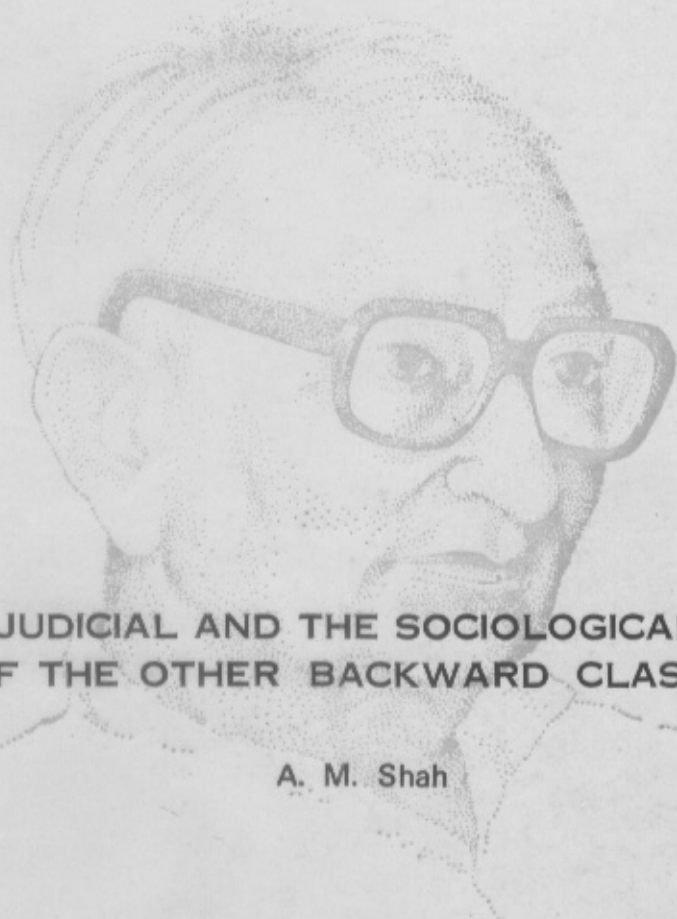


I. P. Desai Memorial Lecture : 6



**THE JUDICIAL AND THE SOCIOLOGICAL VIEW
OF THE OTHER BACKWARD CLASSES**

A. M. Shah

CENTRE FOR SOCIAL STUDIES

PREFACE

To honour its founder, Prof. I.P. Desai, who died on 26 January 1985, the Centre for Social Studies created an endowment fund to which his friends and admirers contributed generously. Intended to promote such activities as were dear to Prof. Desai, the fund has been utilised to institute an annual I.P. Desai Memorial Lecture series. The first five lectures were delivered by Profs. Ramkrishna Mukherjee, A.R. Desai, Yogendra Singh, M.S. Gore and Rajni Kothari.

It gives us great pleasure to make available to a wider academic readership the sixth lecture which was delivered by Prof. A.M. Shah on 24 January 1992. Like his predecessors in the series, and in accordance with the kind of praxiologically oriented sociology of which I.P. Desai was a powerful proponent, Prof. A.M. Shah in this lecture deals with certain critical issues related to the judicial and the sociological view of the Other Backward Classes. We are grateful to Prof. Shah for having readily responded to our invitation to deliver the lecture.

I must thank Dr. Biswaroop Das for kindly preparing the copy for the press, and Shri Bhupen Khakhar for designing the cover for publications under this lecture series.

10 May 1992
Centre for Social Studies
Surat - 395 007

Ghanshyam Shah

THE JUDICIAL AND THE SOCIOLOGICAL VIEW OF THE OTHER BACKWARD CLASSES

A. M. Shah

I am thankful to the Centre for Social Studies for inviting me to deliver the 6th I.P. Desai Memorial Lecture. This has given me one more occasion to pay my respect to IP's memory. My relationship with IP was long and many sided. To begin with, I was his student, and then I became his colleague and friend. The relationship became emotional in the last few years of his life. I give this lecture as a tribute to pleasant memories of that relationship.

I have chosen for my lecture a theme that would have pleased IP immensely - the theme of the Backward Classes. He was a member of the Second Gujarat Backward Classes Commission (well known as Rane Commission) which produced a highly controversial report. He had shown me the theoretical approach paper he wrote for the Commission and I corresponded with him on it. He also showed me the huge bundle of data collected for the Commission. And then we entered into a dialogue on caste which resulted in the publication of our book, *Division and Hierarchy: An Overview of Caste in Gujarat*. If IP had been alive, I am sure he would have entered into a long dialogue on my lecture.

