CHAPTER – I
INTRODUCTION

The spirit of the age is in favour of equality, though practice denies it almost everywhere…..

– PT. JAWAHARLAL NEHRU

Dr. B.R. Ambedkar, the father of the Constitution once a very rightly said that:

The first condition which I think is a condition precedent for the successful working of the democracy is that there must be no glaring inequalities in the society. There must not be a suppressed class. There must not be a class which has got all the privileges and a class which has got all the burdens to carry. Such a thing, such a division, such an organisation of society has within itself the germs of a bloody revolution and perhaps, it would be impossible for the democracy to cure them Thus, it is quite possible that if the privileged few will not willingly and voluntarily surrender their privilege, then the distance between them and the lower orders will destroy democracy and bring into existence something quite different.

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1 The Discovery of India.
to the days of Dharamashastras, wherein this section of Hindu society, appears in different nomenclature, namely Sudras, Dwijas, Chandalas, Shwapachas etc. In current usage, they are known as, ‘Untouchables’, ‘Dalits’, ‘Shoshits’, ‘Harijans’, ‘SC’ and ‘ST’ etc.³

The first reference to the Sudras as the lowest strata of the Hindu society is mentioned in *Rigveda* wherein the origin of ‘Varna Vyavastha’ is mentioned in its mythological context. Purushasuktha (X 90, 12):

[Verse in Sanskrit]

The Brahmin sprang from the mouth, the Ksatriya from the arms, the Vaisya from the thighs and the Sudra from the feet (of the Greator).

All *Dharamshastras* writers start with the presumption that all the *Varnas* – Brahmana, Ksatriya, Vaisya and Sudra are arranged in descending order is the downmost.⁵

Besides *Rigveda*, reference to the same also is available in *Bhagavatgita* and a detailed commentary of the same is expounded by

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Manu is his Manusmriti. What evidences from these sacred documents is that there is a racial homogeneity of the Sudras with Dwijas and it rules out the possibility of their having originated from the aboriginal stock. The description, classification, functions etc. of Sudras are comprehensively dealt with by Manu. At one place, he distinguishes between a free Sudra and a slave Sudra who could be bought and sold:

शूद्र तु कार्येदात्मक क्रीतमकःत्रमेव वा ।
दास्यायेव हि सूष्टोऽस्मै ब्राह्मणस्य स्वर्णंभुवा ।।

The Common factor in both the cases, however, Manu maintains, is service from which the Sudra can never gain freedom for it is for “serving the Brahmina” that he was created by Svayambhu (Brahma).

And further: न स्वामिना निस्वास्तोऽधिः शूद्रो दस्याविद्विदृष्टे ।
निसर्गज्ञ हि तत्त्व स्वार्तिक्षतसपोहति ।।

That even if his master frees him from slavery the Sudras has to remain servile and to perform the duties (i.e. service) of a Sudra, for that is his natural duty.

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5 Id., p. 18.
6 Id., pp. 13-14.
7 Law of Manu, VIII, 413.
8 Ibid.
In fact, Sudras and women are marked out in the *Dharamshastras* for indignities of every conceivable kind. They are dealt with more harshly than others. Their disabilities are grave and onerous, and they are debarred from most of the ordinary grace of life. It was for the *niravasita* Sudras – the Chandalas and the Shvapachas that the worst indignities were reserved. They are the classic forebears of SCs of today. Even as a sympathetic reader of the *Dharamshastras* as P.V. Kane was obliged to concede that the life of a Sudra was not worth much.

Manu, at another place observed:

चंडालवपञ्चानालु वहियोमाल्प्रतिज्ञयः ।
अपपातार्था कर्त्तव्या धनमेषां रवगर्दभभम् ॥
वाससिं मृतचेलानि पिन्नभांडषु भोजनम् ।
कार्यां य समलंकारः परिव्रज्या च नित्यः ॥

Manu requires, that the dwellings of the chandalas and shavapachas shall be outside the village .... their dress the garments of the dead .... their food .... Given to them .... in a broken dish.

