1. CONCLUSIONS

The Preamble to the Indian Constitution lays down a scheme for building an egalitarian society founded on the concept of ‘social justice’. State is enjoined to work for the establishment of State where ‘social justice’ is *sine quo non*. The term ‘social justice’ includes in its ambit and scope elimination of exploitation of those sections of the society which have remained underprivileged for centuries such as scheduled castes, scheduled tribes and other backward classes. The framers of the Indian Constitution were fully alive to the problems of the weaker and underprivileged segments of the society\(^1\) while they provided general principle of equality under Article 14 they have also provided safeguards to weaker sections of the society such as scheduled castes, scheduled tribes and other backward classes under Articles 15(4) and 16(4). These two Articles have been enacted to achieve equality in fact. In consonance with the intention of the founding fathers the Supreme Court has taken pains to see that ‘social justice’ does not remain an empty slogan and has interpreted the relevant provisions broadly and progressively.\(^2\) Article 14 guarantees equality in general terms. This is simplified and particularised in Article 15 and 16. Articles 15(4) and 16(4) of the Constitution empower the State to make special provisions for the advancement of socially and educationally backward classes of citizens or for scheduled castes and scheduled tribes and for reservation of appointments or posts in favour of backward classes which in the opinion of State are not adequately

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\(^1\) See, “Intention of the Framers of the Constitution”, Chapter III.

\(^2\) For detail see *Supra*, Chapter III.
represented in services. Reservation is only one of the various other means to achieve equality for disadvantaged group. It is upto the State to employ other means also to uplift these weaker sections if it feels that reservation is not fulfilling the purpose. These other means may include financial assistance etc. Before a scheme for protective discrimination is implemented the following two issues must be clearly understood (i) the identification of groups entitled to protective discrimination and (ii) nature and extent of reservation.

As regards the first issue, the Constitution permits protective discrimination for three groups (a) scheduled castes (b) scheduled tribes and (c) other (socially and educationally) backward classes. The classes are designated as scheduled castes and scheduled tribes by the President in consultation with the Governor of the State. The concept of ‘backwardness’ has eluded the precise grasp of various Commissions and has baffled judicial minds since the advent of the Constitution. Right from Balaji’s case, the Supreme Court has emphasized that backwardness envisaged under Article 15(4) is both social and educational and not either social or educational. Although caste may be a relevant factor it cannot be the sole or dominating factor in determination of backwardness. According to Professor P.K. Tripathi, “as long as caste remains even one of the several criteria on the basis of which backwardness is to be determined, it will be found that in ultimate analysis it will emerge as the sole basis of differentiation and, therefore, makes the classification invalid.” In Jayasree v. State of Kerala, the Supreme Court upheld Income/Caste criteria for the determination of social and educational backwardness. It is submitted that instead of caste as the basis for determination of

\[\text{3} \text{ Ibid.}\]
\[\text{5} \text{ P.K. Tripathi, supra note 14 at 203, Chapter III.}\]
\[\text{6} \text{ A.I.R. 1976 S.C. 2381.}\]
social and educational backwardness economic criteria be applied. This will result in giving a secular outlook to the society and the nation.

As to the nature and extent of reservation there appears to be divergence of opinion regarding justiciability of such an issue. According to Dr. Dhavan and others, the question of extent of reservation involves policy consideration and better be left with the legislatures. On the other hand, Mohammed Imam and Mohd. Ghouse are of the opinion that judiciary has performed its duty in consonance with the intention of the Constitution makers. However, judiciary has dealt with this problem in number of cases. In Balaji case the extent of reservation was fixed by the Supreme Court below fifty percent. This view has been followed in later cases. In State of Kerala v. N.M. Thomas, a landmark case in the field of protective discrimination, Justice Subba Rao’s dissent in Devadasen case has its full application where the Supreme Court held that it is permissible to give preferential treatment to scheduled castes and scheduled tribes under Article 16(1) outside Article 16(4). As to the extent of reservation