There has been an increasing judicial concern with the question of the Other Backward Classes (hereafter, OBC) ever since special provisions were made for them in the Constitution of Independent India. State action for OBC has increased and the courts have been called upon increasingly to pronounce judgements on this action. In August 1990, the Central Government headed by Prime Minister V.P. Singh took a high jump by announcing the decision to implement the recommendations of the Second Backward Classes Commission, widely known as the Mandal Commission. Immediately, the country was in turmoil, and the Supreme Court was called upon to adjudicate on the issue. The government headed by Prime Minister Narasimha Rao made a few basic changes in the policy, and the court has now to adjudicate on those changes also.

The turmoil on the reservation issue made me read the judicial literature on the subject and relate it to my sociological knowledge on the caste system. I am not a jurist and my knowledge of judicial literature is limited. However, I venture to express a few thoughts on the subject for whatever they are worth.

The term OBC was widely used by the British administration, and had come to mean 'Other Backward Castes' by administrative usage. It is used in the Constitution of Independent India to designate Backward Classes other than the Scheduled Castes and Scheduled Tribes. Article 15(4) refers to them as "socially and educationally backward classes of citizens," and Article 340 as "socially and educationally backward classes." Article 16(4) mentions "backward class of citizens." And Article 46 refers to "the educational and economic

interests of the weaker sections of the people."

In view of the precedents under the Government of India Act, 1935 the identification of Scheduled Castes and Scheduled Tribes has been relatively easy. By and large the Scheduled Castes are the ex-Untouchable or Harijan castes. The identification of OBC, however, bristles with many problems. During the British rule, a number of non-Untouchable castes were identified as Backward Classes in different provinces and native states under government orders from time to time. But after Independence the State governments, mainly in Southern and Western India, have been constrained to identify OBC through specially appointed commissions. At the all India level they have to be identified by a commission appointed by the President under Article 340. The Mandal Commission was the second such commission. The reports and recommendations of all these commissions have been extremely controversial, often leading to violent conflicts.

The British administrative usage of the term OBC in the sense of Other Backward Castes has not only persisted but the law courts have also from time to time justified it. The judiciary's role vis-a-vis caste has therefore greatly increased. Obviously this raises the question of not only the judicial notion of caste but also that of how the judiciary handles the social reality of the caste system while adjudicating on the question of OBC.

The semantic equivalence between 'class' and 'caste' goes against the meanings of these two words in the social sciences as well as in the language of educated Indians influenced by the language of

social sciences. Of course, there is no unanimity about the meaning of the term 'class' in social sciences. In particular, there are sharp differences between the Marxist and the non-Marxist views. Nevertheless, hardly any social scientist would stretch the word 'class' to mean 'caste'.

The judiciary has devoted a lot of attention to the semantic equivalence between 'class' and 'caste'. Its position may be summed up in the statement made in the judgement of the Supreme Court in the case of *P. Rajendran vs. State of Madras* (1968): "a caste is also a class of citizens."² The word 'class' is used here in a very wide and general sense, meaning a number of persons possessing common attributes and grouped together under a general or 'class' name. In this sense, women, children, fathers, mothers, doctors, advocates, etc. are also classes. One has therefore to be careful in using the word 'class' in any discussion on the subject of Backward Classes. In particular, one has to avoid the tendency to drift imperceptibly from one meaning of the word to the other.

II

Special provisions for the advancement of the Backward Classes have been made in the Constitution - in its chapters on "Fundamental Rights" and "Directive Principles of State Policy" - with a view to secure to all its citizens social, economic and political justice, and equality of status and opportunity, goals stated in the Preamble to the Constitution. The courts have the special responsibility of judging whether state action under these special provisions fulfill in actual practice the general goal of social justice and equality enshrined in the Preamble, and whether it is consistent with the other provisions in the Constitution. A

tension between the special provisions for the advancement of the Backward Classes, defined as castes, and the goals of equality and justice stated in the Preamble is built into the Constitution. This tension was aggravated by the addition of Article 15(4) to the chapter on "Fundamental Rights" by an amendment of the Constitution soon after its adoption. It is well-known that it was added with a view to nullify the courts' verdicts striking down reservations for OBC made by certain States.

