Dr. AMBEDKAR’S VIEW ON THE CONCEPT OF PROTECTIVE DISCRIMINATION RELATING TO WOMEN, SCHEDULED CASTES AND SCHEDULED TRIBES UNDER THE CONSTITUTION OF INDIA WITH SPECIAL REFERENCE TO KARNATAKA STATE.

Final synopsis of the Ph.D thesis submitted to the University of Mysore for the award of the degree of Doctor of Philosophy of in Law

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INTRODUCTION

Protective discrimination is one of the important methods through which Constitutional goals like social and economic justice can be secured to the Women, Scheduled Castes and Scheduled Tribes. Protective discrimination means preference given in admission to public educational institutions and in public employment to the weaker sections of the society including the Women, Scheduled Castes and Scheduled Tribes. As India is having diversity in terms of religion, castes, belief and communities with different levels of social and educational advancement, which made it difficult for the State to adopt uniform policy to all sections of the society. Therefore, the founding father of the Constitution of India, Dr. Ambedkar, in order to provide social Justice to the Women, Scheduled Castes and Scheduled Tribes has incorporated many provisions in the Indian Constitution like, special provisions for Women, special protection to Scheduled Caste and Scheduled Tribes, special representation in legislatures, public services and reservation of seats in educational institutions. This had been done for increasing the educational opportunities and representation in public services for the Women, Scheduled Castes and Scheduled Tribes to provide equal opportunity as guaranteed by the Constitution.

SIGNIFICANCE OF THE STUDY:

The study on “Protective Discrimination” is very important because more than 70% of the population is residing in the villages and the development of the country depends upon the rural development. It is impossible for the State to provide the financial assistance to all Women, Scheduled Castes and Scheduled Tribes, by giving cash to improve their economic conditions. So the Constitutional makers have adopted so many provisions for providing reservation in education and employment. When these groups get benefits of this protection they automatically come forward without anyone’s assistance and help. Once this protection has been used by these groups our country reaches the status of any
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4. The Constitutional and legal provisions for Women, SCs and STs.
5. The Protective Discrimination: Judicial approaches.
6. Socio-economic conditions of Women, SCs and STs: A case study of Karnataka State.
7. Conclusion and Suggestions.
developed country. But it is unfortunate to say that still more than 50% of the Women, Scheduled Castes and Scheduled Tribes are unaware about their protection and ignorant to get those benefits, because of the problems like, poverty, illiteracy, interference of middleman, lack of will of the government etc. These groups of people have failed to obtain the complete fruits. So it is inevitable to bring systematization by the government to provide the fruits of reservation to those who actually needed and exclude the forward class from reservation. The present study on “protective discrimination” covers the relevant provisions of the Constitution of India and actual implementation of those provisions. The present work highlights the hurdles which come in the way for materializing the Constitutional goals of special treatment. The study would also highlight the role of judiciary in interpreting the protective discrimination clause provided in the Constitution of India in favour of Women, Scheduled Castes and Scheduled Tribes. Through this study, people belonging to these sections (Women, SCs and STs) would be enlightened about the Constitutional protections and benefits and the protection given to them under various laws. Besides, the conclusion and suggestions made in this research work may be utilized by the legislators, policy makers and policy interpreters to bring about justice and equality through the policy of reservation.

IDENTIFICATION AND FORMULATION OF RESEARCH PROBLEMS:

In this research work the researcher has identified the following problems, they are;

1. Majority of Women, Scheduled Castes and Scheduled Tribes are unaware of Constitutional benefits provided to them by the Constitutional makers with a result that they never claim as a matter of right.

2. The Judiciary, which is the protector and guarantor of Constitutional benefits, has failed to interpret the protective discrimination clause widely, so as to secure justice for Scheduled Castes and Scheduled Tribes.
3. Though Constitution of India has provided reservation to Women, Scheduled Castes and Scheduled Tribes, yet it is not strictly being implemented so as to secure them economic justice and social democracy.
4. Even after 58 years of Constitutional operation in India, the State has failed to secure equality and justice to Women, Scheduled Castes and Scheduled Tribes through State welfare programmes.
5. The reasons why the State has not been able to materialize the object of the Constitutional mandate of protective discrimination and bring about equality in terms of status and opportunities are conspicuous (not clear).
6. The present laws which are supposed to protect the interest of Women, Scheduled Castes and Scheduled Tribes, are not being strictly implemented by the authorities. As a result, the Constitutional mandate of ‘protective discrimination in the form of special privileges has not been fully materialized.
7. The welfare programmes which are taken up by the State are not reaching these people in a way they ought to reach them so as to mitigate injustice and inequality.
8. Majority of advent of Globalization, Liberalization and privatization has affected the Constitutional goal of social justice.

**REVIEW OF LITERATURE**

Review of literature is one of the important principles of research process which exposes the researcher to the various studies and information relating to the research area. A thorough study of academic journals, government published handbooks, books, websites and on line literature has been made. So far, some research work on the Dalit Chaluvali in Karnataka, Mahila chaluvali, Karnataka government programmes for Scheduled Castes and Scheduled Tribes, Women and Ambedkar movement, backward classes in Karnataka has been done. There is no complete study on Dr. Ambedkar's view on the concept protective discrimination.
relating to Women, Scheduled Castes and Scheduled Tribes provided under the Constitution of India with special reference to Karnataka State and its judicial development.