7 Supra, Chapter III.
9 N. Rathakrishanan regards the decision of the Supreme Court as to determination of backwardness etc., against the intention of the founding fathers of the Constitution – N. Radhakrishanan, “Units of Social Economic and Educational Backwardness in India”. 3 J.I.L.I. 39 (1961). Justice Subba Rao (as he then was) is also of the same opinion. In his dissenting judgment in T.Devadasan v. Union of India (A.I.R. 1964 S.C. 179 at 193) he said, “We are concerned with the interpretation of the Constitutional provisions but not the policy underlying it.”
10 "Reservation of seats for Backward Class in Public Services and Educational Institutions” 8 J.I.L.I. 441 (1966).
it was held that it must be below fifty per cent in relation to total cadre strength. In Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India,17 The Supreme Court was prepared to validate 67 per cent reservation in a particular year provided it did not substantially exceed fifty per cent of the total number of posts in the concerned department. In the instant case the Court has given a historical verdict. Though case was in context of scheduled castes and scheduled tribes, but it is equally applicable in the case of other backward classes. The Court held that the backward classes were not merely castes but they were classes included in the scheduled on the basis of their backwardness. Hence it cannot be said the reservation for all these classes is casteism or reverse casteism. The Court said that by no stretch of imagination it can be said that the first 30 years of independence the backward classes have already got a fair deal and reservation in their favour needs no more continuation. In this case the court also upheld reservation at the time of promotion.

As regards the problem of conversion and reconversion it is to be pointed out that conversion has a great bearing on the claim for protection discrimination. Generally, conversion operates as a loss of caste but conversion within Hinduism is an exception to it. From a secular point of view, three factors have to be considered in case of conversion within Hinduism. They are: (i) the reaction of the old body; (ii) intentions of the individual himself and (iii) the rules of the new order.18 If the old body does not find any reason to outcaste or excommunicate and the individual himself intends to retain the old social and political ties the conversion is only nominal for all practical purposes and views of new faith hardly matter. Thus, this type of

conversion does not alter the converts caste status.\textsuperscript{19} Caste is a predominant feature of the Hinduism and embracing non-Hindu religion ceases to have any caste. In \textit{Soosai v. Union of India},\textsuperscript{20} the Supreme Court has held that the purposes of the constitutional provisions relating to scheduled castes are intended to be applied only to those members of the castes enumerated in the Constitution (Scheduled Castes) Order, 1950 who professor the Hindu or the Sikh religion. In case of reconversion reconvert is entitled to all the benefits of that caste.\textsuperscript{21} Regarding benefit of reservation after adoption the question very recently came before the Andhra Pradesh High Court in the case of \textit{A.S. Balaji v. Principal, Kurnool Medical College, Kurnool}.\textsuperscript{22} In the instant case the Court said that for the purpose of Article 14, 15(4) and 16(4) the adopted child in addition to being a member of the homogeneous group or class or tribe must also had suffered or subjected to all the disadvantages or handicaps which the members of the homogeneous group, class or tribe are subjected to or have undergone or is undergoing.\textsuperscript{23}

As to who are the real consumers of the protective discrimination, it is quite clear that the benefit of protective discrimination is not perculating down to the real groups who are socially and educationally backward. According to the Supreme Court,\textsuperscript{24} the benefits by and large are snatched away by the top creamy layer of 'backward' caste or class thus “keeping the weakest amongst the weak always weak and leaving the fortunate layers to

\textsuperscript{20} 1985 (2) Scale No. 14, p. 773. For detail see, \textit{Supra}, Chapter III.
\textsuperscript{22} A.I.R. 1966 A.P. 209.
\textsuperscript{23} \textit{Id.} at 224.
consume the whole cake.” Justice Desai\textsuperscript{25} is of the view that “if economic criteria for compensatory discrimination or affirmative action is accepted it would strike at the root cause of social and educational backwardness.” The outcome of the judicial intervention against preferred treatment is that “the gross effect of litigation on the compensatory discrimination has been to curtail and confine it.” Those who have attacked it in the courts have a remarkable record of success as against those who seek to extend compensatory discrimination.\textsuperscript{26}

At national and international level great attention is being given to the matters, concerning child welfare. Child, said Francis Bacon, is the father of man. What he obviously meant was that the productiveness of an adult depends on the opportunities he has to grow and develop as a child. The Constitution of India contains a number of provisions for their welfare.\textsuperscript{27} It provides sufficient powers and direction to both the Centre and States to enact legislation for child welfare. However, in reality the picture is not a happy one.\textsuperscript{28} After the adoption of the National Policy in Children in August, 1974 an Integrated Child Development Scheme (ICDS) was launched in 1975-76 with 33 projects in which a package of services and non-formal education was to be provided. Now there are 300 projects. The Sixth Plan target increases to 1,000 projects. But this target covers only six


\textsuperscript{26} Mere Gallanter, Competing Equalities : Law and the Backward Classes in India 511 (1984).

\textsuperscript{27} Articles 15(3), 23, 24, 39(e) and (f), 45. There are some other provisions in Part IV which apparently don’t talk of child directly but children are bound to be the beneficiaries thereunder. Such Articles are 38, 41, 42 and 46.

