CHAPTER-VII

CANCLUSION AND SUGGESSIONS

Affirmative action may be justified in terms of compensation for past injustices and a cure for lingering effects of those for lowering the level of competence in the society raising the level of competence in the long run as more of the society’s individual potential is tapped, for polarizing the society along caste or gender lines, or promoting long-term harmony and tolerance through initially forced familiarity, and through provision of role models that will help make professional treatment necessary. That affirmative action programmes have been frequently justified in terms of compensatory justice for scheduled castes, scheduled tribes and other backward classes.

7.1. Indian Social Order

The Indian social order is based on caste system. The social organization divides the manking into four Varnas Bramhin, Kshatriya, Vaisya and sudra. Indian society, transfixed for over 3000 years

had for – reaching effects on the growth and development of various castes and communities. According to Dr. B. R. Ambedkar, Untouchability was started some time about 400 A.D.

7.2. British Rule in India and the Indian National Congress

During the British rule in India old powers prerogatives were abolished; legal enforcement of slavery was withdrawn, new schools and colleges were opened to all, irrespective of religion, race and caste. Poverty and illiteracy among the lower castes kept them away from the protection accorded by laws at the beginning. Even National Congress also gave importance for improving the condition of the depressed classes.

The social reformers and the statesmen like Gandhiji and Dr. B. R. Ambedkar took interest to provide constitutional safeguards to the weaker sections.

7.3. Concepts of equality and the Constitution of India

In India a few unfortunate sections like scheduled castes, scheduled tribes, and backward classes were suppressed socially, educationally and economically for several centuries in the past, and consequently An imbalanced socio-economic order and strict observance of the concept of equality led to the present inequality.
Under Article 46 of the Constitution of India the phrase “weaker sections” is wide enough to include women, scheduled caste, scheduled tribe and other backward classes and children but here the discussion on social justice has been carried on predominantly in relation of compensatory discrimination stipulated in the constitution to achieve equality among the people of India.

Therefore, mere proclamation of equality will be of no avail to persons groaning under the stigma of untouchability, poverty, illiteracy and economic backwardness. The weaker sections need special concessions and preferential treatment to participate in the main stream of national life.

Hence Articles 15 (4) and 16 (4) of the Constitution of India, Provided reservations in educational institutions and employment for scheduled castes, scheduled tribes and socially educationally backward classes of citizens.

7.4. Backward class commissions and judicial Protection

To identify the social and educational Backwardness in vasantakumar case, the supreme court has laid down some of criteria to determine the social and Educational Backwardness

In this connection it is submitted that the union government and state government have constitute Backward Class Commissions to identify the
socially, educationally Backward Class and inclusion of minority Communities under category of backward classes to give more benefits to them in the form of reservation in educational institution as well as in employment.

Based on the recommendation made by the Backward Class commissions the High Court’s and the Supreme Courts have decided the cases in the reservations issues, in relation to criteria for reservations, quantum and length of reservations, etc. The scheduled castes, scheduled tribes and backward class people are the weaker sections of the society who are in need of the special concessions, safeguards, in the form of affirmative action programmes.

The commitment of the founding fathers was to uplift our Backward Classes persons by giving them protective discrimination and ensuring them social Justice. For this 27% reservations has been given the Central Government as well as state governments to the backward classes on the basis of Mendel Commission recommendations.

7.5. Reservations

It may appear that the upliftment of O.B.C is part the larger problem of the removed of mass poverty, this is only partially correct. The deprivation of OBCs is very special case of the larger national issue. This social and educational backwardness and poverty is only a direct consequence of caste based handicaps. These handicaps are embedded in our social structure, their removal will require far-reaching structured change.
In a democratic setup every individual and community has a legitimate right and aspiration to participate in ruling this country in our country nearly 52 Percentage of population belongs to OBCs, they are demanding to save more percentage of reservations then existing 27% reservations in government services. It is no doubt true that the major benefits of reservations and other welfare measures for OBCs will be cornered by the more advanced sections of the backward communities.

It is certainly true that reservations for OBCs will cause a lot of heart burning to other communities. But this heart burning should be allowed to operate as a moral veto against social reform

7.6. Quantum And Scheme of Reservations

Scheduled castes and scheduled tribes constitutes 22.5% of the country’s population. A pro-rate reservation of 22.5% has been made for them in all services and public sector under takings under the central government. In the States also, reservation for Scheduled Castes and Scheduled Tribes is directly proportional to their population in each state.

As stated earlier the population of OBCs., both Hindu and Non-Hindu, is around 52 Percent of the total population of India. Accordingly 52% of all posts under the central government should be reserved for them, where in Article 15 (4) of the Constitution should be below 50%
With the above recommendation regarding the quantum of reservation, all scheme of reservation for OBCs.

