CHAPTER-I

INTRODUCTION:

The Society is composed of un-equals and a welfare state has to strive by both executive and legislative action to help the less fortunate and to improve their condition so that social and economic inequality in the society may be bridged. This is the basic principle on which the authors of Indian Constitution recommended the reservation policy. But the position of the oppressed classes has not improved substantially.

Reservations are not peculiar to India on the basis of caste. In other countries like Malaysia, there is a reservation for Malaya caste, in America for the negroes. The main object of providing reservations in India for the scheduled caste, scheduled tribes and other backward classes, in civil services and services of the central and state governments and reservations in Higher educational institutions like IITs, IIMS, AIIMS and other such institutions for the students pertaining to the ‘other backward classes’. The aim of the government is not to give jobs to some persons belonging to those communities and thereby increase their representation in the services but to uplift those people socially and educationally to provide proper place for them in the society.

The aim of civilized society should be to secure dignity to the every individual. There can be no dignity without equality of and status and opportunity. The absence of equal opportunities in any walk of social life is denial of equal status and equal participation in the affairs of society. The democratic foundation is missing when equal opportunity to grow and gives ones best to the society is denied to a
section Of society. The goal enumerated in the preamble to the constitution remains unattainable so long as the equality of the opportunity is not ensured to all. Founding fathers wanted minimize inequalities in status and to provide facilities and opportunities not only among individuals but also among groups of people so that they may secure adequate means of livelihood and their education and economic interests are protected. They are protected from social justice and exploitation, for this Articles 14, 15, 16, 17, 18, 23, 24, 38, 39, 39-A, 41 and Article 46 were added to the constitution.

The providers of the reservations have categorically stated that it should be only for the first ten years. But our rulers renewed it several times by amending the constitution and provided the reservations even for other caste, apart from scheduled castes and schedule tribes. After getting the independence and implementation of reservations more and more castes are becoming backward from time to time some section of people raised their voices inside the house to give reservations to other backward class of persons. Political parties are also blindly supporting the caste system in implementing the reservations, and thereby creating confusion in the minds of the people and thereby are dividing the society into parts based on religion, caste, etc.,. The framers of the constitutions recommended the reservations should be given to the oppressed classes, and Dr.B.R.Ambedkar was clear in stating that it is the compensatory benefit to the oppressed classes who are being exploited by the upper caste people for thousands of years.
Some special provisions were made in Articles 15(4) and Article 16(4) for the advancement of socially and educationally backward classes of citizens and give them reservations in jobs. Using this power Government gave 22.5% reservations to the communities who are members of sudra caste which was located below the upper castes. The act of the government was not much opposed by other communities and rather welcomed as a goodwill gesture to their brothers who has suffered for centuries of discrimination and disadvantages.

The traditionally accepted meaning of equality of opportunity insures inequality of individual results and the achievement levels of one group differ significantly from others. In Indian context too, as was in the American context, as Moynihan report emphases ‘a new and special effort’ is needed to achieve at least roughly proportional group results and to annihilate the ‘caste virus’ from the Indian bloodstream. This ‘new and special effort’ is called the affirmative action. It is designed to produce the group results required by the doctrine of equal opportunity, based on the assumption of ‘caste equality’. The manipulative defence of affirmative action had sought to evade both the adverse effect on ‘Forward Groups’ interests ‘and the ideological and moral issues involved like ‘meritocracy’ and ‘effortocracy’.

The analysis that follows is an attempt to put a pressing issue of public policy into philosophical and historical perspective. Affirmative action programmes, seemed to operate in a conspiracy of silence on the part of public officials, whose behavior defied their responsibility to defend their actions
publicly. In the ‘law and politics of affirmative action’, which is the main theme of this work, we analysis and examine, inter alia, the role of decision-makers, decision implementers and the courts in giving effect to this ‘new and special effort’ programmes, with empirical data in selected areas.

The final, and perhaps the most vexing, equal protection puzzle in India, of the last four decades has been the scope of affirmative action \(^1\) i.e. from Champakam\(^2\) to Vasanthakumar.\(^3\) Affirmative action was an open constitutional question when it reached the Indian courts in the year 1951. Prior caste or race discrimination were plausibly explicable on the ground, either that caste or race classifications with the purpose and / or effect of harming depressed class were presumptively unconstitutional or that all castes or race classifications regardless of motivation of impact, were presumptively illegitimate.