\textsuperscript{28} Of the 255 million children below 14, nearly 90 per cent suffer from malnutrition, about one lakh succumbing to it every month. India’s infant mortality rate of 125 per 1,000 is among the highest in the world. Over 30,000 children go blind, every year because of vitamin A deficiency. Nine out of every 1,000 school-going children suffer from rheumatic heart disease as a result of nutritional anemia – The Hindustan Times, November 15, 1984, p. 9.
million children. Another eight million children are to be fed under the Special Nutrition Programmes as a part of Minimum Need Programme.29 These two schemes barely touch the fringe of the problem.

Another problem of children is their exploitation. According to the latest survey30 the number of children employed in the country between the age of five and fourteen on March 1, 1983 was 17.36 million. The actual figure may be much higher if thousands of children working as “helpers” and “carriers” in mines, factories who never figure in the official register are to be taken into account. According to a U.N. report one out of every four was a labourer in India.31 The problem of child exploitation is not only a constitutional or legal problem but is also a social and economic problem and must be tackled as such. The child labour, child offenders, child beggers and child adoption are some aspects which require urgent and immediate attention. A uniform law of adoption available to all communities is needed. The recently passed Child Labour (Prohibition and Regulation) Bill 1986 is a welcome one although there are certain drawbacks in it:32 Regarding free and compulsory education for children upto fourteen years of age, the time limit put by the Constitution was upto January, 1960 but this target still remains to be achieved. Children are sufficiently protected under the Law of Contract, the Criminal Law, the Law of Torts, Family Law and Law of Evidence. The National Policy on Education, 1986 has incorporated number of policies for the betterment of children. For them the reorganization of education has been stipulated under following four stages; (a) Early childhood care, (b) Elementary Education, (c) Secondary Education, (d) Vocationalisation. Thus, the

29 Ibid.
30 Supra note 302, Chapter IV.
31 The Hindustan Times, November 17, 1986 p. 17.
32 See, Supra note 305 Chapter IV.
National Policy of Education has tried to tackle the problems of children from different angles. In order to tackle effectively the problems of children it is suggested that laws concerning them must be implemented effectively. It is further suggested that ‘ombudsmen’ for children be appointed in India on the lines of Norway.

So far as, the protective discrimination in favour of women is concerned the Constitution of India contains elaborate provisions for them. The judiciary in its own way has helped in the process of equalization of genders. It has acted with open mindedness while dealing with cases where there are chances of injustice against women due to peculiar social set-up. The Patna High Court, in Babui Panmto v. Ram Agya, annulled the marriage of a girl of sixteen years of age and man aged sixty years on the ground of fraud. The recent cases of Mrs. C.B. Mathuamms v. Union of India; Air India v. Nargesh Meeza; Smt. S. Vishnu v. Union of India; Pratibha Ranu v. Suraj Kumar and Mohd. Ahmed Khan v. Shah Bano Begum show Court’s positive approach towards the problems of women. However, there are instances where judicial attitude has been ambivalent. To some judges the right of the husband to determine the location of the material home has been the deciding factor subordinating all other considerations. Some other judges treated the wife’s reluctance to join her husband due to exigencies of her service as matrimonial offences entitling husband to a decree of restitution of conjugal rights or of judicial separation. In a case where husband was a cobbler and wife had taken job as Gram Saviks the Madhya Pradesh High Court

33 See, Supra Chapter IV.
34 A.I.R. 1968 Patna 190; See, supra note 309, Chapter IV.
37 1985 (1) S.C. All 960.
granted decree of restitution of conjugal rights to husband. However, in N.R. Radhakrishan v. N. Dhanilakshmi, the Court refused to accept the traditional role of Hindu women and their subordinate position in matrimony. Gujrat High Court

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41 A.I.R. 1975 Med. 331. See supra note 317, Chapter IV.
has also taken a similar view.\textsuperscript{42} In \textit{Swaraj v. K.M. Garg},\textsuperscript{43} Justice Deshpande invoked Article 14 in support of his view that husband had no exclusive right to decide the location of matrimonial home. In summing up the attitude of judiciary towards a women, a writer\textsuperscript{44} has very rightly said that “courts are now” willing to wound” discrimination where ameliorative legislations are operative, they are “afraid to kill” discrimination where there is no legislation by a resort to the provisions of the Constitution. Under the National Policy of Education – 1986 many policies have been framed for removing disparities and to equalize educational opportunities for women. It has been stipulated to use education as an agent of basic change in the status of women. In order to neutralize the accumulated distortions of the past, there will be well-conceived edge in favour of women.\textsuperscript{45} It is further stipulated that to remove women’s illiteracy and obstacles inhibiting their access to, and retention in, elementary education will receive overriding priority, through provision of special support services, setting of time targets, and effective monitoring.\textsuperscript{46}