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11 See *op.cit.*, No. 7, X: 51-2.
Again, what strikes all this is not simply that distinctions should be made between superior and inferior, or that they should be made primarily according to birth, but that they should seek to leave no sphere free from their impress.

Manu at another place affirms:

ब्राह्मणपर्य तपो ज्ञानं तप: क्षत्रिय: रक्षणम्।
वैश्यं तु तपो वारता तपः: शुद्धस्य सेवनम्।।

That while the tapas (arduous duty) of the Brahmin is inana, of the Ksatriya is affording protection of others, of the Vaisya is Varta (agriculture, trade and cattle raising), that of the Sudra is sevanam,(service).

The Manusmriti affirms that they are created by God for serving (dasya) the Brahmins. Their profession sinks them low (for) therefore, we see that lower is the profession of a group, correspondingly lower in its social rank. That is Sudra’s natural avocation which determines his status.

In Parashar Smriti also, Sudra, and Chandalas have not been spared:

\[\text{Id.}, \text{XI 235.}\]
\[\text{Op.cit.}, \text{No. 7.}\]
Parashar maintain that the only look of a Chandala pollute an caste. Hindu, (Brahmin) which can only be purified after having a look (Darshan) of the sun.

There are certain provisions in the Gautama Dharamshastr, to deal strictly with Sudras and keep them away from the Vedas:

अथहास्य चेदमुपश्रणव तस्पुजतुभ्यं श्रोतापति पूरम्—
मुदाहरपि जिध्वाचछेदो धारणे शरीर भेदः।।

Gautam Stress that, if any Sudra hears any Veda Mantra, the melted glass or lead should be poured in his ears, and if he recites any verse or words of the Veda, his tung should be cut down and if he remembers the Veda Mantra, his body should be cut into pieces by an axe.

Manu prescribed punishment in his code not only for any crime but also for anything good too or for any good work is being done by any Sudra.

धर्मोपदेशां दर्पणं विप्राणमस्य कूर्वत्॥

14 Tiwari, op.cit., No. 4, p. 16.
16 Id., p. 24, Gautam Sutra (2:3:3).
17 See Har Dutt, Mitakshar Virati also.
For preaching to a Brahmin proudly on the issues of Dharma a Sudra was punishable with pouring burning oil down his throat and ears.

Thus the authors of *Dharmasasthras* made all effort to describe the most suppressed status of Sudras; and for centuries it continued to be so in reality. Thus, the BCs of today, provide a window into modern Indian Society as a whole. It has been said about the traditional order of Hindu society that it was so extensively marked by the pre-eminence of the Brahmin, that an understanding of his social situation provided key to the understanding of its structure as a whole. The fact of suppression was so deep that it is not easy to uplift these masses within a very short period, and the burden wiping of these centuries of deprivations is not to depend upon one or two good-willed individuals, rather upon the whole nation which should make a concerted action to bring these huge appendices of the Indian society to the same level as the other classes. This is known to the democratic world of today, ‘Democratic Equality’. Equality has no meaning unless it permeates into every single citizen of a free nation; and it is to the nation as a whole that has the obligation to fight against all forms of inequality: political, social and economic.

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19 See, for instance, L. Dumont, *Homo Hierarchicus: The Caste System and its Implication*, Paladin (1972). Max Weber also was inclined to argue that the key to the understanding of Hindu Society lay in understanding the social situation of the Brahmins’, see his *The Religion of India*, the Free Press, (1958).
It is with this ideal in mind, the Father of the Constitution, himself a militant mahar (one of the Sweeper Communities of Maharashtra) vowed to make social justice, the corner stone of the Indian Constitution. Thus, social justice can be said to be the conscience of the Constitution and various provisions are added to it to build this important theme. In the words of Dr. B.R. Ambedkar:

We must begin by acknowledging first that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on privilege of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against the many who are living in abject poverty. On the 26th January, 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life of contradictions. In politics we will have equality and in social and economic life we will have inequality…. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built upo.

