand Division, there were no qualifying marks, with the result that a candidate not securing any marks in any subject shall be admitted provided that the total number of candidates from Uttarakhand Division did not exceed the figures prescribed in the aforementioned instructions. The State had tried to justify why the various groups or areas detailed in the instructions were considered to be educationally backward but nothing had been indicated why and how they all could be treated as socially backward also. For educational backwardness the main criteria appeared to be the percentage of marks obtained in the Pre-Medical Test, the number of candidates from reserved areas appearing in the Pre-Medical Test and also the shortage of Higher Secondary Schools in those areas. This was not sufficient for classifying all the residents of those areas as belonging to educationally backward classes. All the residents of the village may be educationally backward, but the same can not be said in regard to all the rural areas. Similarly, in the hill areas other than Uttarakhand Division there are classes of citizens who can not be classed as educationally backward. Uttarakhand division stands in a difficult category and in the absence of data it may be said that major part thereof is socially and educationally backward, but in Uttarakhand Division also there are certain areas all the residents thereof can not be classed as socially and educationally backward. Reservation for candidates from Uttarakhand areas was held to be valid, whereas for hill and rural areas it was not valid.

In another case of Subhash Chandra V. State of U.P. *36 The High Court held that people from rural areas, hill areas and Uttarakhand Division belong to socially and educationally backward classes entitled to reservation under Article 15(4). The case was related to the admission in Medical Colleges. The Court held that sub-Article (3) and (4) of Article 15 classify women and children, socially and educationally backward classes of citizens, Scheduled castes and Tribes as distinct groups. If the State Government makes reservation in respect of these groups, it can't be said that the classification is

not based upon rational differentia. The object of reservation in favour of the various categories of candidates is obviously to make special provision for their advancement. The reservation in respect of the candidates from rural areas, hill areas and Uttarakhand Division has been stated to be because the citizens of these areas form a socially and educationally backward class of citizens. The Court also held that the quantum of reservation, namely, 49 percent was not excessive.

This case came on appeal from that decision to the Supreme Court in *State of U.P. v. Pradip Tandon*. *37 The Court found that the place of habitation and its environment is also a determining factor in judging the social and educational backwardness. The traits of social backwardness are these. There is no social structure. There is no social hierarchy. There are no means of controlling the environment through technology. There is no organization of the society to create inducements for uplift of the people and improvement of economy. Building of towns and industries, growth of cash economy, which are responsible for greater wealth are absent among such social change in resource condition, high lands and hills are to be developed in fiscal values and natural resources. Nature is a treasury. Forests, mountains, rivers can yield an advanced society with the aid of education and technology.

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

Neglected opportunities and people in remote places raise walls of social backwardness of people.

Educational backwardness is ascertained with reference to these factors where people have traditional apathy for education on account of social and environmental conditions or occupational handicaps, it is an illustration of educational backwardness. The hill and Uttarakhand areas are inaccessible. There is lack of educational institutions and educational aids. People in the hill and Uttarakhand area illustrate the educationally backward classes of citizens because lack of educational facilities keep them stagnant. Poverty is evident everywhere and perhaps for more so in educationally advanced and socially affluent classes. A division between the population of our country on the ground of poverty, that the people in the urban areas are not poor and that the people in the rural areas are poor is neither supported by facts nor by a division between the urban people on the one hand and the rural people are socially and educationally backward class. 80 percent of the population, in the State of U.P. in rural areas can't be said to be homogeneous class by itself. They are not of the same kind. Their occupation is different. Their lives are different. Population can't be class by itself. The rural element does not make it a class to suggest that the rural areas are socially and educationally backward is to have reservation for the majority of the State. Thus the reservation in favour of rural areas were held invalid. The onus of proof is on the State to establish that the reservations are for socially and educationally backward classes of citizens. The State has established that the people in hill and Uttarakhand areas are socially and educationally backward classes of citizens. *38

Again the Supreme Court quoted the case of *Pradip Tandon in Indira Sawhney v. Union of India* *39 local circumstances play a crucial role in determining the backwardness as the citizens of hill areas of U.P. were accepted as backwards. But this basis is not justiciable in respect of the residents of hill areas of other States. The Court also said that the relaxation in the limit of the 50 percent is

permissible for the special provisions for the residents of the far-flung areas.