It can safely be said that after the commencement of the Constitution of India, great emphasis has been given on the equality of genders. But it is surprising to note that India is yet to sign the United Nations Convention on Eradication of Discrimination Against Women.\textsuperscript{47}

He ‘social justice’ includes within its ambit and scope affording adequate protection to the minorities. The term minority has not been

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\bibitem{42} Pravina Ben v. Suresh bhai Tribhovan, A.I.R. 1975 Guj. 69.
\bibitem{43} A.I.R. 1978 Del. 296.
\bibitem{44} B. Shiveramayya, "Law, status of women and social change" 25 J.I.L.I. 289 (1983).
\bibitem{46} Cl. 4.3, Id.
\bibitem{47} As per French Ambassadress to UNESCO Ms. Gisele Halimi, The Hindustan Times, January 5, 1986, p. 7, Column 5.
\end{thebibliography}
defined in the Constitution. From the decisions in re Kerala Education Bill, 1957, D.A.V. College, Jullundur and Arya Samaj Education Trust cases the judicial opinion seems to favour application of two tests (i) statistical and (ii) geographical. By the combination of these two tests means that a religious or linguistic group claiming the right under Article 30(1) must be numerically smaller as against the total population within the boundaries of a particular State. That is why Arya Samajists in Punjab have been held to be a minority but not in Delhi. In order to protect the interest of minorities the founding fathers enacted several provisions. Articles 25, 26, 27 and 28 guarantee the freedom of religion. These Articles make the Constitution a secular one. Subject to certain limitations, Article 25 secures to every person a right not merely to entertain religious beliefs but also to exhibit the same by such overt acts sanctioned by his religion. The Courts have been gone into the religious scriptures to find out whether a particular practice is part of the religion or not. In National Anthem case, the Supreme Court has gone to the extent of declaring that no person can be forced to join in the singing of the National Anthem against his will and such compulsion in violative of Articles 19(1) (a) and 25(1). This decision has been seen by some as encouragement to separatism in India. The case has now been referred to a larger bench of the Supreme Court. Article 26 guarantees the right to religious denomination or section of it to establish and maintain educational institutions for religious and charitable purposes and to manage its own affairs, in matter of religion.

50 A.I.R. 1976 Del. 207.
52 Arya Samaj Educational Trusts, Delhi v. The Director, Delhi Education. A.I.R. 1976 Del. 207.
53 The religious freedom under Article 25 is subject to (1) public order, morality and health, (2) regulation of financial, political and secular activities associated with religion, (3) social reforms.
54 Supra note 68, Chapter V.
In *S.P. Mittal v. Union of India*, the Supreme Court said the words 'religious denominations' must take their colour from the word religion and must satisfy (i) that it is collection of individuals who has a common faith and (ii) common organization and designation by a distinctive name. Whether a community is a religious denomination is a question of fact or in any event a mixed question of fact and law. The words 'establish and maintain' in clause (a) of the Article 26 must be read conjunctively. The State cannot interfere with right under Clause (b) of Article 26 unless the management of the denomination runs counter to public order, morality or health. The term ‘matters of religion’ in Article 26(b) is synonymous with the term ‘religion’ in Article 25(1) and embraces not merely matters of doctrines and beliefs concerning the religion but also its practice. The religious denomination under Article 26(c) has right to own and acquire property and under Article 26(d) has the right to administer the property attached to a religious institution in accordance with law. If the right to administer properties never vested in a denomination or had been validly surrendered by it or otherwise effectively and irretrievably lost to it Article 26 cannot be successfully invoked. Article 27 prohibits the levying of tax and proceeds of which are meant specifically for payment of expenses for promotion and maintenance of any particular religion or religious denomination. This Article prohibits levying of tax and not fee. Article 28 deals with the protection of religious freedom of minorities. Clause (1) of the Article prohibits providing of religious

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56 Id. at 20, 21.
instructions in wholly government maintained educational institutions. But the restriction under Clause (1) would not apply under Clause (2) if the educational institution though administered by the State has been established under so endowment or trust. Clause (3) of the Article prohibits a student of an educational institution recognized or aided by the State from taking part in religious instructions given in that institution without his or his guardian’s consent in case, the student is a minor. The judiciary while interpreting Articles 25 and 26 has maintained a careful balance between individual freedom or freedom of the group in regard to religion and need for State regulation. Whenever, courts have come to the conclusion that a particular practice was “matter of religion” they have prevented the State from interfering with it.