In order to eliminate inequalities and bring equality in our society, the proclaimed ideal of the Indian Constitution namely that of social justice, various measures of preferential treatment or compensatory

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20 Dr. Ambedkar’s Address to the CA, 25 November (1949), (CA speech, Vol. 2, pp. 184-187).
discrimination\textsuperscript{21} are incorporated and they are unique in their scope and extent. At present, the reservation exist for the benefit of three groups, namely (a) SCs; (b) STs; and (c) Other BCs. In the case of SCs and STs, the Constitution provides for reservation of seats in the Lok Sabha (House of people)\textsuperscript{22} and the various Vidhan Sabhas (Legislative Assemblies), in educational institutions\textsuperscript{23} and in government job.\textsuperscript{24} Reservation in legislatures confer political power. The second and third types of reservations provides an easy access to new forms of wealth – the governmental largesse – to which they had, relatively speaking, little access before.\textsuperscript{25} Reservation in services under Art. 16(4) has been described by Justice Krishna Iyer as a means ‘gross social distortion and denial of human rights’ to SCs and STs.\textsuperscript{26} The directive principle contained in article 46 of the Constitution requires that the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of SCs and STs and shall protect them from social injustice and all forms of exploitation.\textsuperscript{27} To a lesser extent, the reservation device is also used in matters of allotment of land, housing and other such resources. This type of preferences include the category where Government has to bear heavy expenditure such as special schemes, special grants, loans, scholarships, legal aid etc. and the last type of preferences are meant to provide protection in law and its implementation. Though the main beneficiaries are the members of the

\textsuperscript{21} Hereafter referred to as reservation. Other synonyms for Compensatory discrimination in legal literature are “quotas” and “protective discrimination”.

\textsuperscript{22} Arts, 330 and 332.

\textsuperscript{23} Art. 15(4).

\textsuperscript{24} Art. 16(4).


\textsuperscript{26} Akhil Bhartiya Shoshit Karamchari Sangh (Railway) v. Unic. of India, (1981) 1 SCC, p. 261. para 61. (Hereinafter referred to as Shoshit Sangh).

SCs and STs, in a limited area, other members of BCs are also the beneficiaries of this preferential treatment. All in all, these reservations give a new status which enables them to improve their economic social and political conditions. Thus, the Supreme Court recently in Shoshit Sangh case reaffirms that reservation is only one of the means to promote ‘actual equality’ or ‘equality of result’, however, Justice Krishna Iyer in its commendable opinion appealed for a ‘result-oriented reservation’, and for its social science approach to the problem of offsetting inherited inequalities. Earlier, in N.M. Thomas case, Krishna Iyer held:

The idea of equality has different shades of meaning and connotations. It has many facets and implications. Different writers tend to emphasise some forms of equality rather than others with over-riding importance; equality before the law, equality of basic human rights, economic equality, equality of opportunity and equality of consideration for all persons are some of them. Equality is achieved by treating all persons equally, but men are not equal in all respects. The claim for equality is in fact a protest against unjust, undeserved and unjustified inequalities. It is a symbol of man’s revolt against chance, fortuitous, disparity, unjust power and crystalised privileges. Although the decision to grant equality is motivated prima facie, by the alleged reason that men are equal, yet as soon as we clear up the confusion between equality in the moral sense and equality in the physical sense, we realise

30 Id., p. 264, para 22.
that the opposite is the true; for, we think them it is just to promote certain equalities precisely to compensate for the fact that men are actually born out.\textsuperscript{31}

Therefore, the constitution intends to resort to some sort of proportionate equality in many spheres to achieve justice. The principle of proportional equality is attained only when equals are treated equally and unequals are unequally.\textsuperscript{32} This is the basis of the concept, protective discrimination. How is to achieve this? Equals and unequals in what? These are difficult questions to answer. The answer is to be taken circumstances available in each society with we deal. The principle of proportional equality, therefore, involves an appeal to some criterion in terms of which differential treatment is justified. If there is no significant respect in which persons concerned are indistinguishable, differential treaty would be unjustified. That is to say, it is one more step forward from proportional equality to differential treatment and the concept of protective discrimination is another step forward from compensatory discrimination.