However, there are some studies in these areas which do not directly but indirectly relevant to the present study. Some of them are reviewed and discussed here. The book “B.R. Ambedkar on Federation, Ethnicity and Gender Justice” (2001), edited by Nazeer H, Khan which presents well research papers on Gender justice. These studies display a wide range of issues covering different dimensions of Women and their socio-economic conditions have been analyzed.

G.B. Reddy in his book “Women and Law” 5th edition, 2006” has attempted to discuss the very important Constitutional provisions on Women, legal provisions which protect the various interests of them.

In the Book “Marriage, Dowry Practice and Divorce”, written by S. Gokilavani an attempt has been made to analyze the social evils of Women like dowry death, Women’s status and feminism, divorce Women’s status and feminism, empirical study of dowry System of Practice in Kanyakumari District. She has given the suggestions for eradication of dowry also.

The Book “Women in Indian Society”, (2005) written by Neera Desai & Usha Thakkar, they have attempted to highlight the various issues relating to Women like, Women and work, Women and family, Women’s political participation in India, Women and law and other emerging issues in brief.


The Book “Atrocities and Untouchablity against Scheduled Caste and Scheduled Tribes” (2006) has written by V Narayana Swamy, analysis the various case laws relating to untouchability. The book deals with the atrocities inflicted on
Scheduled Castes and Scheduled Tribes and various provision of Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act, 1989, the protection of civil Rights Act, 1955 and Rules relating to these enactments.

Shankar. L. Gaikwad, in his book “Protective Discrimination Policy and Social Change” (1999), endeavors to examine the implementation of protective discrimination policy in various sectors. His analysis the reasons of faculty implementation and also recommends what measures should be used for its efficient and effective implementation. The book deals with the SCs conditions in Maharashtra and Aurangabad, importance of educational and employment opportunities, discrimination and SCs perception of caste Hindu’s attitudes.

M.K. Dongre in the book “Dimensions of Ambedkarism” (2005) has made an attempt to analyse the Ambedkarism and its dimensions like, social, political, Constitutional, religious, educational, cultural and dimension relating to Women in the first part of the book. In the second part of the book he analysed the economic dimension, the economic structure of Indian Society, economics of caste, economics of untouchability and economic of Hindusim.

An objective study of the Socio-economic conditions of Scheduled Castes and Scheduled Tribes in Karnataka State in early 70’s was made by Prof. C. Parvathamma. The study covers all the 19 districts of the State. In the book “Scheduled Caste and Scheduled Tribes - A Socio-economic Survey”, (1984) an attempt has been made to cover the various aspects of their social and economic conditions including demographic characteristics, caste and sub-caste composition, occupational structures, political consciousness and awareness of Constitutional benefits and the magnitude of untouchability. The study has given detailed account of the Socio-economic conditions of the most deprived sections of the population. While examining the main problems, the author opines Scheduled Caste and Scheduled Tribes in the country and the State as a whole continue that to be the most poor.
Odeyar. D. Hegde in his book “Job Reservation for Dalits and Backward Classes In Private Sector Issues and Strategies” (2005) attempts to discuss the Dalit problem, job reservation for Dalits and OBC’s in the private sector, need and significance, issues in job reservation for Dalits and OBC’s in the private sector, appropriate job creation strategies for Dalit empowerment, Dalit employment questions and need for reducing their absolute poverty.

The book “Casteism in Indian Politics” (2006), written by Dasarathi Bhuyan critically examines casteism in India, caste and Indian Constitution, the backward classes and social change, dominant caste, casteism in India politics, caste and reservation politics, steps to check casteism, caste as determinant of political participation, etc.


Dr. C.B. Raju, conducted a survey on the Scheduled Caste and Scheduled Tribes Socio-economic conditions. In his book “Social Justice and the Constitution of India” (2007), the author has attempted to examine the impact of government’s welfare programme on the Scheduled Caste and Scheduled Tribes. The book deals with the, evolution of caste system, Constitutional provisions for securing justice and judicial response, the practice of untouchability and given valuable suggestions.

The book “Globalization, Privatization and WTO with reference to India” 2003, written by Deepak Srivastava devotes to the study of impact of globalization, its advantages and disadvantages to India, privatizations, its advantages and disadvantages, the role of WTO with reference to India.
Dr. Mahabal Ram in his “Changing Economic Scenario and Social Justice in India” (2003) attempts to discuss a very important issues like, adopting new economic policies, visionless political decisions, disinvestment policy and selling crown jewels, danger of liberalization, challenge to democracy, invasion of capitalism, lack of preparations, mockery of tryst with destiny; poor and Dalits alienated etc.,

The book on “Women and the Law” (2003), written by Dr. Anjanikant has attempted to examine the historical study of the position of Women in India, Constitution and Indian Women, position of Indian Women in their respective personal laws, marital rights of Women in pre legislation era, property rights of Indian Women in their respective personal laws, the study of social and economic condition of Indian Women in seeking Constitutional and legal protection, etc.