Article 29 and 30 of the Constitution guarantee certain cultural and educational rights to cultural, religious and linguistic minorities. These provision connote (a) right to conserve, (b) right to freedom of education and (c) right to State aid. Article 29(1) guarantees to every section of citizens having a distinct language, script or culture to conserve them. The right to conserve the language of the citizens includes right to agitate for the protection of the language. The right to conserve includes (i) right to profess, practice and preach its own religion; (ii) right to follow its own social, moral and intellectual ways of life; (iii) right to impart instructions in its tradition and culture and (iv) the right to perform any other lawful act or to adopt any lawful measure for the purpose of preserving culture. Article 29(2) prohibits discrimination against any citizen on the grounds only of religion, race, caste, language or any of them in matter of admission into educational institutions maintained or aided by the State. This right is given to the

citizens as such as not as a member of any minority community. The Supreme Court in the case of Bombay Education Society\textsuperscript{65} and re Kerala Education Bill,\textsuperscript{66} has held that members of majority community are entitled to seek admission in minority institution. These decisions have gone a long way in strengthening the social integration. Article 30 of the Constitution guarantees following four types of rights to minorities based on religion or language; (i) The right to establish educational institution; (ii) The right to establish institutions; (iii) The right to determine the nature of the educational institution of their choice and (iv) the right not to be discriminated against in matters of State aid to such institutions. It is through the education that group culture can be preserved. According to the Supreme Court the right of minority to establish educational institution under Article 30(1) is not limited to the purposes laid down in Article 29(1).\textsuperscript{67} This Article is of the widest import and includes but the purpose of language, script and culture and imparting secular education. The words “establish and administer’ in Article 30(1) are to be read conjunctively and not disjunctively.\textsuperscript{68} For a community to get benefit of Article 30(1) it must show (i) that it is religious\textsuperscript{69} or linguistic minority and (ii) that the institution has been established by it. This right is available to both pre-Constitution and post-Constitution institutions but the right must of course be sought to be exercised after the commencement of the Constitution.\textsuperscript{70} The right granted under Article 30(1) is not an absolute one.\textsuperscript{71} In a very recent case of Andhra Pradesh Christian Medical

\textsuperscript{65} A.I.R. 1954 S.C. 561.  
\textsuperscript{66} A.I.R. 1958 S.C. 956.  
\textsuperscript{68} Ibid.  
\textsuperscript{70} N. Parameswara Kurup v. State of Tamil Nadu, A.I.R. 1986 Mad. 126 at 127.  
the Supreme Court has very emphatically said the right guaranteed to minorities under Article 30(1) cannot be used as a “smokescreen” for launching financial adventures. “The institutions must be institutions of the minorities in truth and reality and not mere marked phantoms.”

The right to administer educational institutions means ‘sufficient freedom’ to the founder to manage and mould the institution according to his own vision and purpose. The right to administer may be said to consist of the (a) right to choose managing or governing body; (b) right to choose its teachers; (c) right not to be compelled to refuse admission to students; (d) right to use properties and assets for the benefit of the institution; (e) right to selected its own medium of instruction. Although the right to administer minority educational institutions guaranteed under Article 30(1) is not subject to any limitation or exception unlike Article 19, however, this right is subject to the police power of the State which is inherent attribute of sovereignty of State. For regulating the educational institution under police power, the State in addition to satisfy the usual test of public interest must also conform to two more tests, i.e. the regulation is reasonable and is conductive to make the institution an effective vehicle of education for the minority concerned. The judiciary had recognized the right of the minorities to choose the medium of instruction in their institutions. The Courts have also struck down the regulation interfering with the right of minorities to admit students of their choice.

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72 The Indian Express (Delhi ed.) dated 25th April, 1986 p. 7 Column 2 & 3.
73 Ibid.
From Sr. Xavier's case\footnote{A.I.R. 1975 S.C. 1389.} it is clear that (a) the minority institutions have full freedom to choose their staff; (b) the State has a right to prescribe qualifications and (c) the State may also regulate service conditions and fair procedures. Regarding problems of affiliation and recognition and State aid, it has been held\footnote{In re the Kerala Education Bill, 1957 A.I.R. S.C. 956; St. Xavier College v. State of Gujrat; A.I.R. 1974 S.C. 1389; State of Kerala v. Mother Provincial, A.I.R. 1970 S.C. 2079.} that there is no fundamental right to affiliation. State has right to impose reasonable conditions for granting affiliation or recognition but such conditions must not tantamount to surrender of minority right to administer educational institutions of their choice. The State in furtherance of its duty under Article 45 to provide free and compulsory education can regulate or restrict fee etc., if it undertakes to compensate the loss suffered by a minority institution as a result of non-realisation of fees.\footnote{In re the Kerala Education Bill 1957; A.I.R. 1958 S.C. 956.}