In August 1994 the government of U.P. suggested 2 percent reservation for the hill people beyond the limit of 50 percent and requested the centre to amend the constitution for the purpose because most of the hill areas are far-flung and inaccessible. It also provided 6 percent reservation in Medical Colleges and 4 percent in Engineering Colleges for hill people.

As far as the question of the inclusion of the hill people in the periphery of the 27 percent was concerned the following facts were presented to the State Backward Class Commission. *40 in accordance with the eleven indicators prepared by the Mandal Commission. *41

(A) Social

- 1) The people of the hills and Uttarakhand are generally called "Paharis" as a class and it is a known fact that they are considered backward by other classes. In the case of Pradip Tandon, even the Supreme Court accepted the hill people as socially and educationally backward class.
- 2) More than 2/3 of the area is covered by forests in Uttarakhand and hill region which is considered necessary for the environmental balance by the policy of the Centre and State governments. Only 13 percent land is suitable for agriculture which is further reducing by soil erosion. The region is industrially backward. The people migrate for sustenance and indulge in manual labour. Thus the hill people are dependent on manual work for their livelihood.
- 3) Before the implementation of present Acts, in the rural areas of hill and Uttarakhand more than 25 percent females and more than 10 percent of males and in urban regions more than 10 percent of the females and more than 5 percent of the males used to marry below the age of 17

years. This percentage is more than the State average.

- 4) As the most of the males of the region migrate for livelihood, females have to look after the domestic work as well as the agriculture and other works. The participation of females in work is more than 25 percent of the State average. Females are the major workers here.

(B) Educational

- 5) Due to the absence of the male members, children help the females in work. More than 25 percent children of age group 5 to 15 never attend schools.
- 6) Due to the complexities of household works, more rate of students drop-out in the age group of 5-15 years is 25 percent above the state average. Children also migrate to become labourers.

(C) Economic

- 7) As accepted by the Supreme Court in Pradip Tandon case the circumstances are adverse in this region. So the average value of family assets is much below the State average.
- 8) The source of drinking water is beyond 2-3 kilometre for more than 50 percent of the households.
- 9) There are very few families in hill regions which do not take consumption loans. Their percentage is definitely 25 percent above the State average.

The total value of all indicators is 22 according to the Mandal Commission report. All four indicators of social, two of educational and three of economic backwardness suit the hill people as a class. Thus the value of nine indicators comes to 19. As all castes scoring 11 points or above were considered socially and educationally backward hill people who scored 19, should be considered so Mandal Commission gave much importance to social backwardness by giving it 12 marks and the citizens of hill region come under all the four indicators of social backwardness. *42

The government of U.P. was against the dilution in reservation policy. The Vidhan Sabha adopted a reservation for the creation of a separate Uttarakhand State as the solution of the tangle and passed on the buck to the centre, *43 which alone can reorganize States.

The question of reservation in hill region went to the Court. The Allahabad High Court stayed the implementation of the reservation in educational institutions in this region on October 5, 1994. *44 The Court delivered the verdict on May 31, 1995. It ordered the State government to amend the reservation in Kumaun and Garhwal Divisions. The actual population of SCs, STs and OBCs in district level should be kept in mind while implementing reservation in secondary schools. For admissions in Universities the figures of population should be of divisional level. The order was given by the bench of Justice R.S. Dhawan and Justice A.B. Srivastava. Court said that the Kumaun and Garhwal is a geographically different part of the State. Therefore, the reservation will be in accordance to their actual population in district level for SCs, STs and OBCs in the schools from primary to secondary level. Likewise in the Universities the reservation will be decided according to the population of the division. The State government would not extend the limit of 27 percent reservation for OBCs in the admissions in any circumstances. The basis of the petition was that this reservation could not be implemented in Kumaun and Garhwal Divisions according to the norms set by the Supreme Court and the geographical conditions of the region. The State government can't discriminate between backward in backwards. *45