The book on “Women, Law and Social Change” (1991), edited by Dr. Shamsuddin Shams presents a well researched papers which reflect on Women and family law, Women and property law, Women and criminal procedure law, Women and labour law, Women and Constitutional law, Women and social change. These studies display a wide range of issues covering different dimensions of the problems and the development of Women.

OBJECTIVES OF THE STUDY:

The researcher has identified the following objectives for the present study.

1. The study contemplates the evolution of the “Policy of Reservation” which facilitates for the development of Women, Scheduled Castes and Scheduled Tribes.

2. The present research work also focuses on Dr. Ambedkar's Vision of “Social Justice” on Women, Scheduled Castes and Scheduled Tribes.
3. The present study centers around the protective discrimination clause, it is required to find out the efficacy of the various provisions relating to protective discrimination provided in the Constitution of India.

4. After the Constitution came into force, the Judiciary has interpreted the ‘protective discrimination” clause to enlarge its scope and significance. Through the present study, it is required to examine how the interpretation made to the protective discrimination clause has really helped to Women, Scheduled Castes and Scheduled Tribes.

5. Though Constitution has provided certain special benefits to Women, Scheduled Castes and Scheduled Tribes, yet these benefits are not effectively reaching the people to whom they are intended. In view of this there is a need to examine why they are not reaching the targeted sections.

6. Through this study, it is required to examine how the State authorities are enforcing the Constitutional mandate of “Protective discrimination” in accordance with the intention of the Constitutional makers.

7. It is also required to probe into the facts through empirical study that how far, the Constitutional benefits provided are being implemented by the State to uplift the Women, Scheduled Caste and Scheduled Tribes.

8. To examine the impact of liberalization, globalization and privatization on weaker sections especially on Women, Scheduled Caste and Scheduled Tribes in securing social justice.
HYPOTHESES:

On the basis of objectives of the study as Stated above, the following hypotheses have been derived.

1. The Constitutional benefits given to Women, Scheduled Caste and Scheduled Tribes under the “Protective discrimination” are not properly reaching them.

2. In securing social justice, the implementing authorities are not honestly discharging their duties in implementing welfare programme launched by the State.

3. In tackling the problem of social justice through reservation, the existing laws and the Constitutional provisions are not strictly being enforced.

4. Unless the caste structured society is changed to egalitarian society, the protective discrimination clause under the Constitution is meaningless and useless.

5. The role of judiciary in the interpretation of ‘Protective Discrimination” Clause is not commendable so as to secure social justice to Scheduled Castes and Scheduled Tribes.

6. Majority of Women, Scheduled Caste and Scheduled Tribes are unaware of Constitutional benefits and State welfare programmes due to their ignorance and illiteracy.

7. Ambedkar always insisted that egalitarian (casteless) society can be established by securing social and economic democracy to the Women, Scheduled Caste and Scheduled Tribes.
**SOURCES OF DATA:**

So far as collection of data is concerned there are sources such as direct source and indirect source. The former represents data collected directly from the respondents relating to the factual situation of their socio-economic backwardness, awareness of Constitutional and legal provisions, programmes and policies of the Government etc., The later comprises primary and secondary data such as, Journals, reports, legislations, Statutory rules, current awareness, publications, legal periodicals, websites, text books, hand books sponsored by the public offices, etc.

**RESEARCH METHODOLOGY:**

The research methodology followed in commissioning the present work covers both empirical and non-empirical methods. Under the non-empirical or doctrinal study, various legislations, text books, commission reports, judicial decisions, law journals have been comprehensively consulted and used. The empirical study focuses on the real problems and difficulties faced by respondents in availing of the Constitutional benefits. For the purpose of collecting data and information questionnaires and interview schedules are prepared and distributed to the respondents like government officials, number of Dalit leaders, number of SCs/STs political representatives etc., member of SC/ST numbering more than 800 from 4 districts which are Bijapur, Chamarajanagar, Kolar, Raichur.

**THE SCOPE OF THE STUDY:**

In Indian Society the weaker sections have been subjected to socio economic deprivation, exploitation, discrimination and injustice of all types even after the 60 years of independence. Central and State governments have adopted several welfare programmes to promote the quality of life of these weaker sections of population. But it is disheartening to note that the fruits of any sort of developmental scheme have not yet reached the unprivileged section of the
society. With this perspective, the present work has been carried on mainly in relation to “Protective Discrimination” stipulated in the Constitution. The discussion has been confined in this research work to three groups of weaker sections namely, Women, Scheduled Castes and Scheduled Tribes.

CONCEPTUAL CLARIFICATION:

The concept of protective discrimination which was adopted under the Indian Constitution under article 15 (3), 15 (4) and 16 (4) is not a new concept. This concept was already enunciated in the various Constitutions of the world like, USA, UK and Canada. The underlying idea is one and the same to protect the poor and backward in order to uplift those communities from socio economic and educational problems. But it was adopted in different form according to their geographical isolation, development, class system, whereas in the caste ridden society like India we have adopted provisions for the protection of weaker sections who are socially and educationally backward.

In general, “Protective Discrimination” means bringing weaker section of society into the main stream at par with forward class people.