(I). Candidates belonging to OBCs recruited on the basis of merit in an open competition should not be adjusted against their reservation quote of 27%

(II). The above reservation should also be made applicable to promotion quota at all levels.

(III). Reserve quota remaining un-filled should be carried forward for a period of three years and deserved there after

(IV). Retaxation in the upper age limit for direct recruitment should be extended to the candidates of OBCs in the same manner as done in the case of SCs and STs

(V). A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of SC and ST candidates.

All recruitments to public sector undertakings both central and state government and also to Nationalised Banks, all private sectors, all Universities and affiliated colleges should also be covered by the above scheme of reservation.

In the year 2005 the government of India constituted National commission for Religious and linguistic Minorities (NLRLM) under the chairmanship of Justice Ranganath Mishra. The committee submitted its report in the year 2007

The committee submitted its report 10\textsuperscript{th} May 2007 with the following recommendations

The commission discussed at length the socio-economic status of the religious and linguistics minorities, the legal and constitutional provisions for safeguarding their interests, and welfare and development measures adopted for giving a greater thrust to their growth and development with a view to mainstream them. We have also reviewed the criterion which already exists for identifying the socially and economically backward amongst different categories of people in the country including the religious and linguistic minorities. While reviewing the status of socially & economically backward amongst different classes including the minorities, the commission has been guided by the constitutional provisions and the goals that the constitution has set for the country. The ultimate objective as laid down by the constitution is of a country secular in nature, based on the principles of equality, social justice and equity for all its citizens without discrimination on the basis of caste, creed, sex or religion. Taking note of the existing inequalities, it makes both mandatory and enabling provisions for facilitating the creation of a society where caste, class, religion will have none or minimal influence. In conformity with constitutional directives two pronged strategy has been evolved for enhancing the status of its people. The socially and economically backward are eligible for benefits from all policies and programmes of government without any discrimination as they are meant for all. Additionally, special provisions have been made for the categories of
SCs, STs, OBCs, weaker sections and minorities to ensure greater thrust and focus for their accelerated development to bring them at par with the general category of people through line Ministries/Department / Institutions. The commission is aware that many of these programmes and interventions have enabled positive discriminations in favour of the backward people for their educational, social and economic development which have had favorable impact on their status. These programmes are being implemented for the last several decades. The committee suggested as other Backward Castes. The National commission for Backward Classes was asked to review communities exclusion as required under the Act, every ten years

In compliance with the directions of the supreme court in India Sawhney Vs Union of India (Mandal case) to setup BC commissions. The Andhra Pradesh government was constituted a BC commission in the year 1994 and reconstituted in the year 2008 under the chairmanship of Justice Dalava Subramanyam to examine for inclusion of any class citizens as backward classes in the list. And to enquire the Non-observance of the rule of reservation in the admissions in to educational institution and also reservation of appointments to posts/services under the government and other local authorities or other authority in the state.

7.8. Reservation to Muslims in Andhra Pradesh

The commission recommended the specific class of Muslims are to be treated as socially and educationally backward classes of Muslims Under the
head of ‘E’ created in the backward classes list in addition to the existing A,B,C,D categories. For providing to them reservations in admission into educational institutions and in appointments to posts and vacancies in the services of the State for the purpose of Article 15 (4) and 16(4) of the constitution of India excluding the creamy layer.

The Andhra Pradesh government has introduced 4% reservation to the socially and educationally backward classes of Muslims though G.OMS.No.23 backward class welfare (c2) dated 7th July 2007 (ordinance 2007)

7.9. Sachar Committee

In the year 2006 A High level committee, constituted under the chairmanship of Justice Rajinder Sachar to gather date/information for preparation of a comprehensive report on the social, economic and educational status of Muslim Community of India.

The committee submitted its report with certain recommendations to uplift the muslim communities. Basing the recommendation the government have been given the concern ministries /Departments the responsibility the Ministries/Departments

is to identify the poor muslims and develop them in education, skill development, Access to credit special development initiatives the wakf for the Muslim community development.
The researcher analysed the various report of the Backward Commissions and the criteria suggested by them to identify “Socially and Educationally Backward Classes” for the purpose of reservations. The Constitution of India is silent so far as the criteria to be adopted for the identification of socially and educationally backward classes. The result State have adopted criteria of their own for giving effect to Articles 15 (4) and 16 (4). The criteria adopted by the states is questioned before the various courts on various grounds. Further the Constitution is also silent on the extent or outer limit of the reservations. The result is that each state has fixed a quota of its own, which is impugned on the ground that the quote fixed by the states would affect national interest. Therefore on two important issues namely, on the question of relevant criteria and the extent of reservations duration of reservation, persistence of uncertainty witnessed since the judiciary has an ultimate say in the matter of interpretation of the Constitution of India,