The State can impose certain regulatory conditions on educational institutions seeking State aid but these conditions must not be violative of Article 30(1). In order to find out whether a pre-condition is valid or not regard must be had to real affect and impact on the fundamental right. So far as the autonomy of minority institutions are concerned the judiciary has conceded the regulatory power of the State to rectify maladministration.\footnote{Ibid.} But imposition of conditions which are likely to oblige the minority institution to surrender its right to establish and administer educational institutions of its choice or render it unreal or ineffective will be violative of Article 30(1).\footnote{Sidhraibbhai v. State of Gujrat, A.I.R. 1956 S.C. 540.}

Rev. Mother Provincial;\textsuperscript{85} St. Xavier College v. State of Gujrat;\textsuperscript{86} Lily Kurian v. Sr. Lewina\textsuperscript{87} and All Saints High School v. Government of A.P.\textsuperscript{88} case reveal that educational institutions established and administered by the minorities imparting secular education enjoy a superior and privileged position than those run by majority in matter of governmental or university control. The Supreme Court by its generous and liberal interpretation of Article 30 has resulted in denial of security of tenure to teachers of minority educational institutions imparting general secular education. This situation has arisen because of the Supreme Court rejection of the arbitration clause between management of minority institution and teachers in St.Xavier’s case. However, in a land mark judgment delivered in a recent case of Frank Anthony Public Management of the Frank Anthony School,\textsuperscript{89} the Supreme Court held that the management of a minority educational institution cannot be permitted under the guise of the fundamental right guaranteed under Article 30 to oppress or exploit its employees any more than any other private employee. The result of the ruling is that the private unaided schools recognized by Delhi Administration are bound to pay their teachers and other employees the pay scales, allowances, medical facilities, pension, gratuity, provident fund and other benefits as are paid to corresponding teachers and employees of the Government Schools.

Regarding minorities it is very pertinent to point out that the term minority has not been defined in the Constitution. It would be better if it is clarified as to who are minorities by discussions and debates.

\textsuperscript{86} A.I.R. 1974 S.C. 1389.
\textsuperscript{87} A.I.R. 1979 S.C. 52.
\textsuperscript{88} A.I.R. 1980 S.C. 1042.
\textsuperscript{89} Reported in \textit{The Hindustan Times} (New Delhi) Nov. 18, 1986, p. 1.
The Constitution has provided constitutional machinery both administrative and judicial for the implementation of the scheme of protective discrimination for scheduled castes, scheduled tribes, other backward classes, minorities, women and children. Article 338 of the Constitution provides for the appointment of special officers for scheduled castes and scheduled tribes to ameliorate their status in the society and to secure them social justice. The duty of these officers is to investigate all matters relating to the safeguards guaranteed to them and to report to the President concerning working of such safeguards. These reports are laid before both the Houses of Parliament. This special officer who has been designed as Commissioner is also required to look after the interest of Anglo-Indian community. He also examines accounts of non-official organization receiving grants from the Centre and advises the Central Government regarding schemes received by it from the States. He acts as a link between States on the one hand and State and Centre on the other hand. There are Regional Assistant Commissioners throughout the country to assist the Commissioner. But in 1967 these Assistant Commissioners were withdrawn from Commissioner’s control and put under the control of the Director-General. Backward Classes Welfare which caused a great handicap for the Commissioner. The Committee on Untouchability has recommended full independent status for the Commissioner with clearly defined and condivided powers, responsibility and jurisdiction of action as existed before 1967 reorganisation. The Centre in addition to the Commissioner for Scheduled Castes and Scheduled Tribes constituted a high level Commission for Scheduled Castes and Scheduled Tribes in July 1978 for investigating all matters relating to safeguards provided for scheduled castes and scheduled tribes including reservation in public services and its implications.