Very few serious studies have been these matters especially in the context of the backward communities in India and there is clearly a need for an elaborate exposition or the topic i.e. Political Reservation (PR) including the background, the principles involved and the

\textsuperscript{32} One can distinguish between equality in the simple sense and equality considered as a ratio. This is an old distinction in Western ethical and political philosophy, and Aristotle makes its both in his ‘Ethics’ and in his Politics’. In his terminology, the distribution is between ‘numerical’ equality and ‘proportional’ equality: as he put it, ‘by the first I mean sameness or equality in number or size; by the second equality of ratios. Aristotle deals primarily with ‘proportional’ equality, and his whole theory of distributive justice is based
implications of such preferential the whole society.\textsuperscript{33} Also, there has been no single serious debate on the issue of legislative reservations (i.e. PR) whenever, it arose before both the House of Parliament during constitution amendments for further extension, on all the three rare occasion during the last three decades.\textsuperscript{34} Furthermore, there has been no fundamental thinking at any level governmental or non-governmental on this issue. There is no public debate on the issue either; the media, to put it midly has been altogether absent minded about this.\textsuperscript{35}

In Chapter I, which deals with the problems of inequality very much in detail, the scholar has tried to tal out the concept from the original the Hindu Philosophy and other treaties like Dharamashastras and travel through the notions and interpretations of the concept according to the western and philosophy as well. Though the conditions available in such communities in the west for the study of the problem of inequality are different yet the theoretical discussion of the same does throw a clear light to understanding the problem of inequality available in this country at least as a starting point. The two significant addition would be the cultural depth and the association of social status in relation with the religious status which has been so deep rooted in the problem of inequality in this country. Thus the author has tried to confine the chapter to a clear understanding of the problem of inequality in its various angles and dimensions, found to exist in our country.

\textsuperscript{33} See Beteille, \textit{op.cit.}, No. 3, p. 27, foot note 16, also.
\textsuperscript{34} Galanter, \textit{op.cit.}, No. 28, p. 437.
\textsuperscript{34} The Constitution has been amended thrice during the last three decades for further extending the period of Legislative Reservations, i.e., in 1960, through Constitution (8\textsuperscript{th} Amendment) Act, 1959; in 1970 through Constitution (23\textsuperscript{rd} Amendment) Act, 1969; and in 1980 through Constitution (45\textsuperscript{th} Amendment) Act, 1980.
\textsuperscript{35} Upendra Baxi, in the Ambedkar Memorial Lecture, \textit{Political Justice, Legislative
In Chapter II, the problem of inequality has been brought to a much narrow scope and the attention is focused on one of the main areas of inequalities namely, political inequalities. This is because the inequality in reality exist in various spheres and it is not in the purview of the present study to discuss the problem of inequality in its whole social, economic and other various spheres though such spheres have very close connections with the problem of political inequality in this country. The author has tried his best to explain that to a casual reader, the concept of political inequality may sound to be contradictory in itself. Politics is an area where power is to play. In no society power can be' distributed equality. Yet what it is intended to bring out is the areas of political inequality in which a handful of people in the name of democracy wields power upon the majority who should have been in reality holding and using the power. This aspect of contradiction is not opposed but will remain a mockery to our Constitution. While discussing the concept of Political inequality, the author has a entered into the fields of proportional equality and the provisions of the constitution to achieve this equality through the mechanism of differential treatment. The chapter comes to an end with an exposition of an understanding what should be the nature of the measures in order to achieve political equality in its true sense.