7.10. Judicial Interpretation:

Indian Judiciary has pronounced some Judgements upholding reservations and some judgement for fine tuning its implementations. Lot of Judgements regarding reservations have been modified subsequently by Indian Parliament through constitutional amendments some judgements of Indian Judiciary has been flouted by state and Central Governments. Give below are the major Judgement given by Indian courts.
The landmark judgments of Balaji Devadsan, Champakam Dorai Rajan, Rangachari, Inamder, Triloknath, T.M.A.Pai, Rajendran, Thomas, vasanthakumar and finally Narayana Rao, Ashok Kumar Gupta have been elaborately discussed on various aspects of protective discrimination the difference between the protective discrimination and compensatory discriminations has been mainly focused. Finally in Vasantakumar case the Supreme Court of India has laid down the guidelines to determine the social and educational backwardness of backward classes. The guidelines had been followed by Narayan Rao in 1987.

7.11. Testing of Hypothesis

It is submitted that the Hypothesis formulated for the present study is tested after collecting information and data. The results are as follows

(1). the hypothesis is that the provisions of the constitution for Scheduled Castes and Scheduled Tribes is very clear under Article 338 (9) and 3338(A) Every state should consult the National Commission for Scheduled Tribes on all the Major policy matters affecting the SC and STs, such consultation is mandatory. There is no such mandatory provision in the Constitutions for OBCs and Minorities

(2) The hypothesis is that reservations is provided under the Constitution under the Articles 15(4) and 16(4) to uplift the Backward Classes for a limited period. The various Committee Constituted to study the social & economic and educational status of the classes/castes and Minorities and to Include Under the category of Backward Classes. The committees recommended to
include more castes under the OBCs excluding the creamy layer among the castes. But no caste is excluded from the list. Some of the states providing reservation more than 50 percent in Government post & Educational institutions. This effect the merit students of other forward castes and leads to anti-reservations stare

(3) The hypothesis is that by interference of the Politicians/Legislatures, the Government is giving weightage for inclusion of communities rather than excluding them. The task of inclusion and exclusion of communities has not been evenly balanced and additions of the lists have been increasing vested interest and political considerations have been responsible for inclusion. The time has come when the question of de-scheduling of relatively advanced communities should receive serious and urgent consideration. A deadline may be fixed when the lists of SC, STs and OBCs are totally dispensed with

(4) The hypothesis is that the commissions have followed the scientific methods in identifying the socially educationally backward classes and inclusion of minority communities in to other Backward Classes. But the procedure prescribed for inclusion/exclusion is unscientific and ad hoc and subjection. Procedure prescribed for inclusion of SC and STs differs from that applied to the other Backward classes and Minorities

(5) The hypothesis is that the role of courts in deciding the constitutional validity of reservations policy is very important. The Supreme Court of India had laid down the guidelines to determine the social economical and educational backwardness of Backward Classes and duration, percentage of reservations. The courts have mannerly focused on the difference between protective discrimination and compensatory discrimination.
7.12. Suggestions:

The present study forwards the following Pragmatic suggestions to the policy makers regarding the inclusion of minority communities under the category of other backward classes

7.12.1. In a democratic setup every individual and community has a legitimate right and aspiration to participate in ruling the country. Equal opportunity may be given to the all castes /classes in education employment and in politics so that they can enjoy rights guaranteed under the Indian Constitution under Articles 15(4) and 16(4)

7.12.2. Regarding educational concessions our educational system is elitist in character and various state government are giving a number of educational concessions to other backward classes students like post metric scholarships pre-metric scholarships, reimbursement of tuition fees; free supply of books and cloths up to Xth standard, mid – day meals, establishment of special hostel felicities, stipends on par with the scheduled caste and scheduled tribe students. All the above facilities to be extended in all the States in the Country

7.12.3. It is well known that most of the backward class children are irregular and indifferent students and their dropout rate is very high. An incentive and time bound programme for adult education should be lunched in high
concentration of other backward classes for dropout students. Bridge schools to be established in these areas where the backward students are more to improve their educational standards.

7.12.4. After completion of the it is very much necessary that suitable institutional finance and technical assistance is made available to such members of village vocational communities who want to setup small scale industries on their own. And vocational training to be provided to the OBC candidates so that national economy will be developed and their financial status also be increased and also to encourage for establishment of industries by the backward class communities.

7.12.5. Various commissions in the country strongly recommended that all the State Governments should be directed to enact and implement progressive land legislation so as to bring about structural change in the existing production relations in the countryside. At present surplus land is being allotted to SCs and STs. A part of the surplus land becoming available in future as a result of the operation of land ceiling laws etc. some of the states governments are allotting the surplus lands to OBC landless labours. This should be implanted throughout the country without any delay.