\(^2\) State of Madras vs Champakam Dorairajan, A.I.R.,

Old standards no longer apply. Old labels no longer fit. Who once confidently shared a way of seeing the world and reaching to its problems, find themselves at odds-sometimes at bitter odds over the question of affirmative action.¹

Affirmative action may be justified in terms of compensation for the past injustices or as a cure for the lingering effects of those for lowering 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 race or gender lines, or promoting longterm harmony and tolerance through initially forced familiarity, and through provision of role models that will help make preferential treatment unnecessary in the future.² Because of the potential for stigmatizing

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preferred Scheduled Caste, Scheduled Tribes and Socially and Educationally Backward Classes\(^1\) as ‘unable to make it on their own’, affirmative action is almost as frequently said to be harmful to disadvantaged groups as it is said to be helpful.\(^2\). Defenders of affirmative action argue that most of the initial suspicion, that preferred individuals lack merit abates as soon as the individuals prove their competence.

But above all, affirmative action is criticized for being unfair to forward castes who are displaced by the programmes even though they have not themselves caused particular harm to Scheduled Castes and Scheduled Tribes and Socially and Educationally backward Classes. The charge is that such programmes are always unfair to the individuals (forward castes) against whom the preferential treatment is directed, unless those individuals themselves participated in the discrimination against the now-preferred Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes.

As Kathleen Sullivan has noted, the ‘suggestion that the social costs and benefits of affirmative action may be judicially weighed and balanced…. Invoke

\(^1\) Hereafter used as Depressed and Backward Classes.

\(^2\) Supra Note-1.
the spectra of social engineering’ that the court desperately wishes to avoid\textsuperscript{1}. It will not be easy to convince the forward castes ‘that they need not pay for the sins discrimination with jobs they already have, but that they must do so with jobs or promotions they might otherwise have got but for affirmative action.\textsuperscript{2}

The rationale, the researcher offers, here is one of distributive justice rather than that of compensatory justice. Properly conceived, compensatory justice is the claim to compensation for discreet and ‘finished’ harm done to Scheduled Castes, Scheduled Tribes, and Socially and Educationally Backward Classes or their ancestors i.e., to award damages for prior sufferings. Simplified for our purposes distributive justice as a matter of equal protection is the claim an individual or group has to the positions or advantages or benefits. They would have been awarded under fair-conditions-fair conditions being identified

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here with the absence of invidious discrimination.\footnote{This definition is sufficient only for equal protection purpose, since there are likely to be other requirements of distributive Justice given other considerations.} When we consider minimum requirements of equal protection, distributive justice requires that whatever advantages are allowed under fair conditions be allowed to everyone, regardless of caste. Our definition is not intended to, and does not, preclude the attachment of limits on permissible advantages. It simply insists that whatever the limits are, they must be the same for everyone.

\paragraph{1.1. Inequality and Affirmative Action:}

In making affirmative action claims, confusion arises because the language of compensatory justice is often employed to defend distributive justice as it is employed to defend compensatory justice. That is, it is frequently argued that affirmative action programmes are necessary to ‘compensate’ scheduled castes, scheduled tribes and backward classes for the harm done to them in the past. But unless further clarification is made, it is uncertain whether the argument refers to past harms so great that their victims deserved to be compensated, or to past harms that have continuing, disabling effects.
If the reference is the former, the argument is indeed one of compensatory justice, but if it is the latter, the argument is essentially one of distributive justice.¹

Distributive justice is a claim of justice in the present, compensatory justice is a claim of retroactive justice, of justice in or for the past. In some cases, of course, the two merge, as when a past injustice is said to have continuing effects. But in that case the distributive justice argument has subsumed or incorporated the compensation claim. Claims of distributive justice are thus always centered on an abstract present, if the past is brought into the argument, it is always incorporated into the terms of the ideal distribution of goods-that is, a distribution that would be just for all persons at all times.

The affirmative action programmes have been frequently justified in terms of compensatory justice for scheduled castes, scheduled tribes and other backward classes. Such a justification is problematical in these cases, and its vulnerabilities have been seized on by critics-including, perhaps most

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1. Supra.
importantly, Supreme Court Justices – to discredit affirmative action. Arguments of compensatory justice in the context of affirmative action run-up against our strongly ingrained general opposition to group responsibility and group entitlement-punishing or rewarding an individual simply because he or she belongs to group.