The term “Protective Discrimination” is known under various nomenclature as “Positive discrimination”, “Progressive discrimination”, “Positive affirmation” or even as “Reverse Discrimination”.¹

The term “Protective Discrimination” was coined by C.H. Alexandrowicz to indicate the measures of protection including reservation of seats in colleges and posts in the government services sanctioned by the Constitution.²

According to Dr. Ambedkar, “Protective Discrimination” is special preferential treatment or special help. It is very necessary to bring equality among inequals. Special provisions are made for the upliftment of Women, Scheduled Castes and Scheduled Tribes, who are in no position to compete with the more

² Ibid. P.7
advanced sections of the society. For the purpose of competing with the forward classes, the protective discrimination is required.\(^3\)

In U.K. (United Kingdom) where the Constitution is unwritten in which the parliament enacted the Race Relation Act 1926, section 1 and 2 prohibit discrimination in any of the three forms i.e., direct or indirect discrimination and victimization is illegal. Section 8 to 35 of the Race Relations Act 1926 proceed that it is not unlawful to offer persons of a particular racial group access to facilities or services to meet the special necessities of persons of that group in regards to their education training in welfare or any ancillary benefit.\(^4\)

In **Indra Sawhney Vs. Union of India**\(^5\) Lordship Jeevan Reddy observed that there are two types of reservations like, i) Vertical reservation and ii) Horizontal reservation. The reservation is in favour of scheduled castes, Scheduled Tribes and other Backward Classes, under Article 16 (4) may provide for vertical reservation. Whereas reservation in favour of physically handicapped under Article 16(1) may be called as horizontal reservation.\(^6\) If any woman candidate is selected on the basis of reservation in any category then she will be fixed of the reservation will be of horizontal nature.\(^7\)

**THE SCHEME OF THE STUDY**

1. Introduction
2. The growth and evolution of policy of reservation.
3. Dr. Ambedkar’s Vision: “Social Justice” for the Women, SCs and STs.
4. The Constitutional and legal provisions for Women, SCs and STs.
5. The Protective Discrimination: Judicial approaches.
6. Socio-economic conditions of Women, SCs and STs: A case study of Karnataka State.
7. Conclusion and Suggestions.

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\(^3\) Constituent Assembly Debate Vol. 7, 1948 – 49. P. 695.  
\(^4\) Ibid P. 696  
\(^5\) 1992 Supp (3) Sec. 217  
\(^7\) Ibid page no. 393.
**Chapter one** deals with the concept of ‘Protective Discrimination” as provided under the Constitution of India. In this chapter motivating factors which influenced Dr. Ambedkar to insert special provisions to Women, Scheduled Castes and Scheduled Tribes such as, Ambedkar’s family background, great humanist, foreign education, influence of Goutahma Buddha, Mahatma Jyothiba Phule, Social evils against Women, Scheduled Caste and Scheduled Tribes are dealt with. The present chapter also covers the significance of the study, incidents of atrocities on the Women, Scheduled Caste and Scheduled Tribes in India in general, Karnataka in particular. The identification and formulation of research problems, the review of literature, the research objectives, hypotheses, the sources of data collection, the methodology adopted in this legal research, the scope of the work, conceptual clarification with reference to the meaning of the concept of protective discrimination, vertical reservation, and horizontal reservation are also dealt here.

**Chapter two** highlights the growth and evolution of the policy of reservation for the upliftment and protection of Scheduled Castes, Scheduled Tribes and Women. It examines the history of reservation, reservation in Bombay province, in Mysore province, during the British period, historical background of the status of Women, status of Women during the Vedic period, post Vedic period, pre-independent era, Women and Ambedkar movement. The concept of reservation is one of the crucial factors in the Constitution of India to secure Socio-economic justice to the weaker sections and bring them to the mainstream of the national life. The political social and economic inequalities, existed in our country prior to our Constitution, came into being which made social thinkers to agitate for securing Socio-economic and political justice. In India the process of reservation was initiated on 26th July 1902 by Chatrapati Shahu Maharaj of Kolhpur. He extended the educational facilities and job reservation to the depressed classes in his Kingdom. In his administration he started giving 50% reservation to the depressed classes in India. For the first
time, the process of reservation was started during the regime of Chatrapati Shahu Maharaj in India. Karnataka State has got a long history of protective discrimination policy for uplifting the socially and educationally backward sections of the State. In 1918, Nalwadi Krishna Raja Wodeyar, the king in Mysore government, appointed a Miller committee headed by Justice Miller. In 1921 Nalwadi Krishna Raja Wodeyar extended the reservation 75% in the State to the depressed classes. The committee endeavored to afford opportunities to the depressed classes by making reservations to them in government departments. Similarly the policy of reservation was also provided by the Government of India Act 1935 with the effort of the Dr. Ambedkar. In the 1935 Act, for the protection of Scheduled Castes and Scheduled Tribes abolition of untouchability, the special safeguards and reservation for Scheduled Caste and Scheduled Tribes, introduction of universal adult franchise were adopted. Further, Dr. Ambedkar being a drafting committee Chairman he incorporated the reservation in services as fundamental right and other provisions to the present Constitution of India.