While the courts generally permit the use of the word 'caste' for 'class', they lay down conditions for considering any caste as a "Backward Class". The Supreme Court in the *Rajendran* case (1968) stated, "If the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is a socially and educationally backward class of citizens" (emphasis added). In another judgement of the same year, in the case of *Sagar vs State of Andhra Pradesh*, the Supreme Court stated, "In the context in which it occurs, the expression 'class' means a *homogeneous section of the people* grouped together because of certain likenesses or common traits and who are identifiable by some common attributes such as status, rank, occupation, residence in a locality, race, religion and the like" (emphasis added). In a judgement in 1971, in the case of *Periakaruppan vs State of Tamilnadu*, the Supreme Court reiterated both the above views. In a judgement of 1972, in the case of *Balaram vs State of Andhra Pradesh*, the Supreme Court went a step further when it stated that a caste may be a "Backward Class" notwithstanding the presence in it of a "few individuals (who are) both socially and educationally above the general average". In other words, the homoge-

neity test need not be met to the fullest extent.

The courts have also discussed the question: how far can caste (as a status category) enter into determining a class (i.e., a caste unit) as a socially and educationally backward class. The courts are unanimous in pronouncing that caste can be one of the relevant factors, though not the sole factor. In other words, according to the courts, a caste unit can be an OBC if it has certain backward features, including that of backward caste status.

While the courts have allowed castes to be considered as OBC, they have said little on the nature of caste units, on caste status, and on the caste system in general, leave alone making use of the existing social scientific knowledge on the subject. This judicial apathy towards knowledge on the subject is puzzling.

III

The caste system is so complex that it does not permit a precise definition of caste units forming part of it. A search for a precise definition of caste is not likely to be successful or useful. This point will become clear as we proceed in our analysis.

The caste system is governed by the twin principles of division and hierarchy. Briefly, the principle of division (also called separation, difference, segmentation, repulsion) refers to the divisiveness of Hindu society into a number of groups and subgroups with certain character-

istics. The principle of hierarchy refers to the arrangement of these groups or divisions into a gradation of high and low. Frequently, the hierarchical relations between caste groups are described as vertical relations and the caste groups themselves as horizontal units. Thus, the caste system has both vertical and horizontal dimensions. In so far as the OBC are considered to be backward castes, both the principles are involved in any discussion of them.

The principles of division and hierarchy are in a dynamic relationship with each other. As one sociologist has said, the principle of hierarchy which governs the relationship between castes enters every caste and permeates it. However, the relative strength of the two principles varies according to the context of time and place. As we shall see, the strength of the principle of division has increased while that of the principle of hierarchy has decreased in modern times. Also, the principle of division is stronger than the principle of hierarchy in towns and cities compared with that in villages.

In the policy of caste-based reservation, the principle of division needs the closest and most critical attention, because castes have to be identified and listed for the purpose of providing benefits to their members. We have to examine two widespread presumptions in this regard: (1) that we can identify a caste and its boundaries easily and count its population accurately; and (2) that all the members of a caste have an identical social, economic and educational status.

A caste is considered to be a *named* group of people. However, as soon as one starts identifying and listing castes, caste names pose

problems. These names are part of the dynamics of the caste system. They reveal as much as they hide. The main reason is that every caste name is not only a mark of identification of the caste group but also a symbol of its status. Any caste claiming a higher status than that attached to its accepted name, would try to claim another name indicating higher status. In the same way, castes occupying higher status would deny the new name to the caste aspiring to higher status. Frequently, the different sections within a caste also have different names. In short, one should not assume that every caste name indicates a single caste, or that every caste has a single name. Anthropologists, ethnologists, sociologists, census officials, and authors of gazetteers and castes-and-tribes volumes looking for certainty in caste names have experienced frustrations for more than a century. A deeper understanding of the caste system is required to understand the problem of caste names. It requires, in particular, recognition of the fact that there has always been mobility - both upward and downward - in the caste system.

Although the ancient four *varna* scheme is part of the dynamics of the caste system, the word 'caste' should not be used for *varna*. Sociologists now use the word 'caste' for the word *jati* or *jñati*, although there is ambiguity about these words also. Any attempt to fit the innumerable *jatis* into the four *varnas* is bound to fail. There is no historical evidence for the popular idea that the present *jatis* are a result of continuous fission of the *varnas*. It is also noteworthy that frequently a *varna* name is used as a *jati* name; the two usages should however be clearly distinguished.

A correct understanding of the caste situation *today* requires recognition of the fact that 25.7% of India's population is urban (Census of India 1991: 1). Therefore, it would be incorrect to define caste only in terms of the village community, as is done frequently. The usual image of caste prevalent today was derived from the situation when the urban population constituted only about 10% of the total population. But today this situation has changed to such an extent that it would be a grave mistake if any view of caste that is based on the village is applied to the entire society.