More specifically, there are two related objections to the compensatory justice argument for affirmative action. They are grounded in the complementary principles that compensation should be paid to the one harmed and that it should be paid by the one who caused the harm. Affirmative action programmes based on compensatory justice may fail the first principle in several ways, most obviously because of generational and socio-economic class differences. While perhaps no one would go so far as to assert that there is no continuing harm to scheduled castes and scheduled tribes and backward classes in the current generation, few would dispute that the most egregious harm occurred in past generations, and in any case that is the harm most typically asserted as justification for reverse discrimination now. To hold that descendants of the millions of weaker sections, harmed throughout history, are entitled to compensation for the long-past injury of their ancestors is to violate the first principle of compensatory justice, that recipients of compensation be the ones harmed. It says that caste is more important than anything else in determining birth and responsibility—indeed, in determining one’s basic identity.
Socio-economic class also becomes a factor in determining whether those injured are the ones compensated and whether those guilty are the ones who pay, for, many, if not most, affirmative action remedies are class-bound. As to those compensated, Kent Greenwalt has written: ‘Even supposing wide compensation to be appropriate, admissions, job and set-aside preferences are peculiar compensatory devices. They reach only a portion of those who are probably least harmed by earlier discrimination, that is, those who have done well enough to be applicants for admission to educational institutions or for relevant jobs or who have built up business enterprises’. And if the benefits of affirmative action programmes are typically class-based, then it stands to reason that those who will pay the benefits are also class-or situation-based individuals who, presumably, are no more guilty of inflicting caste harm than other forward or upper castes of their generation.

Even critics sympathetic to affirmative action have noted its basis. Preferential employment remedies typically result in the exclusion from employment opportunities of a class of persons, most often forward class, who themselves may be innocent of any caste-based wrong doing. Moreover, this excluded class may comprise the relatively least advantaged non-backward class, who may have enjoyed no personal advantages traceable to past caste injustices. In sharp contrast to the arguments of compensatory justice, the main aim of this thesis is to evaluate the implementation of reservations according to their proportional quotas and to examine whether these are justifiable in terms of distributive justice. To repeat, distributive justice as a matter of equal
protection requires that individuals be awarded the positions, advantages, or benefits they would have been awarded under fair conditions. This necessitates study of origin and development of reservation policy in its historical perspective.

1.2. **Reservations during British period:**

No doubt, communal representation was integral even to pre-British Indian Society in the sense of the numerous social closures operated by the caste system. However, the context of this write-up is not these indigenous incarnations, but the categories introduced by the British.

To begin with, these categories were a continuation of the pre-British period. That was only in keeping with the British concern for incorporating into its colonial framework, the traditionally well-entrenched, and from its viewpoint, the strategically placed social groups, as its compradors. That explains the directive of the Committee of Public Instruction, Madras, to the district officers soon after its appointment in 1826.  

The committee explains the preference for the Brahmins and other high caste Brahminnis proximi for jobs and preference for Brahmin teachers in the educational institutions established since 1826. In fact, the British attempts to

1. See generally Radhakrishnan P., “Reservation in Retrospect “.
go along with this class, long preceded its educational efforts. As early as in 1814 the court of Directors had ordered the Exclusion of Indian Christians, then mostly of the ‘untouchable’ castes from certain offices such as of Munsif, Vakil, and Law officer in Bengal Presidency, and also of Sudder amen (Civil Judge), and cavalry in Madras Presidency.

In 1846, in response to a request from the Sheriff of Madras for sanction to employ Peons from among the pariahs in the grand gaol indiscriminately with those of other castes, the Board of Revenue (BOR) reaffirmed this principle.

The Sheriff is informed that upon the principle laid down in the Honorable Court’s dispatch number Eight of 2\textsuperscript{nd} February, 1831, the Government does not recognize Caste, or any religious distinction as a ground of civil disability and all classes or castes, are therefore, alike eligible to offices for which the Head of an office may consider them qualified, and their employment advantageous to the public interests.\footnote{Ibid.}
These considerations can best be understood in terms of the British Curbs and Counterpoiser against the Brahmins, concessions for and conciliation of the Mulsims, and responses to the pressures of the non-Brahmin Hindus for their share in its patronage dispensation.

Intellectual work has always been more or less remained the property of the Brahmin ‘guild’

‘As most of the officials consulted favoured letting in other castes more freely, in 1903 the government enhanced the admissions to the colleges from 15 to 20 a year, and ordered induction of not less than 25 per cent of the candidates from non Brahmn Castes. But as this order was limited to a single institution it had hardly any effect on the Brahmins.