**Chapter three** contemplates Dr. Ambedkar’s vision in securing social justice for the Scheduled Caste and Scheduled Tribes and Women. Social justice being a multi-dimensional concept has been viewed differently by scholars of Law, Philosophy and Political Science. The term social justice is quite comprehensive. Social justice in India is the product of social injustice. Our caste system and social structure is the fountain–head for social injustice. **According to Dias**, social justice is the just allocation of advantages and disadvantages, preventing the abuse of power, preventing the abuse of liberty, the just decision of disputes and adopting to change. **According to Utilitarian’s**, social justice is being one of the dimensions of justice, it stands for organization of society based on the principles of equality, liberty and fraternity. **According to Krishan Iyer**, social justice is people oriented or people’s justice, legal justice canalized, controlled and conferred by law. Social justice of to day becomes the legal justice of tomorrow.
In the **words of Dr. Ambedkar**, the term social justice is based upon equality, liberty and fraternity of all human beings. The aim of social justice is to remove all kinds of inequalities based upon caste, race, sex, power, position, wealth etc. The social justice brings equal distribution of the social, political and economical resources of the community.

Ambedkar was the chief architect of the Indian Constitution. He was fully aware of the pattern and problems of the Indian Society. He tried to achieve social justice and social democracy in terms of one man-one value. He treated social justice as a true basis for patriotism and nationalism. Ambedkar did not accept the theories of social justice as propounded by the Varna System, the Aristotelian order, Plato’s Scheme, Gandhian Sarvodaya order and not even the Proletarian socialism of Marx.

Caste system founded on Varnashrama dharma is the negation of social justice. The Hindu Varnasrama dharma and caste system pushed forth Brahmans as the highly privileged caste with a high hereditary social status and stamped the vast majority of the people as ‘Sudras’ and ‘Untouchables’ fit for only manual labour. They were deprived of educational opportunities and condemned to a low social status. Social justice in India seeks to remove glaring inequalities in society based on a hierarchical caste system with its graded inequalities from birth on a large section of Hindu Society and the conferment of privileges and position of dominance to a small section of the society.

The concept of social justice has been enshrined in the Indian Constitution. Ambedkar was Chief Architect of the Indian Constitution. The Constitution is a monumental example of social engineering. Social justice is not defined in the Indian Constitution but it is relative concept taking in its wings the time and circumstances, the people their backwardness, blood, sweat and tears. The Constitution of India brings a renaissance in the concept of social justice when it weaves a trinity of it in the preamble, the fundamental rights and the directive
principles of State polices and this trinity is the core of the commitments to the social revolution. This is the conscience of the Constitution.

Globalization in India means opening doors of our economy to the multinational in the field of agriculture, industries, communication, transportation, electricity generation and distribution and also education etc. However, before opening the door of economy to the multinational companies’ one should know the fact that these multinationals are not coming for providing charity in India but to make profit by utilizing our reserve resources, raw materials and treasury. They are not concerned with our environment, infrastructure development or to deliver social justice. These are not in their policies and programes.

**Chapter four** focuses on various Constitutional and legal provisions which can safeguard the interest of Women, Scheduled Caste and Scheduled Tribes. Accordingly, the chapter is divided into two parts, such as Part-A Constitutional and legal provisions for women. Part-B Constitutional and legal provisions for Scheduled Caste and Scheduled Tribes. The Scheduled Caste, Schedule Tribes and Women are worst sufferers from many decades. For the purpose of protecting the interest of Women, Scheduled Caste and Scheduled Tribes the Constitutional framers (Especially Dr. Ambedkar) incorporated many provisions in the Indian Constitution. The different Constitutional provisions for Women such as, the State shall not deny to any person equality before the law or equal protection of the laws with in the territory of India under article 14. In the article 15 of the Constitution, State should not discriminate any citizen on the grounds of sex, caste, religion, race, etc., in the provision of 15(3) State can make the special provision for Women. Article 16 gives equal opportunity for all citizens in matters relating to employment or appointment to any office under the State. According to Article 23 State should prohibit the traffic in human beings and forced labour of Women. The Constitution secures equal pay for equal work for both men and Women under the Article 39. Even under the article 42, the State shall make provisions for securing
the just and humane conditions of work and for maternity relief. In the provision of 44 of the Constitution the State shall guarantee with in its economic limits to all citizens, the right to work, right to education and public assistance in certain cases.


The Constitution ensures the protection and assures the promotion of the interests of Scheduled Caste and Scheduled Tribes too. The Constitution has specifically provided many provisions to the people of India in general, members of the Scheduled Caste and Scheduled Tribes in particular. For instance, the State shall not deny equality to any person before the law or equal protection of the laws with in the territory of India under article 14. In article 15 (1) the State shall not discrimination any citizen on the basis of caste. In the provision of 15(4) State can make the special provision for the SCs and STs. Under the article 16 (4) State can make special provision in public employment for the SCs and STs. Article 17 abolishes untouchability, it is further provided that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. Article 46 promotes educational and economic interests of Scheduled Castes and Scheduled Tribes. Article 330 reserves representation for Scheduled Caste and schedule tribes in the house of the people. Article 338 deals
with the establishment of National Commission for Scheduled Caste and Scheduled Tribes.

