CHAPTER 5
SUMMARY AND CONCLUSION

Affirmative action, and the policy of reservations, has provided opportunities to those who are marginalised and historically, educationally and socially backward in the society. Affirmative action has produced significant results. However, there are some contradictions in the continuation of the policy – which actually affects the rights of other people in the concerned societies.

Internationally, affirmative action has been present in various countries and existed in different ways. The most significant change has taken place in the United States, where the affirmative action debate began as late as the 1960s and the policies for African Americans were implemented in the same decade. The provisions for the Bhumiputras in Malaysia during the 1970s, the Employment Equity Act of Canada during the 1990s, Brazil, Sri Lanka and Malaysia, Pakistan and many European countries had their own kind of support policies for the marginalised in the society.

In India, affirmative action is primarily in the form of reservations. It has been guaranteed through the constitution that opportunity will be provided to those who are at the backstage and marginalised at the social level since 1950s. The affirmative action of the United States is partially different from India and reservation policy, though the goals are same provide benefits to those who have been marginalised by bringing benefits to them.

Affirmative action in the United States was used as a specific term to describe the government policies in early 1960s. President Kennedy’s Executive Order of 10925 has mandated that “affirmative action must ensure that applicants are employed and those employees are treated during employment, without regard to their race, creed, color, or national origin.” The United States’ affirmative action consists of policies that take gender, race, as well as ethnicity into account, in an attempt to promote equal opportunity within the country. The focus of such policies ranges from employment and
public contracting goals to educational outreach and health programmes. The impetus towards affirmative action is twofold: to maximise diversity and its presumed benefits and to redress the perceived disadvantages due to overt, institutional, or involuntary discrimination. In many cases, affirmative action in the United States is meant to encourage public institutions, such as universities, hospitals, and police forces in being more representative of the populations they serve.

Affirmative action has been the subject of numerous court cases, where it is often contested on constitutional grounds. Some individual American states also have orders that prohibit discrimination and outline affirmative action requirements with regard to race, creed, color, religion, sexual orientation, national origin, gender, age, and disability. Some other states specifically prohibit affirmative action, with laws intended to decrease discrimination, such as California’s Proposition 209 of 1996, Washington’s Initiative 200 of 1998, and Michigan’s Michigan Civil Rights Initiative of 2006.

Some opponents of affirmative action contend that affirmative action programmes are discriminatory and that, in many cases, they result in the promotion or appointment of low-qualified individuals over high-qualified individuals merely because the former belongs to a certain race, ethnicity, or gender. They also, however argue that preferential treatment should be based upon current social and economical standing, and not that of one’s ancestors. Some opponents say that affirmative action devalues the accomplishments of people who are chosen because of the social group to which they belong, rather than their qualifications.

Exponents of affirmative action policies have argued that by nature, the system is not only race based, but also class and gender based. To eliminate these two key components would undermine the purpose of the entire system. The African American Policy Forum (AAPF) of the United States believes that the class-based argument is based on the idea that non-poor minorities do not experience racial and gender-based discrimination. The AAPF believes that race-conscious affirmative action remains necessary to address race-based obstacles that block the path to the success of countless people of color of all classes. The groups go on to say that affirmative action is
responsible for creating the African American middle class, so it does not make sense to say that the system only benefits the middle and upper classes.

Some opponents further claim that affirmative action has undesirable side-effects and that it fails to achieve its goals. They argue that it hinders reconciliation, replaces old wrongs with new wrongs, undermines the achievements of minorities, and encourages groups to identify themselves as disadvantaged, even if they are not. It may increase racial tension and benefit the more privileged people within minority groups at the expense of the disenfranchised within majority groups (such as lower-class whites).

There has recently been a strong push among American states to ban racial or gender preferences in University admissions, in reaction to the controversial and unprecedented decision of the Grutter vs. Bollinger ruling. In 2006, nearly 60 per cent of Michigan voters decided to ban affirmative action in university admissions. Michigan joined California, Florida, Texas, and Washington in banning the use of race or sex during admissions. Some research has indicated that as many as 15 per cent of freshmen enrolled at some of America’s most selective colleges are wealthy white teens who failed to meet their institutions’ minimum admissions standards; furthermore, these wealthy white teens outnumber students who benefit from affirmative action. Some opponents believe, among other things, that affirmative action devalues the accomplishments of people who belong to a group it’s supposed to help, making it counter-productive.

The opinion that the practice is racist depends on how one defines the concept. For instance, the offering of extra college scholarships to black students and Hispanic students, regardless of race, thus including White Hispanics as opposed to European American or Asian American students appears overtly racist. Others believe that programs may be motivated by political considerations.