The Chapter on the concept of distributive justice, i.e. Chapter II, is a further step to narrow down the theoretical exposition of the main theme, that is, political reservations. The very basis of political reservation is distributive justice. If equality is understood only in its physical sense, then this chapter would have been out of place. But the concept of an equality in course of time have taken a serious turn

Reservation for Scheduled Castes and Social Scheme', (1978), p. 4.
and brought out the concept of distributive justice which in turn became the basis of the principle of compensatory justice. For the purpose, the author has attempted to locate the root of distributive justice in the ancient Hindu literature, the utilitarian theory and other modern exposition of the subjects by the more recent jurists.

1.1 OBJECTIVES OF THE STUDY

The Constitution does not accept the traditional concept of justice. It elucidates the idea of Distributive justice and measures it in relation to the vital needs of the society. To achieve the objective of an equal and just social order devoid of any inequality, injustice and exploitation, the Constitution has been emended several times, which highlights our Constitution’s socialist commitment towards its people. The Constitution of India is supreme law of the land and it also contains the provisions regarding judiciary. The Supreme Court of India is the guardian of the fundamental rights of the people. But in spite of multifarious efforts and multidimensional strategies, policies and plans of government, poverty, backwardness, illiteracy, unemployment, socio-economic exploitation and increase in crimes against vulnerable sections of our society etc. are writ large on the faces of Indian masses. The present state of affairs of industrial workers, minorities, women, children and other section of the society, their bad socio economic conditions, and ever increasing gap in income and wealth tempted the researcher to study thoroughly the working of the socio-economic as well as legal policies of the Government, both in theoretical and empirical framework. In view of the deficiencies – institutional, functional as well as administrative in the existing socio-legal system, the present study focuses attention specially ion the following basic issues.
• Assessment of various inequalities and imbalances prevalent in the Indian society and extent of contribution of legislative, executive, administrative, judicial and other variables of our system in implementing the goal of social justice.

• To study analytically the growth and development of socio-economic conditions of different sections of Indian society and to find out lacunae in our policies and programmes which have hampered the desired level of attainment of social justice in Indian society.

• To evaluate the legislative measures available for the achievement of goal of social justice and the institutional deficiencies in their framework and policies.

• To analyze the perceptible gap between the theoretical framework and its functioning and to identify and gauge the socio-economic and other factors which have frustrated our socio-legal welfare mechanism.

• To analyze the scope of various administrative plans, programmes and measures for promoting the welfare of masses for poverty-alleviation, education promotion and employment generation etc.

• To assess and evaluate the judicial approach towards the implementation of socio-economic laws, plans and programmes and the role of judiciary in molding the present legal system to suit the needs of the weaker sections of society.
• To analyze the prevailing socio-legal flaws and to chalk out the requirements for molding milieu based on justice, equality and freedom.

• To assess and evaluate various formal, non-formal programmes, the role of social welfare or non-government organizations in the alleviation of the misery of the poor and in the elimination of social inequalities and injustices.

• To analyze the co-ordination between government and non-government organizations for more effective, viable and result oriented functioning.

• Last, but not the least is to suggest in the light of the findings of the study, ways and means of upgrading the policy postulates and legislative framework to remove institutional deficiencies to strengthen and expand formal and informal welfare programmes and to ensure better coordination among various government departments, institutions, agencies and other non-government and information action groups active in the field of socio-economic upliftment of Indian masses.

1.2 HYPOTHESIS

1 The concept of Distributive justice is very much enshrined in the constitution of India.

2 Under Article 15(4), 16(4) the criteria of backward ness is not identifiable in clear terms.

3 Carry forward rule for backward classes must be maintained.
4 There is no dearth of laws in regard to distributive justice.

1.3 RESEARCH METHODOLOGY

Research Methodology is hypothetic deductive one all study material concerning distributive justice in operation in the scheme laws have been well analyzed. In a nutshell the research is doctrinal one.