7.12.6. In some of the states, backward classes development corporations were established to improve the socio economic educational measures for their advancement. This type of corporations should be established throughout the country for their development. This type of corporation should be under the
control of a separate Ministry/Department for OBCs at the Central and State to safeguard their interests.

7.12.7. Since the commencement of the Constitution, reservation has been made for scheduled caste and scheduled tribes generally in proportion to their population is 15 Percent and 7 Percent in matter of seats in the lok sabha and the State Assemblies and in professional colleges and the posts in all central department. Later reservation was extended to other educational institutions, backward classes were also covered by reservation policy in many states. Following the Mandal commission report 27 Percent reservation is providing in higher educational institutions like IITS, IIMS, AIIMS to other backward class students. This was followed by the Central and all State governments. Some of the states have enhanced the reservation quota for OBCs that lead to anti-reservation stir in the country.

7.12.8. the Supreme Courts by a majority judgment upheld the notification of the V.P.Sigh government reserving 27% percent jobs in services to the backward classes subject to the exclusion of socially advanced among them. (Creamy layer) Six of the nine judges on the special branch stuck down the P.V.Narasimha Rao’s governments notification reserving an additional 10 percent jobs in the services for the poorest among the other communities not covered by any reservations. The court also banned reservations exceeding 50 Percent in State services.

7.12.9. Under Article 340, the constitution of India provided for appointment of commission to investigate the conditions of backward classes in accordance with
the provisions under Article 15 (4) and 16(4). The committees should select the economic criteria rather than caste to declare the backwardness. Following the directions of the Supreme Court in Indira Sawhny Judgment in 1992, Central Government and State Governments setup commissions/committees. All the committees followed the Mandal Commission criteria i.e. Namely social educational and economic criteria for inclusion of minorities under category of Backward Classes.

7.12.10. The government brought into effect reservation up to 27 Percent for the other Backward Classes in the central and state Government Jobs. Notification issued for jobs excluding the creamy layer among the OBCs Mandal Commission recommended review would be done after two years to find out of the OBCs had derived the benefit due to them in full or if the creamy layer among them had eaten into their full. The Government has not taken any steps to find out the creamy layer and not excluded single caste/class from the OBCs list. The exclusion of creamy layer should be done immediately so that Justice can be done to the really Poor Backward Class people.

7.12.11. Regarding the length of period of reservation policy two types of views can seen in the public one is reservation policy should be continued for fixed period while the others opinion is it should be continued till the sections became equal with the forward classes. But the majority opinion is that the reservation policy should be extended only to a short period till the sections reach the position of the developed sections of the society. Apart from the reservation the section of people should also put their own efforts to improve
their economic and educational positions automatically their social status also will go up.

**7.12.12.** The procedure followed for inclusion/exclusion of Minorities under the category of other Backward Classes is unscientific, ad hoc and subjection. The procedure prescribed for inclusion of SC/STs differ from that applied to the OBCs. The common procedure to be applied in a scientific manner so that equal justice can be seen.

**7.12.13.** It is a fact that the number of backward classes in the list has increased despite the investments in development activities and special provisions, initiatives and policy for positive discrimination in favour of SC/STs, OBC, and minorities followed by the Government in the last several decades. This by itself indicative of the fact that the considerations other than actual socio economic backwardness of classes are perhaps responsible for increasing tendency of communities and governments for recognizing new castes/classes. Political considerations clubbed with vested interest in remaining backward due the advantage available is perhaps largely responsible for this situation. More classes/castes becoming backward should raise serious doubts about the efficiency of stratagies, polices, programmes evolved and being implemented for raising the socio economic status of backward and weaker communities for the last 65 years. It is indicative of failure to reach out to the deserving
7.12.14 It is observed that preference be given to the less advanced among the Scheduled Castes and Scheduled Tribes and other Backward classes including minorities in provision of all facilities. The tendency on the part of same Castes and Tribes to get themselves listed as backward merely to get concessions is undesirable and must be discouraged.

7.12.15 It is suggested that a High Power Committee, Consisting of among others, anthropologists, social workers and legislatures may be appointed, as and when necessary to draw up a revised list of Scheduled Castes Scheduled Tribes, other Backward classes including minority communities.

7.12.16 According to provisions of clause (9) of Article to 338(A) and 338 the union and every State Government shall consult the National Commission for Scheduled Tribes on all major policy matters affecting the Scheduled Castes and Scheduled Tribes respectively. Such consultation is mandatory and can be construed to be an important constitutional safeguard for SC/STs.

The above constitutional provision does not exist in the National commission for minorities Act, 1992. In the absence of such provision the Government of the day may or may not consult the National commission for Minorities on major policy matters impacting minorities, depending on exigencies. Therefore, the National Commission for minorities Act, 1992 needs to be suitably amended. This may instill a sense of confidence amongst minorities about protection of their interest.