Some days ahead to this judgement the BSP withdraw its support from Mulayan Singh ministry breaking the SP-BSP combine. Ms. Mayawati of BSP became first Dalit Chief Minister of U.P. with the support of BJP on the surface, the BJP appeared to be biggest gainer, but this argument did not take into account the Mandalisation of U.P. comparable to the phenomenon in Bihar, which brought Laloo Prasad Yadav to power with a larger share of the vote earlier. This year the BJP's decision to back the

BSP in its long simmering battle with the SP, its leaders said, was in keeping with the imperative of preventing the Dalit-OBC-Muslim line up from consolidating into an invincible combination. *46

With the breaking of SP-BSP combine which had a monopoly over the Dalit-Muslim-OBC vote bank, a political caste war began in U.P. Different intermediary castes, including Kurmis, Yadavs and Gujjars prepared for the show of strength. The SP was trying to show that even Dalits were with it, while the BSP organised a Yadav rally. *47

As far as the question of reservation for the candidates belonging to hilly and Uttarakhand areas was concerned, the Supreme Court declared illegal the former U.P. government's order of six percent seats reservation in Medical Colleges. *48 A two Judge bench of Mr. Justice B.P. Jeevan Reddy and Mr. Justice S.C. Sen said that such candidates should have been treated as socially and educationally backward classes or SCs or STs, while the Mulayam Singh Yadav government had granted reservation under some other provisions of the constitution. A separate horizontal reservation of 6 percent apart from and in addition to 27 percent reservation for OBCs, was clearly illegal. The Court said it was indeed surprising that the State of U.P. which was a party to the Pradip Tandon case, had failed to bear it in mind. Further, the said decision had been referred to approving in the Mandal case. In striking down the additional reservations, the apex Court clearly signalled that availability of seats in professional colleges can not be curtailed for those who qualify on merit. Indeed, the Court tried to protect merit by asking the State government to create four more seats in MBBS course and fill them from merit list. The creation of additional seats was restricted to current admissions only and should not be a permanent feature.

In November 1995, then Governor of U.P. decided to extend 27 percent reservation for OBCs to the entire hill region in educational institutions. He also agreed to extend the reservation in jobs too.

In the Lok Sabha election and the assembly election of 1996 every political party made caste-based strategy in U.P.

Because of the political instability, major policy decision became complex. The Political instability has become a marked feature of U.P. politics. To some extent it is due to the collapse of the Congress and the singular failure of State Governments to tackle some problems as economic and social justice or pay adequate attention to the slow rates of growth and limited industrialization in U.P. Equally important is the social transformation set in motion by changes in political economy and agriculture policies. Some of these changes benefitted the backward classes which resulted in their larger share in political and bureaucratic power. But the uniqueness in U.P. is that these demands are resisted by the upper castes.

All subsequent governments of SP, BSP and BJP supported the reservation policy related to SCs, STs and OBCs. Caste always played an important role in the politics of Uttar Pradesh.

To keep 50 percent of the jobs and seats open for 20 percent of the population was a difficult task. The monopoly of the upper castes was questioned by the backward classes from the 70s with their newly-gained economic power and numerical strength. But from the outset the challenge was political and not social, U.P. has no history of anti-Brahmanism or social reforms except the localised Arya Samaj in western U.P. compared to the South, backward caste politics in U.P. was not supported by movement of social transformation. The pursuit of power and material interest has generally taken place on the basis of social solidarities of caste, rather than that of class. Arguments about equality were less about the removal of injustice and more about the sharing of privilege and making the circuit privilege more inclusive. The shrinking privilege is hotly contested by the upper castes each time an attempt is made to expand the regime of reservation. But the growing power of Dalits and OBCs has made them a force which can not be ignored by any political party.

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