So far as the Scheduled Caste and Scheduled Tribes are concerned, to protect their civil rights to prevent the atrocities on them and to eradicate the bonded labour system, etc., certain legislations have been passed by the parliament. Such as, The Protection of Civil Rights (P.C.R.) Act 1955, The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, The Bonded Labour System (Abolition) Act 1976, The Minimum Wages Act 1948.

Chapter five mainly focuses on the role of judiciary in interpreting and enforcing the Constitutional mandate of “Protective Discrimination”. Accordingly, the chapter is divided into two parts, such as,

Part-A Judicial approach towards Protective Discrimination of Scheduled Castes and Scheduled Tribes.

Part-B Judicial approach towards Protective Discrimination of Women.

In India, the role of judiciary in protecting the interest of SCs and STs through their judgments is not satisfactory in respect of their education, public employment and promotion etc, In Balaji Vs. State of Mysore, the supreme court held that under Article 15 (4) in order to get the Constitutional benefits, the SCs and STs must be both socially and educationally backward. In addition to that to extend the facilities to them, their social backwardness is the main determining factor which would be the result of poverty, occupation and place of habitation are taken into consideration. Again in P. Rajendra Vs. State of Madras, the Supreme Court upheld the test of backwardness which was solely based on caste. The Supreme Court observed that, it must not be forgotten that caste is also a class of citizens. If the caste as a whole is socially and educationally backward, reservation can be made in favour of such caste on the ground that it is socially and educationally backward class of citizens within the meaning of Article 15(4). Further the Supreme Court in the case of K.S. Jayashree Vs. State of Kerala,
held that both caste and poverty would be relevant factors in determining the backwardness, social as well as educational. In **K.C. Vasanth Kumar Vs. State of Karnataka**, the five judges expressed five separate opinions on the vexed question. Their conclusion which may be relevant factors in determining the backwardness of citizens. Again the Supreme Court in **Valsamma Paul Vs. Cochin University**, observed that, SCs and STs had suffered, socially, economically, culturally and educationally. The object of reservation is permissible under Articles 15 (4) and 16(4). Further, the court said that in order to remove these handicaps, disadvantages, sufferings and restrictions to the SCs and STs it must provide the necessary opportunities and facilities. It is very essential bring them into main stream of the society.

In **M. Nagaraj Vs. Union of India**, the Constitution validity of the Constitutional amendments Act 1977, 1981 and 1985 were challenged on the ground that they destroy the basic features of the Constitution. By these clauses 4 (a), 4 (b) were added to Article 16 which provided retrospective promotions to the SCs and STs and also provided relaxation in qualifications. The petitioners argued that these amendments were Un-Constitutional. The five judge bench of the Supreme Court, however, held that these are only enabling provisions to be followed with by the State while giving reservations (i) limit of 50 percent, (ii) deleting creamy layer (iii) roster based post. These amendments do not destroy the identity of the Constitution and therefore they are Constitutional as only applying to the SCs and STs.

Indian judiciary has applied the principle of social justice and has also appreciated the protective discrimination in favour of Women. It is proved from a number of judgments pronounced by Supreme Court that judiciary is infavour the promotion of Women’s right in securing socio-economic and political environment. A few of them are worth mentioning here.

In **Dattareya Motiram More Vs. State of Bombay**, the court endeavored to uphold the validity of certain provision of Bombay Municipal Boroughs Act
1925 which provided for the reservation of seats for Women in the elections to the Jalgon Municipality. The court held that “as a result of joint operation of Articles 15(1) and 15(3) the State could discriminate infavour of Women against men, but it may not discriminate infavour of men against Women”. Again in **T. Sudhakar Reddy Vs. Government of Andra Pradesh**, the Supreme Court has upheld the Constitutional validity of provision to sec 3 (a) of the Andra Pradesh Co-operative societies Act 1964 and of the rules 22 (c) and 22 (A) (3) (a) framed upon the mandate of Article 15(3). The provision read with the said rules provided for nomination of two Women members by the registrar to the managing committee of the co-operative societies with a right to vote and to take part in the meetings of the committee. The court upheld the validity of this provision on the ground of Article 15(3) of the Constitution which permitted for making special provision for Women. In **Madhu Kishwar Vs. State of Bihar**, the Supreme Court observed that half of the Indian population is Women. Women have always been discriminated against and have suffered and are suffering from discrimination in silence. Therefore they should not be discriminated on the basis of sex.

In **Vishaka Vs. State of Rajasthan**, the Supreme Court laid down number of guidelines to prevent the sexual harassment against Women. In this case the court examined the definition of ‘Women Rights’ under section 2(d) of the Protection of Human Rights Act 1993. “Sexual harassment which includes any unwelcome sexually determined behaviour like, physical contact and advances, a demand or request for sexual favors, sexually coloured, removed, showing pornography and any other unwelcome physical, verbal or non verbal conduct of sexual nature”. Supreme Court further emphasized that Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right.

All the above case laws developed by the judiciary show that Dr. Ambedkar’s concept of social justice is reflected in these decisions. Dr. Ambedkar never advocated social justice to the Women, SCs and STs at the cost of the rest of
the people. But he only advocated to provide reservation in various fields with a view to achieve equality in the public life and to bring about egalitarian type of society.