In the United States, a prominent form of affirmative action centers on access to education, particularly admission to universities and other forms of higher education. Race, ethnicity, native language, social class, geographical origin, parental attendance of the university in question, and gender are sometimes taken into account when
assessing the meaning of an applicant's grades and test scores. Individuals can also be awarded scholarships and have fees paid on the basis of the criteria listed above. In 1978, the Supreme Court ruling of Bakke vs. Regents said that public universities and other government institutions could not set specific numerical targets based on race for admissions or employment. The Court said that goals and timetables for diversity could be set instead.

Admission officers claim that selection should not be based on academic record alone, but also on commitment, enthusiasm, motivation, and potential. Highly selective institutions of higher learning do not select only high performers but look at various other factors in an applicant at the time of admission. Nevertheless, high performers, with 1500 to 1600 points, are extraordinarily well-represented at most of these institutions.

Professor Richard H. Sander of University of California has published an article in the November 2004 issue of the Stanford Law Review that questioned the effectiveness of affirmative action in law schools. The article presents a study that, among other things, shows that half of all black law students rank near the bottom of their class after the first year of law school, and that black law students are more likely to drop out of law school and to fail the bar examination. The article offers a tentative estimate that the production of new black lawyers in the United States would grow by eight per cent if affirmative action programmes at all law schools were ended, as less qualified black students would instead attend less prestigious schools where they would be more closely matched with their classmates, and thus perform better. Sander helped to develop a socioeconomically-based affirmative action plan for the University of California, School of Law, after the passage of Proposition 209 in 1996 which prohibited the use of racial preferences by public universities and Californian schools. This change occurred after studies showed that the graduation rate of blacks at University of California was 41 per cent, compared to 73 per cent for whites.

In order to accommodate the ruling in Hopwood vs. Texas, banning any use of race in school admissions, the State of Texas passed a law guaranteeing entry to any state university of a student's choice if they finished within the top 10 per cent of their
graduating class. Florida and California have also replaced racial quotas with class rank and other programmes. Class rank tends to benefit top students at less competitive high schools, to the detriment of students at more competitive high schools. This effect, however, may be intentional, as less-funded, less competitive schools are more likely have high minority enrollment. Critics argue that class rank is more a measure of one’s peers than of one’s self. The top-10 percent rule is also only helpful because schools are still highly racially segregated. And taking the top 10 per cent of each class still does the same thing that traditional affirmative action programmes do – admit students to college that would not be admitted under entirely merit-based policies. From 1996 to 1998, Texas had entirely merit-based admission to its state universities, and minority enrollment was low. Adopting the ‘top 10 per cent’ rule returned minority enrollment to pre-1996 levels.

In India, the nature of the reservation policy is further more complex because of the form of its societal structure. The underlying theory is that the under-representation of the identifiable groups is a legacy of the Indian caste system as it has been already discussed in chapter one of this thesis. After India gained independence, the Constitution of India listed some erstwhile groups. The framers of the Constitution believed that, due to the caste system, SCs and the STs were historically oppressed and denied respect and equal opportunity in Indian society and were thus under-represented in nation-building activities. The Constitution laid down 15 per cent and 7.5 per cent of vacancies to government-aided educational institutes, and for jobs in the government or public sector, with the reserved quota for the SCs and STs candidates respectively.

Later, reservations were introduced for other sections as well. The Supreme Court ruling that reservations cannot exceed 50 per cent (which it judged would violate equal access guaranteed by the Constitution) has put a cap on reservations. However, there are laws in many states of India that exceed this 50 per cent limit and these are under litigation in the Supreme Court. For example, the caste-based reservation fraction stands at 69 per cent and is applicable to about 87 per cent of the population in the state of Tamil Nadu.
The policies of reservations in favour of Backward Classes were introduced long before the Indian Independence, comprising of presidency areas and the princely states south of the Vindhyas. Chatrapati Sahuji Maharaj, Maharaja of Kolhapur in Maharashtra. They introduced reservation in favor of the backward classes as early as 1902, to eradicate poverty from amongst them and to give them their due share in the state administration. The notification of 1902 created 50 per cent reservation in services for backward classes in the State of Kolhapur. This notification is the first Government order for providing reservation for the welfare of depressed classes in India.

The concept of untouchability was not practiced uniformly throughout the country; the identification of OBCs is not an easy task. What is more, the practice of segregation and untouchability prevailed more in the southern parts of India and was more diffused in Northern India. An additional complexity is that there are certain castes/communities, which are considered as untouchables in one province but not in other provinces. Some castes, based on traditional occupations, find place in both Hindu and non-Hindu communities. Listing of castes has had a long history, starting from the earliest period of our history with Manu. Medieval chronicles contain description of communities located in various parts of the country. During the British colonial period, listings were undertaken after 1806, on an extensive scale. The process gathered momentum in course of the censuses from 1881 to 1931.