At the present time there are three types of caste units. Firstly, there are castes which are entirely urban. Secondly, there are castes the population of each of which is found living in both rural and urban areas - of course, in varying proportions. Thirdly, there are castes which are entirely rural, though it is doubtful if many castes of this type are left at the present time.

In the village, the boundaries between its various caste groups are sharp and easily identifiable due to prohibitions on exchange of food and water, exchange of *hookah* and *chilam*, free movement between streets, exchange of goods and services, performance of ritual services, and so on. Above all, inter-caste marriage in the same village is just unthinkable. Many of these items of behaviour are not observable in the city and, therefore, the boundaries between castes in the city are not so sharp and easily identifiable. This does not mean that castes do not exist in towns and cities. They have existed there for centuries. But the nature of inter-caste relations in the city is different from that in the village.

Taking villages and towns together, the common denominator in the various characteristics of the caste group today is the rule of endogamy, i.e., the rule of marriage within the group. It is generally presumed that this rule makes every caste clearly and rigidly demarcated and easily identifiable. However, the reality is complex.

IV

What is a caste group or unit? There is no clear-cut answer to this question. The main difficulty is that there can be several levels or orders of caste groups. In every region of India the Hindu population is divided into what may be called "caste divisions of the first order." These are the main or major divisions. Each of them may have within it subdivisions of the second order. The sociological literature on Gujarat has reported divisions going down to the fourth order in many castes of the first order. Let us take an example. Baniyas are a caste of the first order. It is divided into thirty to forty divisions of the second order, the names of some of which are Disawal, Kapol, Khadayata, Lad, Modh, Nagar, Nima, Porwad, Shrimali, Vayada, and Zarola. Each one of these is further divided into divisions of the third order called *ekdas* or *gols*, meaning endogamous units or circles. And some of these are further divided into divisions of the fourth order, called *tads* or factions.³

This illustration shows that the word 'sub-caste' or even 'sub-sub-caste' is not always sufficient to describe the internal divisions within a caste. In the reverse direction, the term 'caste cluster', 'caste complex', 'caste category' or 'caste conglomeration' also does not help describe the reality adequately. The situation is complicated by the fact

that people themselves use the word *jati* for caste divisions of all the orders, and only detailed inquiry reveals the precise unit to which a person refers.

While some castes have divisions going down to the fourth order, some have divisions going down to the third order, some have divisions going down to the second order, and some do not have any divisions at all. How many subdivisions exist in the various divisions of the various orders is a matter of investigation.

Historically, the divisions within a caste may be a result of either fission or fusion or both. What is important for the present, however, is the fact that the inclusion of a sub-division within a division may be disputed. There are always claims and counter-claims about inclusion of some sub-divisions.

It should be clear from the above that one has to be extremely cautious about figures of population of castes. One has to ask: to which order or level does a particular caste belong for which a population figure is mentioned? Whatever the order, if the caste unit is small and residing in a relatively small area, its population can be fairly easily counted. In every city there are at least a few small endogamous castes, sometimes as small as composed of two to five hundred families each, and therefore easily identifiable. Most other endogamous units are large, with members spread over many villages and towns. Some of these large castes are huge conglomerations of small castes or sub-castes, each with a population as large as several millions and spread over not only an entire state but also two or more states. A few examples of such

castes are Rajputs, Jats, Yadavas, Marathas, Kolis, Kammas, and Lingayats. The population figures of such castes are bound to be dubious. They are dubious because of the very nature of the caste system.

In the past, each sub-caste had an internal hierarchy. In a sub-caste of peasants the internal hierarchy had powerful landlords at the top and small landholders, tenants and landless labourers at the bottom. The economic and political hierarchy was accompanied by hypergamy, i.e., the people of the lower stratum got their daughters married either in their own stratum or in a higher stratum, but the latter did not give its daughters in return. This resulted in a shortage of marriageable girls in the lower stratum, frequently forcing the men of this stratum to take brides from an acceptable lower caste. In the top stratum, frequently the parents tried to get their daughters married into acceptable higher castes, usually royal families belonging to these castes. The point is that the general assumption that the boundaries of a caste are sharp and easily identifiable is false.

India may be divided roughly into hypergamous and non-hypergamous areas. Most of northern, western and eastern India is hypergamous, while most of South India, except Kerala, is non-hypergamous. The boundaries of caste are usually fuzzy in the former. Even in the latter they are not as clear as they are assumed to be, particularly in the case of dominant castes (e.g., the Coorgs) which have, however reluctantly, admitted outsiders into their fold.