The government was, however, continuing its efforts to curb their monopoly in public service. Thus in 1904 the Board of Revenue obtained from the collectors a statement of the castes of all employees in superior service, that is, on monthly salaries of Rs.15 and above, in the revenue offices in the districts. As the Brahmin, non-Brahmin ratio was 70:30 it instructed the Collectors to ensure a fair distribution of appointments among the non-Brahmins.
1.3. **Egalitarianism and the Indian Constitution:**

The Indian Constitution sets forth a programme for the reconstruction and transformation of a medieval hierarchical society emphasizing inequality \(^1\) into a modern egalitarian society based on individual achievement and equal opportunity for all regardless of one’s caste, race, or religion. \(^2\) But this ideal of egalitarianism did not come about suddenly but is a culmination of a long process of change in the traditional pattern of our caste-ridden society. \(^3\). These changes were effected mainly through indigenous reformers, religious thinkers, and social scientists.

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1. From the very beginning the Indian social system has been described by social scientists as a unique system of inequality sustained by religious and ritual conceptions of purity and pollution. L. Dumont in his *hierarchicus* (1966) describes the Indian caste-system as based on recognized of inequality as a basic value. Also see K.R.Leach, *Aspects of caste in South India* (1962).

2. Articles 14, 15 (1), 16(1), 16(2), 29(2) of the constitution provide for equality and non-discrimination and Articles 15(4) and 16(4) provided for protective discrimination. For details see Chapter VI infra.

3. Singhparmanand Dr., *Equality, Reservation and Discrimination in India*, (Edition 1985), P.8
national leaders and the intelligentsia of the country, who consistently challenged the dominant values legitimizing inherited inequalities based upon the doctrines of Karma and rebirth. Religious movements such as Shaivism, Buddhism, have always been questioning the legitimacy accorded to social inequality and have been restating the Hindu scriptures as preaching human equality. The reformist movements launched by Brahma Samaj, Aryasamaj and religious heads have generated the idea of equality of men. The bhakti movements by Kabir, and Ravidas present a saintly tradition of India in which the lower castes have been venerated. Thus, at every point of ancient Indian life social inequalities sanctioned by Hindu dharma have been consistently challenged.

Many Indian intellectuals, like Gandhiji, Nehru and Dr. Ambedkar were influenced by the Western ideas of equality and egalitarianism infused in the writings of thinkers such as Rousseau and J.S. Mill. They rejected the basis of Hindu orthodoxy and preached gospel of equality in nationalist movement. Gandhiji’s crusades for common brotherhood on behalf of the untouchables was a ‘curious blend of Western egalitarianism and Hindu reformism’. Dr. Ambedkar espoused the cause of untouchables, depressed classes in the Western idioms and dismissed caste inequality as man-made rather than as ordained by God. He proclaimed, ‘if I fail to do away with adominable thralldom an dhuman injustice under which the class into which I was born has been groaning I will put on end to my life with a bullet’.² It was because of Ambedkar’s dramatization of the cause of depressed classes that the framers of
the Indian Constitution readily incorporated the policies of compensatory
discrimination. The expression ‘Suppressed’, ‘Oppressed’ and ‘Sub-merged’
were used as substitutes for the word ‘depressed’ by different people majority
of the people. ¹. Under the impact of these new ideas of rationality, equality
and freedom, many lower castes began to get access to them in the traditional
sources of power. This happened in South India where these lower castes
launched a movement against Brahmin domination in every area of social and
political life and ultimately succeeded in securing reservation for Scheduled
Castes and Scheduled Tribes and backward Classes in admission to educational
institutions and in employment Although the Constitution has aimed at the
creation of a ‘casteless and classless’. Society, caste, ‘still continues to be one
of the stubborn facts of real social interchange’. . And this stubbornness of
caste has created all problems in the administration of the affirmative action
programme. Thus, ideas of inequality sanctioned by Hindu scriptures and the
idea of human equality have been part of the Hindu tradition. Swami
Vivekanandha, pointed out way back in nineteenth century that equality of
opportunity does not solve the problems of inequality but becomes a mark to
conceal the accentuation of social injustice where opportunities, though equal
in law become more sharply unequal, owing to many causes including primarily
the mal-distribution of wealth and income and of educational opportunity. He
suggested that if there is inequality in nature, weaker should be given more