**Chapter six** deals with empirical study on Socio-economic conditions of Scheduled Castes, Scheduled Tribes and Women: A case study of Karnataka State. For the convenience of empirical study, the Karnataka State has been divided into four divisions with head quarters at Bangalore, Belagum, Gulbarga and Mysore. Further the entire State is having 29 districts.

The chapter assesses the economic conditions of Women, Scheduled Castes and Scheduled Tribes, education status of Women, Scheduled Caste and Scheduled Tribes, government programmes for Women, Scheduled Caste and Scheduled Tribes, employment status of Women, Scheduled Caste and Scheduled Tribes, poverty status of Women, Scheduled Castes and Scheduled Tribes, etc. For the purpose of examining the Socio-economic conditions and to find out how far Constitutional benefits are reaching the weaker sections generally, the Women, the Scheduled Caste and Scheduled Tribes in particularly four districts in Karnataka State have been selected for the study such as, Bijapur, Chamarajanagar, Kolar and Raichur (i.e SC/ST and women population is more here). Among these districts 800 respondents belonging to Women, Scheduled Caste and Scheduled Tribes have been selected on random basis.

Of 800 respondents 340 are Women, 340 are Scheduled Castes, 120 Scheduled Tribes respondents. Besides 40 SC/ST officers, 40 Dalit leaders and 20 Scheduled Castes/ Scheduled Tribes political representatives including MLA’s and MP’s have been selected on random basis for extracting various information relating to the problems of Women, Scheduled Castes and Scheduled Tribes. In order to get information from all the respondents, interview schedules and questionnaires were prepared and administered to them individually. Sincere attempts have been made to meet Dalit leaders, officers, MLA’s and MP’s to
obtain relevant information on the Socio-economic conditions of Women, Scheduled Castes and Scheduled Tribes. In addition to this important government departments such as, Directorate of Women and Child Development Department, Bangalore, Social Welfare Department, Directorate of Scheduled Tribe Welfare Department, Ambedkar Development Corporation, Department of Agriculture, Horticulture, Animal Husbandry, Sericulture, Zillapanchayat officers from Bangalore, Mandya, Mysore, Chamarajanagar, Kolar, Bijapur, Raichur have been consulted for obtaining information about Women, Scheduled Castes and Scheduled Tribes.

For the propose of obtaining first hand information two types of questionnaires have been used i.e. Open questionnaire and Closed questionnaire. Besides, Observation techniques and Interview techniques are used to get qualitative information about their socio economic, educational and other problems. Both the questionnaire and interview schedule are considered to draw the findings on the present chapter. The view expressed by the respondents in the questionnaire and during interview was subjective in nature and efforts were made to corroborate all such views with others and come out with balanced findings.

**Chapter seven** focuses on the Conclusion and Suggestions. After the entire study on Protective Discrimination as contemplated under the Indian Constitution under Article 15(3), 15(4) and 16 (4) it is evident that mere adoption of these provisions are not enough so as to uplift the Women, SCs and STs from the problems of poverty, illiteracy, unemployment, etc. It is essential to create awareness to the SC/STs and Women especially in the rural areas. Then only the Women, SCs and STs can claim their Constitutional benefits and rights.

The Hindu Social System is responsible for the growth and evolution of the policy of reservation. Hindu social system divided into various classes and castes, i.e., upper castes and lower castes (Varnshrama). As a matter of fact, the Hindu social system denied education to the Women, Scheduled Castes and Scheduled
Tribes. Justice was given to the Women, SCs and STs only during the British period, especially in Bombay province and Mysore province. The kings like Shau Maharaj and Nalwadi Krishna Raja Wodeyar provided the reservation to the weaker sections or backward classes. It is a very significant contribution to the India Society. Further Dr. B.R. Ambedkar fought against the social injustice and struggled a lot to improve the conditions of Women, SCs and STs. These sections of people were suffering from atrocities, exploitations and injustice for many centuries. Therefore, in order to uplift them socially, economically the reservation policy is adopted as an essential requirement.

So far as Dr. B.R. Ambedkar’s vision of “Social Justice” is concerned, he is the real earnest who sacrificed his whole life for the amelioration of Women, SCs and STs in the society. He strongly fought against the prevalent caste system and gender discrimination in the society and ventured to secure social justice to these sections of the society. His struggle for social justice could be visualized in the ideals and philosophy of the Indian Constitution. Like that, the Constitutional ethos of the social revolution running through the preamble, fundamental rights and the directive principles which emphasize the establishment of an egalitarian social order based on human values and justice, Social, economical, political, equality of status, opportunity and assuring human dignity. Hence, Dr. B.R. Ambedkar brought out a social revolution by awaking the Women, SCs and STs and breaking all social evils based on Hindu Social System.

The Constitutional makers incorporated some of the provisions to the Constitution of India which provide equal status and opportunity to all, including Women, the Scheduled Castes and Scheduled Tribes. For example, Right to equality, Prohibition of discrimination on the grounds of religion, caste, race, sex or place of birth, equality of opportunity in matters of public employment, Abolition of untouchability, Right to life, Right not to be denied admission to any citizen in any educational institution maintained by the State or receiving aid out of State funds on the grounds of religion, race, caste, Right to Constitutional
Remedies. The main object of these rights ensured to all the people including Women, the Scheduled Caste and the Scheduled Tribes is to provide social justice and to establish social order of equality society.