implementation of Civil Rights Act, 1955 with particular reference to the objective of removal of untouchability and individual discrimination within five years and factors accounting for Commission of Offences against the person belonging to Scheduled Castes and Scheduled Tribes. The Commission in its report of 1978-79 has thoroughly dealt with the circumstances leading to atrocities against Harijans and Advasis. It has recommended a statutory status to the Commission and also a right to participate in planning process of socio-economic development of scheduled castes and scheduled tribes and evolution of progress of implementation of the measures undertaken for the same. Another administrative machinery for implementation of the protective discrimination the Commission for Scheduled Areas and Scheduled Tribes and Constitution for this Commission is envisaged under Article 339 of the Constitution. In furtherance of the said Article the Commission for scheduled Areas and Scheduled Tribes was set in 1960. This Commission suggested criteria for determination of scheduled area. To ameliorate the conditions of backward classes the centre in furtherance of Article 348 of the Constitution set up two Backward Classes Commissions one in January 1953 known as Kelekar Commission for Backward Classes and second in 1978 popularly known as Mandal backward Classes Commission. Mandal's Commission report was submitted in December 1980. However, the Central Government has not yet taken any decision on it. The next administrative machinery is special officers for Linguistic Minorities. In furtherance of Article 350B a Commissioner for Linguistic Minorities was appointed in July 1957 in order to protect the rights of linguistic minorities. Another institution created for their protection is Zonal Councils. These Zonal Councils enable the State in a zone to formulate a common policy for minorities and have come into being under the States Re-organisation Act, 1956. These Zonal Councils
although advisory in nature have been successful in promoting cooperation and consultation between Centre and States. Minorities Commission is yet another institution for looking into the interest of minorities. It was appointed in January 1978 by an executive order. The Janata Government did bring a bill for giving it a constitutional status in the Lok Sabha but it fell through for want of quorum. The Congress (I) Government after it came into power, also promised a statutory status to Minorities Commission but nothing has been done since then. In its Fourth Annual Report (1.1.1981 to 31.3.1982) the Minorities Commission pointed out that it could not satisfactorily carry out the important function entrusted to it if it depended on the good will and voluntary cooperation either of authorities against which complaints were received or others. The Commission, therefore, reiterated its earlier recommendation for a constitutional status to be conferred upon it as a part of more comprehensive National Integration-cum-Human Rights Commission or it that was not possible immediately, it must be given powers under section 5 of the Commission of Inquiries Act.\(^9^1\) In order to make the Minorities Commission really effective one it is suggested that it should be given a statutory status. For tackling protective discrimination in favour of women and children the Constitution as such does not require appointment of any authorities or agencies. Generally if a law is passed implementing the constitutional provisions then the offences under the law would be investigated and tried or otherwise dealt with by the competent executive or judicial authority. Departments of social affairs have been functioning within an appropriate government and are responsible for administration of the relevant measures. Children Acts as in force in various States to contemplate the setting up of the children courts. The recent Juvenile Justice Bill passed by the

Parliament on November 18, 1986 provides for giving neglected and delinquent children the same treatment throughout the country. This Bill when becomes Act will replace Children Act, 1960. The administrative machinery provided under the said Bill is (i) Welfare Boards for neglected children and (ii) Juvenile Court for delinquent children. However, the effective working of the measure will depend upon the sincerity we have for the children. As regards judicial machinery for enforcement of protective discrimination the Right to Constitutional Remedies has been provided under Articles 32 and 226. In Minerva Mills case\textsuperscript{92} Bhagwati, J. (as he then was) has characterized the power of judicial review under Article 32 and 226 as “part of the basic structure of the Constitution.”\textsuperscript{93} The Supreme Court has revolutionized the concept of locus standi. It has allowed public interest litigation at the instance of public spirited citizen for enforcement of constitutional and legal rights of those who are not in a position to come to the court because of poverty. In A.B.S.K. Sangh (Rly.) v. Union of India,\textsuperscript{94} the Court allowed an unregistered association of railway employees to maintain petition under Article 32 for redress of a common grievance. Other cases where the Supreme Court relaxed locus standi principle are S.P. Gupta and Others v. Union of India,\textsuperscript{95} Sunil Batra v. Union of India,\textsuperscript{96} Veena Sethi v. State of Bihar,\textsuperscript{97} People’s Union of Democratic Rights v. Union of India.\textsuperscript{98} Similarly in Bihar Blinding case\textsuperscript{99} the Bonded Labour case,\textsuperscript{100} the Bombay Pavement Dwellers case,\textsuperscript{101} the Supreme Court issued appropriate orders by relaxing the principle of locus standi. The recent