Every conglomeration of castes faced the problem of inclusion

and exclusion. There were always some sub-castes which wanted to be included in a conglomeration, but the established higher sub-castes wanted to exclude them. This resulted in claims and counter-claims regarding use of caste names. It is these tensions which were reflected in the chapters on caste claims in all census reports till 1931.

Within each conglomeration there are thus a number of local sub-caste hierarchies. At the bottom of each such hierarchy there are poor and illiterate villagers and at the top there are rich, educated and powerful town or city - dwellers. If we bring together two poor, illiterate villagers from two different local sub-castes within a conglomeration, say Yadavas from Bihar and Haryana, or Kolis from Western Saurashtra and South Gujarat, they would not be able even to converse with one another in the same language. Only the powerful leaders and modern professionals perched on the pyramids of the various local hierarchies, who meet usually in urban centres, have a certain cultural, social and political identity.

The population of each large conglomeration of castes is spread evenly from one village to another village and from village to town situated in an area. Anyone who tries to do that exercise of moving from one village to another in order to observe the spread of the population of a large conglomeration of castes would find that the boundaries of such a horizontal caste unit are fuzzy and questionable.

The widespread prevalence of hypergamy raises a fundamental issue regarding the definition of caste as an endogamous unit. Undoubtedly, there is no inter-caste marriage in any village. But no

caste as an endogamous unit is confined to one village. In actual fact, every caste is spread over a number of villages and towns, and we have to examine the operation of the rule of endogamy in this regional context. We then find looseness in the operation of the rule. Its looseness lies not just in cases of deviation by individuals but frequently by an entire stratum at the lower, and sometimes also at the upper, end within a caste.

The above point about endogamy and hypergamy at once raises the question of defining a caste as a hereditary group of individuals. Ideally, in an endogamous group the husband and wife have the same status, and therefore their children inherit that status. When an inter-caste marriage takes place the problem of determining the status of the child arises, and there are laws to determine the child's status in such circumstances. However, what is more important than individual cases is the widespread and regular practice of inter-caste marriages without any stigma of violation of the rule of endogamy attached to it. So much so that the origin myths of many castes derive the birth of the entire caste from an inter-caste marriage. This is the phenomenon of 'mixed unions' or miscegenation (*varnasankara*) widely discussed in ancient Hindu texts.

It is wrong to presume that all members of a caste have the same economic status. There was considerable economic differentiation in almost every caste even during the pre-British period. There are several reasons for this: (1) As regards occupation, one should not be misled by the caste name. For example, all members of the Potter caste were not potters, and all members of the Drummer caste were not

drummers. There could also be a mixture of traditional occupations in the same caste. (2) A number of occupations were caste-free. Agriculture and animal husbandry were, of course, the most open occupations. People of almost all castes from top to bottom were involved in them in one way or other. Trading and money lending were also caste-free. I have known even a few Chamars (leather workers) in Gujarat being traders and moneylenders during the First World War. There were many other occupations in which a smaller number of castes might be involved, but there was hardly any occupation which was a monopoly of just one caste. Even priesthood was not a monopoly of one caste, namely, Brahmin, as is generally assumed. (3) Almost every occupation was internally differentiated so that it could be pursued at different levels. (4) Different subdivisions within a caste could specialise in different occupations. (5) In the case of castes having rural and urban sections, there was considerable difference in the occupations of the members belonging to the two sections. (6) While it is true that certain castes were expected to perform certain specialized functions, mainly because of considerations of purity and pollution, the idea that every caste performed only one occupation is one of the myths about the caste system.

Along with the occupational differentiation, there was considerable differentiation of wealth and income in every caste. Such differentiation could exist between households of the caste even within the same village, but the degree of differentiation could be high between one village and another, between village and town, and between one area and another, particularly in the case of numerically large and geographically widespread castes.

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There could be uneven distribution of power within a caste. Even in the smallest castes the leaders of the caste *panchayat* were richer and more influential and powerful than the ordinary members. In the larger and widely spread castes such inequality was quite sharp. In a few castes, like Rajputs and Marathas, the top stratum included royal if not imperial families and the bottom included small landholders and even landless labourers. In a considerable number of other castes all over India the top stratum included smaller and substantial landowners while the bottom included poor landless labourers. It is important to realise in this connection the implications of the fact that the political hierarchy in the country admitted of many levels from the village upward to the imperial authority. We should keep in mind the fact that every Hindu Raja, however big or small, belonged to some caste, and the other members of his caste wielded varying degrees of power, some having no power at all. Hierarchies of power existed also within priestly, trading, artisan and service castes. There was some differentiation of power even within the Scavenger castes.