Chance.\textsuperscript{1} It was mainly because of the failure of reformist movements and of private voluntarism preached by Gandhiji and others to induce social transformation, that led to the State supported system of protective discrimination. Under Article 1 of the Universal Declaration of Human Rights, wherein equality is an established and main purpose of law. On this basis, law plays an important role for desegregation.\textsuperscript{2}

Compensatory discrimination is the device for the removal of the ancient distortions that have crept into the Indian social system. A society is only as strong as its weakest sections. Therefore, to protect and promote interests of such sections is to establishes and strengthen the society. \textsuperscript{3} Compensatory discrimination is the means to promote the constitutional goal of social justice. The purpose of reservations is to promote the interest of the weaker sections of the society. According to the provisions of the Indian Constitution, reservations are of three types i.e., reservation of seats in union and state legislatures (Articles 330 and 332) the reservation of seats in educational institutions (Article 15(4)) reservations of posts in public employment (Article 16(4)).

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\item[1.] Juneja P.C., “Caste as Criteria for reservation –Anoverview” central India law Quarterly Vol.5:2(1992),PP.221,222.
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The claimants of reservations under the constitution of India are three categories of people, namely, Scheduled castes, Scheduled Tribes and Backward Classes. Scheduled Castes are also known as untouchables. They are exploited and suppressed by Savarna or upper caste Hindus and asked to live outside the villages. Ignorance, poverty and illiteracy are prevalent among these untouchables. They are backward socially, educationally and economically.

Educational opportunities were denied to the Scheduled Castes. The schools in ancient times were located in village Hindu temples and these castes were barred from entering into the temples and as a result they were deprived of the facilities to attend the schools. Hence, education to these people was denied and they remained illiterate, backward in all spheres through generations.

The caste consciousness had been deep rooted in India. Prior to Independence, the conditions of Scheduled Castes were inhuman and unbearable in India. The efforts of various religious leaders and social reformers had not been of much help in the removal of the caste stigma of the untouchables.

The Scheduled Castes, Scheduled Tribes and some other Backward Castes suffered at the hands of upper caste Hindus.

The Scheduled Tribes also, suffered social disabilities due to their isolated habitation. They resided in remote areas which were inaccessible. These tribes were not victims of social disabilities. They did not suffer evil custom of untouchability existed in Hindu society which was suffered by
scheduled castes. They were exploited by traders and thus they became economically poor. Their social life which was based upon the traditional customs and rituals, barred them from getting educated and modernized. Thus they became socially, educationally and economically backward.

Apart from scheduled castes, scheduled tribes there were some groups of people who were called as low occupational groups or backward castes. Due to their low occupations they were also socially, economically and educationally backward.

The Scheduled Castes, Scheduled Tribes and Backward Class people are the weaker sections of the society who are in need of the special concessions and compensatory justice in the form of reservations.

1.4. **Affirmative Action Programmes and Judicial Trends**

Two burning issues with disintegrative potential and amenable to populist exploitation may now be examined. Judges over the decades, from Champakan to Vasanthakumar, have explored the scope and ambit of these two complex issues which are inseparable from one another on agitational violence. Judicial reasoning, however objective, cannot escape the personal element altogether. Forensic remedies fail in the field when pop politics communalized and thwarted the fundamental logic of life and the imperative values of the constitution.¹

Principle and Pragmatism must together govern a realistic and constitutional resolution of these two issues. The consternation expressed about collapse of administrative efficiency on account of the induction of scheduled caste/scheduled tribe candidates is an unrealistic exaggeration. The response of Justice Chinnappa Reddy in Vasanthakumar \(^1\) grips our attention.

‘Efficiency is very much on the lips of the privileged whenever reservation is mentioned. Efficiency, it seems, will be injured if the rule of reservation is extended to promotional posts. From the protests against reservation exceeding 50 per cent or extending to promotional posts and against the carry forward rule, one would think that the civil service is a heavenly paradise into which only the archangels, the chosen of the elite, the very best may enter and may be allowed to go higher up the ladder. But the truth is otherwise. The truth is that the civil service is no paradise and the upper echelons belong to the chosen classes are not necessarily models of efficiency. The underlying assumption that those belonging to the upper castes and classes, who are appointed to the non-reserved posts will because of their presumed merit, ‘naturally perform better than those who have been appointed to the reserved posts and that the clear stream of efficiency will be polluted by the infiltration of the latter into the sacred precincts is a vicious assumption, typical of the superior approach of the elitist classes. There is