\textsuperscript{92} A.I.R. 1980 S.C. 1789.
\textsuperscript{93} \textit{Id.} at 1826.
\textsuperscript{94} A.I.R. 1981 S.C. 298.
\textsuperscript{96} A.I.R. 1980 S.C. 1759.
\textsuperscript{97} A.I.R. 1983 S.C. 339.
\textsuperscript{98} A.I.R. 1982 S.C. 1473.
\textsuperscript{100} Bandhua Mukti Morcha v. Union of India, A.I.R. 1984 S.C. 802.
judgment of the Supreme Court in Shriram Foods and Fertiliser Limited,\textsuperscript{102} marks a step in the evolution of Indian law towards bringing all centres of economic power within the scope of Article 32 which confers on the citizen the right to move the Supreme Court for enforcement of fundamental rights. While these rights are vested with the citizen vis-à-vis the State the judgment has if only by implication, enlarged the defined of the “State” under Article 12 to incorporate private sector industries. Mr. Justice P.N. Bhagwati who delivered the judgment held that the Shriram Foods and Fertilizers Limited must be treated as the “State” and was, therefore, “strictly liable”. On the basis of earlier precedents (Bandhua Mukti Morcha; Rajasthan Electricity Board v. Mohan Lal (1967); Sukhdev v. Bhagat Ram (1975); Ramana Sheth v. Inter-National Airport Authority (1979); Som Prakash v. Union of India (1981) the Constitution Bench decided that Shriram Foods and Fertilizer Ltd. would be deemed the “other authority” and pointed out that the Court over the last few years, had expanded the horizon of Article 12 to infuse respect for human rights and social conscience in corporate structure. “The purpose of expansion has not bee to destroy the raison d’etre of creating corporations but to advance the human rights jurisprudence”, it added.\textsuperscript{103} The whole of the case law on scheduled castes, scheduled tribes and other backward classes, women and children and minorities discussed under the respective Chapters of this work shows that the role of judiciary has had been very positive in fulfilling the aspirations of the founding fathers. It has protected the rights of scheduled castes, scheduled tribes, other backward classes, women, children and minorities with full zeal.

Thus, it can be said there is sufficient machinery both administrative and judicial to safeguard the interests of weaker

\textsuperscript{102} Popularly known as Shriram Gas Leak case reported in \textit{The Times of India} (New Delhi) December 30, 1986 p. 4.

\textsuperscript{103} Ibid.
sections of the society and minorities. The real problem is that plethora of bodies and Commissions concerning scheduled castes, scheduled tribes, other backward classes and minorities have been established. This has resulted in duplication of work for ensuring the Constitutional benefits for minorities and weaker sections of society.

II. SUGGESTIONS

On the basis of critical study of the subject it seems pertinent to make the following suggestions:

1. The doctrine of protective discrimination embodied in Article 15(4) and 16(4) and mandate of Article 29(2) cannot be stretched beyond a particular point. In regard to services where professional technological scientific or other special skill is required whether under the Union or States there should not be reservation of posts and merit alone must be only criteria for appointment.

2. For a proper working of compensatory provisions under Article 15(4) and 16(4) it is essential that there must be a clear cut criteria for finding out the ‘backwardness’. The suggestion of Professor S.K. Agrawala that the power to identify and list backward classes throughout the country must vest in the Central Government which may consult the State Governments (as in case of scheduled castes and scheduled tribes) is very pertinent and welcome one. This will give national outlook to the problem. The recent case of Kumari Manju Singh v. B.J. Medical College,104 is a pointer towards the same.

104 A.I.R. 1986 Guj. 175.
3. There should not be any objection to adoption of ‘carry forward’ rule for backward classes for the simple reason that they cannot avail full quota allotted to them and thus remain inadequately represented in services.

4. Instead of caste as the criteria for determination of social and educational backwardness economic criteria should be applied. This will result in destruction of caste and will give secular outlook to the society.

5. The best way of striking a balance between competing claims of equalities is that the reservation should be below fifty per cent. The reservation beyond that limit should be declared as unreasonable. In this regard the formula laid down in Balaji case\textsuperscript{105} is an ideal one.

6. The reservation for scheduled castes, scheduled tribes and other backward classes should be reviewed after every five years and those who have availed the benefit of reservation should not be entitled to the benefit again.

7. In order to deal effectively with the problems of children centre should initiate uniform schemes. The new Bill on Juvenile Justice, 1986 is a pointer in that direction.

8. In India, ombudsman should be appointed for children in the same way in which Norway has done.


\textsuperscript{105} A.I.R. 1963 S.C. 649.
10. Uniform law for adoption available to all communities is needed. Since there is no legislation enacted by Parliament laying down the principles and norms which must be observed and procedure which must be followed in giving an Indian Child in adoption to foreign parents, it is suggested that a comprehensive legislation be enacted for the same. The case of Laxmi Kant Pamdey v. Union of India,\textsuperscript{106} is a pointer in that.

11. The labour legislations should be strictly enforced. It is generally seen that women are discriminated in matter of wages and other service conditions.

12. Where personal laws discriminate against women, such discrimination should be removed.

13. The position should be clarified as to who are minorities by discussion and debates.

\textsuperscript{106} A.I.R. 1986 S.C. 272.