The main aim of incorporating various provisions in the Constitution is to bring peaceful political and socio-economic revolution with a view to balance the conflicting interests in Indian society for securing the satisfaction of maximum of wants with minimum of friction. The Constitution gives the direction to the legislatures to chalkout the various governments policies and programmes to the Women, SCs and STs to get the benefits. The Constitution has ensured equal status to all i.e., not only between men and men, women and women but also between men and women. This Constitutional spirit is found a distinct place and recognition in various legislations passed by the parliament.

So far as the judicial approach towards “Protective Discrimination” of Scheduled Caste and Scheduled Tribes is concerned, in the research work, there was no descending opinion about these special provisions as contemplated under the Indian Constitution. But they showed their dissidence only with different views about the ‘Identification’ of the backward class. Some judges viewed economic criteria has to be taken, so as to determine a particular group as backward. Some other judges opined that people those who are socially and educationally backward are taken into consideration as backward. Couple of other judges viewed that “Caste” itself is determining factor to decide the particular class as backward. But nobody condemned about these special provisions. Some judges opined their willingness or unwillingness about “carry forward rule”, “creamy layer” and “reservation” in promotions. But those dissidence were of only a minority view and finally it was settled that reservation should not cross a particular limit. So it is appreciable observation to bring the equality in the society. In point of view of women the Supreme Court and the High Courts are the protectors of Constitutional and legal rights of Women by way of delivering several favourable judgments. In relation to Women Indian judiciary has shown
much positive judicial activism, the judiciary role is very crucial to gender
discrimination or gender inequality. So, the judiciary has also contributed more for
the development of Women, SCs and STs in relation to their social and economic
conditions to bring out egalitarian society through their judgments.

So for as the empirical study is concerned, it was found that lot of
differences are observed from theory to practical problems. The concept of social
justice is reflected in the Preamble, the Directive Principles of State policy under
part IV and the Fundamental Rights of the Constitution. But it is not found much
in reality. If we read the news papers every day we can come to know that
governments are introducing such programmes and policies for the upliftment of
the weaker section of the society. But in reality all these slogans and statements
are only fake which are quoted in the news papers and media, just they are doing
only to attract the public and popularize them and for the purpose of their vote
bank. Most of the schemes and benefits derived from government are eaten up by
middlemen and they won’t reach to all those who are actually in need of those
benefits. All the government programmes and policies are good, but they failed in
reaching the real needy persons because of lack of implementation. Majority of the
Women, Scheduled Castes and Scheduled Tribes have opined that Constitutional
benefits are available only to those who give bribe to the officials and those who
have political support.

The study reveals that, majority of the urban Women are aware of the
government welfare programmes through their Streeshakti group and often NGOs.
By that they are trying to get the Constitutional benefits and utilizing properly. In
rural areas, Women are still socially, economically, educationally, politically
backward and hardly know about the government welfare programmes. Though
Women belong to minority communities yet they assert their claims for equal
opportunity. Even then no significant improvement has taken place in securing
equal opportunity. Even though Women are facing the problems like, dowry,
widowhood, rape, sexual harassment, female infanticide, devadasi etc. no adequate measures are taken by the State to prevent them so far.

The present study also reveals that majority of the SC/ST agricultural labourers, are depending on their landlords for their livelihood. While working in the land belonging to the upper castes they are frequently discriminated by the upper castes, in providing the wage, loan and other benefits. Further, this empirical study also reveals the discriminatory treatment in respect of temple entry, barber shop entry, village community feasts and marriages etc. Many of the Scheduled Caste officers, Dalit leaders, SCs and STs MP’s and MLA’s expressed their view that, though government is launching the various developmental and welfare programmes, yet they are not properly implemented to reach the targeted people. These facts clearly show that, even after 60 years of Independence and the Constitutional protections conferred, the conditions of the Scheduled Caste, Scheduled Tribes and Women are still deplorable. Even today they are subjected to discrimination, humiliation and injustice by the upper castes in the society.

In this regard, the following suggestions have been recommended.

1. Education should be made compulsory for Women, SCs and STs.
2. Awareness should be created among Women, SCs and STs regarding their Constitutional and other legal rights.
3. Enforcement for laws at grass root level.
4. The government should relax the procedure to the Women, SCs and STs for obtaining loan from various financial institutions to secure the social justice.
5. The government should employ the Women, SCs and STs to hotel industry, temples, both in public and private sectors.
6. The police and law courts should have a special responsibility in dealing with women, SCs and STs Cases for ensuring social justice.
7. A law should be made by the government making the district magistrate obligatory to review these cases every month and forward the report to the State government.

8. The policy of reservation should be extended to private sectors, Higher judiciary, Rajyshaba and to the non-government enterprises in the organised sector as a part of their social obligations in the terms of the national commitment.

9. From the point of safety and protection the government should construct separate villages for Scheduled Castes for their settlement.

10. The reality is that mere enactments of the legislations are not enough to improve the status of women, SCs and STs. What is required is that the mind set of the people has to be changed.

Signature of the Research Supervisor

Doctoral Candidate

Date:

Place: Mysore.