The main point is that when new opportunities for mobility became available at the beginning of the British rule there existed social, economic and political inequality within every caste. No caste started the race for mobility as one undifferentiated block. During the course of the British rule greater economic and social differentiation took place in every caste. And after Independence the differentiation got further accelerated.

The twin facts of inequality between castes and within each caste have important implications for the implementation of the policy

of reservation for Backward Classes (to be sure, castes). Even when the British first started the policy of reservation, there was unequal distribution of wealth, income, literacy, power, etc. between castes and within each caste. Therefore, the benefits of reservation were appropriated mostly by the upper castes among the backward castes and by the upper sections in each caste. The reservations thus strengthened the position of the stronger castes and the stronger sections within each caste.

As already mentioned, this process of internal differentiation in each caste has accelerated after Independence due to various forces such as agricultural development, land reforms, commercialisation, industrialisation, urbanisation, bureaucratisation, and political mobilisation. Although no caste was an undifferentiated monolith when the policy of reservation for Backward Classes was first introduced during the British period, the degree of differentiation was not high. But now, in the 1990s, when reservation is being introduced in large parts of the country for the first time, or is being substantially increased in some other parts, internal differentiation within castes is quite high. The situation is qualitatively different. The method of sample survey followed by the Mandal Commission — namely, that of selecting two villages and one urban development block in every district — was absolutely inadequate to measure the degree of differentiation in a caste in 1979-80. On the one hand, it excluded the huge chunk of population living in the larger towns and cities, and on the other hand, two villages out of about a thousand in a district were just not adequate to gauge the differentiation. And during the last ten years since the publication of the Mandal Report, the differentiation has further accelerated. Thus, the Central

Government's decision to apply in 1990 the Mandal Commission's recommendations to the castes listed in its report was at great variance with the social, economic and political reality concerning very many castes.

It is important to keep in mind the fact that once a caste is recognised as a Backward Caste and gets the benefits of reservation, it rarely if ever agrees to be de-recognized even after it has become stronger economically, socially and politically. In fact, it uses the newly-acquired power to resist all attempts to de-recognise it. This is precisely the reason why in those parts of the country where reservation has existed since the 1930s or so, there has been hardly any change in the list of Backward Classes even though considerable changes have taken place in the social, economic and educational status of many castes. The Supreme Court and the High Courts have warned time and again that the reservations should not become a vested interest and that they should be phased out. But the politicians do not listen to the courts. The process of phasing out of caste-based reservation should have begun at least a decade ago, but if it is not begun even now, it will become a heavy mill-stone around the nation's neck.

During the last hundred years or so, there have been social movements, sometimes with, and sometimes without, political motivation, to unify caste sub-divisions of the fourth order into that of a division of the third order, those of the third order into that of the second order, and those of the second order into that of the first order. Such movements have met with success in varying degrees. But one thing is certain, namely, that success has rarely, if ever, resulted in the

obliteration of sub-divisions.

Caste associations have played a vital role in the unification movements of castes, which has enabled them to play an important role in modern politics. They send petitions to the Backward Classes Commissions and even lobby and pressurise these Commissions for including them in the list of Backward Classes. Since these petitions become part of the evidence gathered by the Commissions, they need close scrutiny.

One of the widespread misconceptions about caste associations is that they are considered to be representative institutions of caste populations. This is far from the truth. First of all, there are associations at every level of caste divisions, i.e., the first order, second order, etc. Secondly, a caste at any of these orders may have more than one association, and the different associations may work at cross purposes. It is well-known that different associations put forward different claims before Backward Classes commissions. Thirdly, no association can be considered as representative of the particular caste whose name it carries. Usually only a small proportion of its population are enrolled as its members, and most of them, particularly their leaders, are rich and powerful members of the caste. Under no circumstance can these members be considered as the 'democratic' representatives of the entire caste.

V

The word 'socially' in the constitutional phrase 'socially and educationally backward classes' poses several difficulties. On the one

hand it is used as an overarching concept to include every aspect of society, i.e., economic, political, legal, educational, etc., and on the other, it is used in a restricted sense to refer to a residuum, i.e., for whatever is not economic, political, legal, educational, etc.

This ambiguity affects the discussion on social status of castes. Sociologists have tried to disaggregate the various elements in social status of castes by distinguishing between what they call 'ritual status' and 'secular status'. The ritual status of a caste is determined mainly by two considerations. Firstly, there are ideas of purity and pollution which pervade Hindu life - in the temple, in the home, in rituals and ceremonies, and in many items of ordinary behaviour. These ideas affect interaction between castes - in touch, in the exchange of food, drink, and other goods and services, and in many other ways. Secondly, the ritual status of a caste is affected by prevalence of certain customs, habits, and ways of life, as for example, vegetarianism and teetotalism, freedom of divorce, re-marriage of widows and divorced women, exchange marriage, dowry, bride price, etc. These types of considerations are summed up under the concept of Sanskritization first developed by Professor M.N. Srinivas and discussed at length by many other scholars. The secular status of a caste is viewed in terms of economic and political factors, including modern education.