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neither statistical basis nor expert evidence to support these assumptions that efficiency will necessarily be impaired if reservation exceeds to per cent, if reservation is carried forward or if reservation is extended to promotional posts.......................... And, who better than the ones belonging to those very sections? Why not ask ourselves why 35 years after independence, the position of the scheduled castes etc. has not greatly improved?..... Dealing with the efficiency doctrine in the A.B.S.K. Sangh case ¹ Krishna Iyer J. had occasion to observe:

‘........Leaser classes of posts, where promotion is secured mechanically by virtue of seniority except where the candidate is unfit, do not require a high degree of skill as in the case of selection posts’. ¹

He further observed:

“The preponderant majority coming from the unreserved candidates cannot affect the over-all administrative efficiency significantly”. ²

The other backward classes who are also beneficiaries under the constitution, are not clearly defined, nor have they the ‘untouchability’ indentity which demarcates the scheduled castes. The constitution refers to them in Articles 15, 16 and also 46 as ‘weaker sections’ of the people.

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1. Sangh A.B.S.K., vs Union of India, A.I.R., 1981,
A detailed study of pre-history of the backward classes category has been made by Marc Galanter in his ‘Competing Equalities’. He concludes that the term had never acquired a definite meaning at the all-India level in the pre-constitution days and has been mainly the offspring of a Madras movement against Brahmins.¹

The present work is a modest attempt to study the effect of reservations in professional colleges with particular reference to medical, engineering and law colleges in Guntur and Krishna districts of Andhra Pradesh.

On the demand of other backward class of persons the Backward Class Commission was appointed on January 29th, 1953 known as Kakakatelkar Commission to investigate the conditions of socially and educationally backward classes within the territory of India. The commission in its first report recommended in the year 1953 for reservation to certain castes who were engaged in some traditional occupation but later on he sent a letter to the President of India in which he virtually pleaded for rejection of the report on the ground that the reservation on the basis of caste would not be in the interest of the society and the country.

2. Ibid., P.115.
1.5. Mandal Commission-1975

The second backward class commission known as Mandal Commission was established in India in 1979 by Janatha Party Government under Prime Minister Morarji Desai with a mandate to ‘identify the socially or educationally backward’. The commission was headed by B.P. Madal Ex. M.P with four other members. As a Chairman he submitted its report in the year 1980 adopting social, educational and economic criteria. The commission recommended 27% reservation in favour of other backward classes (OBC) in addition to 22.5% already existing in favour of S.C & S.T.

The commitment of the founding fathers was to uplift our backward class persons by giving them protective discrimination and ensuring them social justice. For this 27% reservation has been given by the central government as well as state governments to the backward classes on the recommendations of Mandal Commission through the office memorandum dated 25th September, 1991. Mandal Commission pointed out that 3743 castes are backward and the reservation was given to all the 3743 backward castes. Justice Kuladip Singh in his minority judgment has said Mandal has not done any survey to find out whether to 3743 castes which according to him are backward classes under Article 16(4).

On 21st march 2005 the Government of India constituted National Commission for Religious and Linguistic Minorities (NLRLM) under the chairmanship of Justice Ranganath Mishra former Chief Justice of India & exchairman, National Human Rights commission with the following terms of reference

(a) to suggest criteria for identification of socially and economically backward sections among religious and Linguistic Minorities.
(b) to recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities including reservation in education and government employment and

(c) to suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations.

The committee submitted its report 10th May 2007 with the following recommendations

The commission discussed at length the socio-economic status of the religious and linguistic 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.

1.7. A P .Commission for Backward Classes - 1993

In compliance with the directions of the supreme court in Mandal case (Indra Sawhney V/s union of India.1992) to set up B.C commissions, the Andhra Pradesh Commission for backward classes was constituted under the A P commission for backward classes Act,1993(Act .No.20 of 1993) and started functing from 31-3-1994. The present body of the commission which was reconstituted from 25-5-2008 working under the chairmanship of Justice Dalava Subramanyam and other four members

The functions of the commission are :-

1. to examine requests for inclusion of any class of citizens as backward classes in the list and hear complaints of over inclusion or under inclusion of any backward class in such list and tender such advice to the Govt. as it deems appropriate,
2. to make recommendations on any other matter relating to the backward classes that may be referred to it by the Govt. from time to time,
3. to make an interim report in regard to any castes of classes in whose case urgent action, necessary under the Act in the opinion of the Govt.,
4. to enquire into specific complaints with regard to the non-observance of the rule of reservation in the admissions into educational institutions and also reservation of appointments to posts/services under the Govt. and other local authorities or other authority in the state.