The Backward Class movement also first gathered momentum in South India, particularly in Tamil Nadu. The continuous efforts of some of the social reformers of the country have led the chances of opportunities for upliftment. India is divided into many endogamous groups, or castes and sub-castes, as a result of centuries of the social hierarchy. Proponents of reservation say that the traditional caste system, as it is practiced, leads to severe oppression and segregation of the lower castes and limits their access to freedom and education.

In Chhattisgarh, the reservation policies for the SCs, STs and BCs are provided with the norms and conditions based on constitutions and government order. We have discussed
earlier about how reservation for the SCs and STs is beneficial to some extent. The community is benefitted by government policies and entering mainstream of the society.

The public services of Chhattisgarh is open for all sections of society, however, there are provisions for the reservation to provide opportunity to those who are backward and marginalized. For the elections from lower level to upper level, the chances have been given to the SCs and STs to get benefitted from reservation policies of the Indian government. The Government of India has also provided reservation to Backward Castes, SCs, as well as STs, to bring them into the decision making process at the grass root level of society. One of the key features of the 73rd constitutional amendment is that seats are reserved at all three tiers of the panchayat for Scheduled Castes and Scheduled Tribes in proportion to their population, as well as reservation of one-third of seats for women. The Chhattisgarh Panchayati Raj Act 1993 incorporates these provisions, along with reservation of seats for people belonging to Other Backward Classes. The District Election Officer, along with publishing the notice of election, is bound to display a notice regarding the reservation of seats in a panchayat for which an election is being held.

These constitutional and legally based opportunities helped backward classes to get into the mainstream of social order. In Chhattisgah, the condition of STs was especially vulnerable and, they were the most marginalised sections since a long time. When Chhattisgarh was the part of Madhya Pradesh, the tribal achievements were few. This has increased only after the year 2000, when the new state has come to its existence, as Chhattisgarh. As mentioned in previous chapters, the benefit is an ongoing process; however, the government has to scrutinise the policy and its results from time to time. This would be very helpful for the deprived sections of Chhattisgarh. There are some drawbacks in the implementation of reservations, which need to be corrected.

The course of action is on the way; however proper government machinery may lead to the advancement of the deprived community on the proper and enhanced efforts in the days ahead. The policy of reservation has never been subject to a widespread social or political audit. Before extending reservation to more groups, the entire policy needs to
be properly examined, and its benefits should be spread over a span of nearly 60 years have to be gauged.

However, there are many contradictions on the implementation of reservation policies. Some arguments support reservations, while others refute it. The United States' policy of affirmative action has been opposed at many levels. Even in India, the reservation policy has been both supported as well as opposed.

The anti-reservationists feel that the incompetencies because of reservation and the dismal performance of the public sector is because of this reason. The dismal performance may be attributed to several debatable reasons (like permanent job nature, poor vigilance, etc.) and is certainly irrespective of the reserved/unreserved category of people. They also speak about providing help in basic education instead of reservation, but all of this is only after bringing reservation. There was a period when untouchability was at its peak. Also, though the concept of reservation has been introduced, 'non-utilised' reservations fall back into the unreserved category. The concept of 'allocation' by percentage instead of 'reservation' would be of more help in bringing in equality. The politicians who are criticized are actually the ones to have broken shackles of slavery and eliminated discrimination.

Moreover, the anti-reservationists allude that the brain-drain is because reservation. Brain-drain is mainly attributed to the cause of people wanting to become rich overnight, and hence moving out of the country to earn well. Even if we assume that reservations could be a fraction of the cause, one must understand that to tackle brain-drain is meaningless without nationalism.

Further, there are arguments that the reservations are the biggest enemies of meritocracy. By offering reservations through relaxed entry criteria, we are fueling inflation of moderate credentials as opposed to the promotion of the merit based education system, which is the foundation of a progressive country. Meritocracy should not be polluted by injecting relaxation of entry barriers; rather it should be encouraged by offering financial aids to the underprivileged and deserving candidates. Today, the
Indian Institute of Technology and Indian Institute of Management hold a high esteem in the global scenario due to their conservation of merit. The caste based reservation system only perpetuates the notion of caste in society, rather than weakening it as a factor of social consideration, as envisaged by the constitution. Reservation is a tool to meet narrow political ends.

Affirmative action or the reservations can be provided at a more comprehensive level taking into account various factors of exclusion such as caste, economic conditions, gender, as well as the kind of schooling received. A comprehensive scheme of affirmative action would be more beneficial than reservations in addressing concerns of social justice.

In Chhattisgarh, reservations continue to produce positive results, proving significant for backward classes in the society. This also applies to the rest of India, where the government has provided a chance to remove the discrimination by ‘positive discrimination’. Now the question arises as to how far it would go and where it would lead. Nonetheless, reservation is necessary, and must exist for those who are underprivileged until society becomes equal.