Sociologists have made many systematic attempts to discover agreed hierarchical orders of castes in villages in different parts of India. They have, however, found that it is impossible to arrive at a precise hierarchical order even in a single village. By and large, while the position of the Brahmins at the top and that of the untouchable

Scavengers at the bottom are fixed, there is ambiguity about the relative positions of castes in the middle. There is lack of consonance between the different elements going into ritual status of almost every caste. There are claims and counter-claims and even serious disputes about the status of many castes in a village. One can therefore arrive at only an approximate hierarchical order of castes.

If this is the situation in a village, one can imagine the difficulties of determining the relative status of an entire caste spread over many villages and towns. There can be differences in the status of different sub-divisions of a caste vis-a-vis other castes. For example, in one group of villages all Brahmins might refuse to work as priests of a certain non-Brahmin caste, while in another Brahmins of low status might work as priests for the same caste, and in a third group of villages even high status Brahmins might work as priests for it. Such differences in status can be quite wide in the case of a caste which is widely dispersed over a whole State or more than one state. This is related to the fact that every caste has an internal hierarchy, and different areas have different caste compositions. The main point is that any exercise to determine a clear, sharply defined social (i.e., ritual) status of an entire caste (excepting a small caste) is bound to be futile.

If, even after studying castes in a village or in a group of a few villages for a whole year or more and with elaborate scientific methods, sociologists and social anthropologists fail to arrive at the precise status of different castes, it is mysterious how the various Backward Classes commissions claim to have arrived at the precise social status of castes for a whole state and even for the whole of India. They seem to me to

do this on the basis of arbitrary methods or preconceived notions. The so-called scientific methods they adopt to collect data seem to be rationalisations for justifying decisions that have already been taken. It is extremely surprising that learned judges accept the recommendations of such commissions on the social status of many castes.

Since a number of castes are sought to be placed in the OBC category, we should ask the question, "What is the common criterion of backwardness?" In the case of Scheduled Castes there is the common criterion of untouchability. Is there, or can there be, such a common criterion of the social status of OBC? The main point to note in this connection is the wide spectrum of social statuses of the castes subsumed under the term OBC. At the lower end there are castes which are very nearly untouchable and very poor, and at the top there are castes with a very high degree of Sanskritization, and which are wealthy and powerful. Among the eleven indicators of backwardness accepted by the Mandal Commission, one indicator is "castes/classes considered as socially backward by others". The Commission has not clarified who are these "others". In the caste hierarchy every caste considers all those below it as backward, and therefore it is unrealistic to ask all the "others" to provide an agreed answer about backwardness of a particular caste.

In such a situation, the higher castes among the OBC are bound to take greater advantage of the reservation benefits than the really disadvantaged lower castes. Since the courts do not permit the distinction between the more backward and the less backward among the OBC, differential access to the benefits of "backwardness" is bound to continue.

If the 'backward castes' cover a large range of castes in the vertical hierarchy in an area, is it possible to consider 'backward castes' in one area comparable with those in another? The idea of reservation for OBC presumes that all the 3000 or so OBC in the country are on par in a competitive situation. But can they really compete as equals? The answer may be left to the reader's imagination.

VI

As stated at the outset, with 25.7% of India's population now living in urban centres, it is unrealistic to apply the view of caste system derived from villages to the entire society. Urban society poses certain extremely difficult questions regarding the policy of caste-based reservation.

Urban society, particularly in the larger towns and cities, is extremely heterogeneous. Apart from the fact that there are people belonging to many different religions, the Hindu population in every large town and city is itself divided into many linguistic and regional groups due to large scale migrations in the past. This fact raises the question whether there is just one caste hierarchy, or many regional caste hierarchies, in a city? Secondly, while in the case of the city population belonging to the region in which the city is located, there is some continuity with the rural population of the region, in the case of immigrants from other regions there is real disjunction. Thirdly, the city population belonging to the region in which it is located, is drawn from all the sub-regions. While the caste hierarchy in one sub-region has many characteristics different from those in another, these differences

disappear in the city to a large extent.