The Andhra Pradesh commission for backward classes recommended that specific classes of Muslims are to be treated as socially and educationally backward classes of citizens and that a fifth group titled socially and educationally backward class 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.

Andhra Pradesh Government has introduced 4% reservations to the socially and educationally backward classes of Muslims through ordinance 2007 (G.O.Ms.No.23, Backward class welfare (C2), 7th – July-2007)

1.8. Sachar Committee - 2006

A High Level committee, constituted under the chairmanship of justice (Retired) Rajinder Sachar to gather data/information for preparation of a comprehensive report on the social, economic and educational status of Muslim community of India
submitted its report (Popularly known as Sachar committee Report) on 17th November 2006

The report was tabled in both the houses of parliament on 30th November, 2006. The Government took several decisions on the recommendations of the sachar committee and a statement in this regard was laid in both houses of parliament on 31-8-2007

The decisions taken by the Government on the recommendations have been grouped under the following areas:-

I. Measures for affirmative action
II. Education
III. Skill development
IV. Access to credit
V. Special development initiatives
VI. wakfs
VII. Miscellaneous.

The responsibilities for implementation of these decisions have been given to the concerned Ministries/Departments.

Though the constitution has accepted the concept of equality as the foundation for social justice yet it is not absolute in terms and is circumscribed by limitations. In a society where different sections of people are dissimilarly placed, they cannot be made equal by merely being treated as equals. In such circumstances the principle of equality is to be violated under reasonable classification. The intention of the constitution makers was to make reservation in services for backward class of citizens who not adequately represented in services. It was only to be for a minority seats and for a limited period. Any large scale caste based reservations as suggested by
Mandal Commission, were against the intention of the constitution makers who wanted to establish equality and fraternity and not separatism and discard.

The trinity of the goals of the constitution, viz, socialism, secularism and democracy cannot be realized unless all sections of the society participate in the state power equally, irrespective of their caste, community, race, religion and sex and all discriminations in the sharing of the state power made on those grounds are eliminated by positive measures.

Under Article 16(4) of the Constitution of India allowed the reservations in the public services under the Central and State Governments for a 'class of people’ which must be ‘backward’ and ‘in the opinion of the state’ are ‘not adequately by represented’. Under Article 46, the state is required to ‘Promote with special care’ the ‘educational and economic interests’ of the weaker sections’ of the people and ‘in particular’, of the scheduled castes and scheduled tribes, and ‘to protect’ them from ‘social injustice’ and all forms of exploitation’. Since in the present case, we are not concerned with the reservations in favour of the SCs/STs, it is not necessary to refer to Article 335 except to point out that, it is in terms provided there that the claims of SCs/STs in the services are to be taken into consideration, consistently with the maintenance of the efficiency of administration. If must, therefore, mean that the claim of other backward class of citizens and weaker sections must also be considered consistently with the maintenance of the efficiency. For, whomsoever, therefore, reservations is made, the efficiency of administration is not to be sacrificed, whatever efficiency may mean. That is the mandate of the constitution itself.
The various provisions in the constitution relating to reservations, therefore, acknowledge that reservation is an integral part of the principle of equality where inequalities exist. Further, they accept the reality of inequalities and of the existence of unequal social groups in the Indian society. They are described variously as ‘socially and educationally backward classes’ (Article 15(4) and Article 340), ‘the backward class’ (Article 16(4) ‘the weaker sections of people’ (Article 46). The provisions of the constitution also direct that the unequal representation in the services be remedied by taking measures aimed at providing employment to the discriminated class, by whatever different expressions the said class is described. How does one identify the discriminated class is a question of methodology. But once it is identified, the fact that it happens to be a caste, race, or occupational group, is irrelevant. If the social group has hitherto been denied opportunity on the basis of caste, the basis of remedial reservation has also to be the castes. Any other basis of reservation may perpetuate the status quo and may be inappropriate and unjustified for remedying the discrimination. When, in such circumstances, provision is made for reservations, for example, on the basis of caste, it is not a reservation in favour of the caste as a ‘caste’ but in favour of a class or a social group which has been discriminated against, which discrimination cannot be eliminated, otherwise. What the constitution forbids in discrimination ‘only’ on the basis of caste, race etc., However, when the caste also happens to be a social group which is ‘backward’ or ‘socially and educationally backward’ or ‘weaker sections’, this discrimination treatment in its favour, is not only on the basis of the caste.

