PREFACE

The concept of 'Protective discrimination' for so-called backward classes of people in India has assumed a new dimension because of the massive socio-economic changes after Independence and resultant change in the perception regarding 'Equality'. Soon after independence, the social problem of caste inequality came to the fore though there are many kinds of inequalities in our country, the main emphasis is on caste because of the potential of 'caste' in the battle for ballots. Caste is considered peculiar and intrinsic to the Indian society but escapes strict definition, owing to its complexity. Yet it is used in so many contexts with this lack of precision. It is a term widely used to describe the hereditary, endogamous social classes and sub classes of traditional Hindu society.

The issue of protective discrimination through reservations is steeped in questions of equality, merit and social justice. Understanding the interactions between these questions has long evoked judicial, political and academic debate. The debates on affirmative action or protection discrimination tend to employ the language of rights, particularly the rights of 'upper' against the rights of 'lower' castes. The demands that the state should distribute benefits of education and employment between different castes and communities is a strong one as it echoes a social ideal that has prevailed in India for centuries. What is noticeable is a continued tendency to assert 'rights' of one group as against another, as opposed to rights of an individual as an
individual. The Indian Constitution guarantees fundamental rights of equality of opportunity and non-discrimination to individuals.

The vocal demand for rights by different castes whether ‘upper’ or ‘lower’ do not rest in harmony with the Constitutional guarantees of personal rights to the individual, increasingly hijacked by groups. This hijacking of public space by groups as a result of politicians of various hues pandering to sectional interests have led to policies being framed to cater to group interest over the claims of individuals, mirroring the social stratification of ancient period, which the policy claims to remedy. The objective of each and every such policy is to provide social justice to the downtrodden or backward classes. Undoubtedly the framing fathers of our Constitution realized that Indian society was characterized by inequalities owing to the caste system and their prime motto was to establish a “casteless” society, but alas! It has taken turn to caste based society with never ending reservations for a certain classes of people without any review and revision, as if it has become the bludy whims for political gain only.

India’s reservation, were initially to encourage participation of certain backward groups (the SC and STs) in governance, it has moved on from being compensation to a means of reserving power equations in society. It is also often said that the reservation quota policy in its current form, pits one group against the other, further fragmenting the society. Thus, India’s reservation policy,
formulated in a rigid, hierarchical society as stated above, has been called Compensatory discrimination, it seeks to "include and recompense both for historic deprivations and offset present handicaps".

As a part of the Social Justice policy, reservation are always been considered as a moral obligations that certain classes owe to the others who have been systematically denied access to resources. However, reservations are (and should be) but only one element in this complex policy of securing social justice to the socially disadvantaged, others include providing backward classes with certain beneficial schemes- such as scholarships, grants, loans, land allotments, health care and other poverty alleviation and development measures, making both Constitutional and statutory provisions to safeguard certain groups. It is important to recognize that all these measures are essential for the development of a particular community and quotas are but a part of the longer concern of eliminating backwardness.

Thus, while the justification for the reservation policy and the quota system has been accepted by all, debates are polarized on 3 main questions : the beneficiaries of the policy, its extent and its permanence. These have been thrashed out since the turn of the century, however debates intensified post Mandal and Indra Sawhney and their legacy continues till date. So, inspired by all these logical situations of contemporary India, where from every state there is hue and cry for reservations and people get delighted to identify themselves belonging
to a particular backward class or caste, the researcher has undertaken the issue of protective discrimination, to study it from socio-legal perspective.

An attempt has been made to describe that how the concept of protective discrimination was inserted in the Constitution of India, its history, the goal of social justice how far been achieved and also has tried to find out the rational of retention of such affirmative actions which are otherwise discriminatory to the rest of the common masses. The researcher has also tried to find out the loop-holes of the present Constitutional provisions pertaining to 'Protective Discrimination' along with some suggestion to move to form a consensus that reservations can not continue forever. It will make the so-called backward, most backward resulting in mental paralysis and putting a socio-political stigma on the overall development of our country in the name of social justice.

So, while eliciting with the subject matter of study, the researcher has, as far as practicable discussed the march of law with relevant case laws, its jurisprudential aspects, keeping pace with the present scenario of administrative action vis-à-vis social justice and the major areas have been extensively dealt with in the relevant chapters of this study. Against this backdrop, the researcher has undertaken the daunting task of analyzing the question of reservation or protective discrimination in India and has tried to make a critical assessment thereon from socio-legal perspective.