But there is an even more basic question: is it relevant to talk about caste hierarchy in a city, and if yes, what sort of caste hierarchy? It is hardly necessary to point out that in the urban economy the traditional relation between caste and occupation is largely shattered. Of course, there are even now a few caste-based occupations in towns and cities, but their organisation is fundamentally different from that of caste-based occupations in the village. For example, although most of the barbers in a city would belong to the traditional barber caste, they work in hair-cutting saloons and even in beauty parlours. Not only that, some barbers are owners of these saloons and parlours, while others are ordinary workers under them. Frequently, one barber owns a chain of several saloons and parlours and thus operates like a capitalist entrepreneur. The same is true of the occupations of washermen, carpenters, blacksmiths, musicians, and so on. In recent years, this trend has been observed even in the so-called "menial" occupations. In large cities like Bombay, factories, shops, offices, and other establishments prefer not to employ a full-time salaried cleaner (*safai-karmachari*) but to hand over the work to a contractor who hires a number of cleaners to clean several buildings one after another. In the caste-based occupations in the city the relationship between the worker and the customer, unlike that in the village, is contractual, monetized and caste-free. That is to say, the worker provides goods and services to any customer irrespective of caste. For example, the barber or the washerman would provide his services to any one who comes to his shop.

Although a few occupations in the city may continue to be caste-

based, it is important to note that all the members of a caste are not engaged in the caste-based occupation. The members of every caste take advantage of the immense diversity of occupations in the city, so much so that often there is considerable occupational differentiation even within a single household.

The nature of social interaction between members of different castes on the street, in the market place, on buses and trains, in restaurants and hotels, in schools, colleges and universities, in factories, shops and offices, in cinema theatres and other places of entertainment, is by and large free from the considerations of caste. Purity and pollution behaviour is rarely observed among them. There are two major exceptions: (1) The Brahmin priest observes purity and pollution behaviour during rituals, and (2) scavenging is still done by members of the local Scavenger caste. But there are significant deviations from traditional norms in the relation of these two castes with other castes.

Indeed, a number of sociologists have argued that the inter-relationship between castes in cities has ceased to be hierarchical, that the principle of division (or repulsion, or separation, or difference) rather than hierarchy operates between them, that there is a relationship of juxtaposition rather than hierarchy between them, and that there is a feeling of being different rather than of being higher and lower between them. Some sociologists have gone to the extent of saying that castes in cities have ceased to be castes and have become ethnic groups.

The above discussion of caste in urban centres has an important implication for determining *social* status of castes, particularly for

their identification as 'backward'. Since the nature of social interaction in urban centres is fundamentally different from that in villages, it is impossible to assign definite social status to castes in the city on the same criteria as those applicable in villages, except perhaps to the caste of Scavengers.

An important consequence of the large urban population today is that while certain castes are exclusively urban, almost every other caste has both rural and urban components of varying proportions. In such a situation it is a big question whether the urban component of a caste should continue to be considered on par with the rural component? Let it be noted that the urban component of a caste is also not uniform in its economic and social conditions.

The present urban population and the increasing rate of urbanization raise not only crucial methodological problems regarding identification of Backward Classes as castes but also fundamental issues regarding desirability and wisdom of continuing with the policy of caste-based reservation.

VII

I hope it is clear from the above that judges have to deal with the same two basic problems about caste that sociologists deal with: (i) to identify caste units, (ii) which can be considered as low in status (socially and educationally backward). Judges, however, have to follow the principle of certainty in law in both the respects, while sociologists would argue that the ground reality of the caste system does not permit them

to arrive at such certainty. The Constitution seeks to resolve the problem of certainty by entrusting to the Government the job of providing the list of OBC. As Dr. B.R. Ambedkar stated during the Constituent Assembly debates on the issue, "A backward community is a community which is backward in the opinion of the Government" (1948: 702). However, the Governments both at the Centre and in the States hand over this job to commissions. With due respect to these commissions - some of which have even included social scientists as members or have used them as consultants - I would submit that these commissions have sought to invest caste units with rigidity which they do not really possess. Incidentally, the Hindu law givers also tried to do the same since the ancient times but did not succeed.

NOTES

- 1 I am thankful to Professors M.N. Srinivas and B.S. Baviskar for commenting on a draft of this paper, and to Professor B. Sivaramayya for enlightening me on judicial issues. I have used Galanter (1984) and Sivaramayya (1984) with benefit in understanding judicial issues.
- 2 Very rarely judges consider the OBC as groups other than those based on caste, as in *Pradip Tandon vs State of U.P.* (1975) and *Jayasree vs State of Kerala* (1976).
- 3 For an extensive discussion on the orders of caste divisions, see Shah and Desai (1988).

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