Now reservation in employment in connection with the affairs of the union or state or the statutory corporations/bodies has
been provided in Articles 16(4), 46 and 355 of the Constitution of India. But it is unfortunate that inspite of the recommendations of the commissions both at the Central and State levels and Judicial decisions, the matter of reservations could not be streamlined as yet.

For about 65 years of working of the constitution, reservation was limited only to direct recruitment, because of misconception of that employment or appointment related only to initial appointment and not to promotional posts. The Indian Railway took lead of making reservations in promotion based on selection.

Indian Judiciary has pronounced some Judgments upholding reservations and some Judgments for fine turning its implementations. Lot of Judgments regarding reservations have been modified subsequently by the Indian Parliament though constitutional amendments. Some Judgments of Indian Judiciary has been flouted by State and Central Governments. Major Judgments given by Indian Courts and its implementation status is discussed in thesis.

1.9. **OBJECTIVES OF THE STUDY**

The following are the specific objectives of the study

1. To trace out the evolution of the concept of reservation in India
2. To understand the basis for reservation to various categories in SC., ST and OBC
3. To know the constitutional provisions for implementation of reservation of seats in higher educational institutions and in employment and promotions.
4. To elucidate the criteria suggested by the commissions and adopted by the States for the identification of socially and Educationally backward classes.
5. To analyze the limitations on the rights of the minorities by express provisions of the constitution and implications.
6. To assess the judicial contribution for the promotion of the reservation policy.
1.10. **HYPOTHESIS**

Keeping the above objectives in view the following hypothesis are formulated

1. The provisions of the constitution in regard to OBC and other minority rights are vague with the result that there is litigation regard to almost every aspect of the OBC and minority rights.

2. Reservations primarily provided for upliftment of the backward classes. But the way the reservations implemented in India had an impact on the merit.

3. There is interference by the authorities of the state through legislative and executive measures on more than one ground on account of which the OBC and minorities have had to face a number of problems.

4. The commissions have followed the scientific methods in identifying the socially and educationally backward classes and inclusion of other minority communities into backward classes.

5. The implementation of constitutional provisions by the courts has in fact determined the nature and scope of rights of the OBC and minorities and the limitations on those rights.

1.11. **METHODOLOGY**

The present study has been pursued by following the historical and analytical methods of research. The historical method has been considered relevant because the safeguards provided to the SCs, STs and OBCs and minorities in the constitution have a long history spread over several documents of constitutional significance. The analytical method has been considered relevant because the nature and scope of the law can be understood in the right prospective by analyzing various provisions of law and by referring to the judgments of the courts on various provisions of
the constitutions, apart from the relevant G.Os issued by the Central and State Governments.

The primary sources from which material has been gathered are the constitutional documents, digests and commentaries on the constitution, reports of backward class commissions, minority commission and the reports. Material has been gathered for this purpose from libraries and various websites and articles published in the journals and magazines.

1.12. TREATMENT OF THE TOPIC

The present study is divided in the seven chapters

✓ Chapter-I deals with introduction need for the present study, methodology, objectives of the study, hypothesis and the division of the area of research for discussion.

✓ Chapter - II deals with a brief historical prospective of the Indian Social Order, particularly the evolution of caste system and background of reservation to SCs, STs and other backward classes in India.

✓ Chapter-III deals with constitutional framework and the affirmative action. In this chapter the efforts of the founding fathers of the constitution to frame the constitution and to provide constitutional provisions to protect the interest of weaker sections have been focussed.

✓ chapter -IV deals with the backward classes commissions and their recommendations to determine the criteria for reservations in favour of socially and educationally backward classes.

✓ Chapter-V deals with the various provisions of the constitution to protect and upliftment of the minorities in regarding to social, economical, educational and employment rights.
✓ Chapter-VI deals with the affirmative action and judicial process the various decisions of the Supreme Court and High Courts on the validity of reservations and the criteria to determine backwardness and also the quantum and time frame of reservations and also deals with compensatory justice and educational opportunities and compensatory discrimination and employment opportunities

✓ Chapter VII embodies the summery of discussion on the present study, conclusions and suggestions.