CHAPTER VII

CONCLUSIONS AND SUGGESTIONS

The Constitution of India is described as one of the most right-based Constitutions of the world. The policy of Indian Government of compensatory discrimination comprises a range of preferential schemes. The policy of initiatives used in India to counterbalance the inequalities of society is a policy of reservations. The term “Reservation” denotes a set quota of public service positions for acknowledged minorities and includes reservation of seats in educational institutes. Reservation by definition entails some favouritism for the deprived that may otherwise lose in an open competition with those who are lucky to have had a good education, training and rearing. It is added in our Constitution as a constructive measure in order to provide the Backward Classes of the citizens an occasion to improve brilliance in the service. The main Constitutional and Statutory provisions relating to the law and policy of reservation have been critically examined in the present study. The appropriate comments and suggestions have also been incorporated under the different chapters of this study. So, it becomes pertinent to summarize them in the concluding chapter.

Conclusions

The first chapter provides the detailed introduction and evolution and genesis of the discriminatory practices based on the caste-system prevalent in India. It also deals with the importance of the present study. It is highlighted that the doctrine of equality is the foundation of social justice on which the palace of democracy can be built. Equality in dynamic sense means reduction of the harshest forms of inequality. The notion of justice enshrined in the Constitution of India is based upon the equality principle. The Preamble of our Constitution holds out a promise to all the citizens of India of securing social, economic and political justice. The Preamble of Indian Constitution speaks of “We, the people of India” resolving to secure inter alia “Justice – social, economic and political” to “all its citizens”.

In-egalities prevail in all societies and in India also, for centuries, there has been a domination of social systems which bred in-egality, exploitation and in-justice. The social divisions have been caused by the long spell of subjugation leading
to deprivations, divisions and discriminations against a vast section of the Indian society. The truth is that for centuries, social and economic injustice were perpetrated by the so-called higher castes on the lower castes in the Indian social system where equal chances in the opportunities and the facilities of the society were denied to them (lower castes). In ancient India, the conventional Indian society had witnessed the lavish growth of hierarchal movement embodied in the institutions of Varna and Jati. The hierarchal social order was created over the centuries with a view to conserve the domination of social status, property and education by the higher caste Hindus. Caste-system is sui generis in this country to Hindu religion. Hindu society was divided into four Varnas, or classes, a convention which had its genesis in the Rig Veda, the first and most important set of hymns in Hindu Scripture which dates back to 1500-1000 BC. The Hindu-orthodoxy believes that an early hymn in the Rig-Veda and the much later Manava Dharma Shastra (Law of Manu), are the sources of the caste-system. The Purusasukta is quoted by Manu, the law-giver, as the source and rationalization for the caste division of his own time. Among the Aryans, the priestly caste was called the Brahmans, the warriors were called the Kshatriyas, the common people divided to agriculture, pastoral pursuits, trade and industry were called the Vaishyas and the Dasas or non-Aryans and the people of mix-blood were allocated the status of Shudras. The Chaturvarna-system has been gradually distorted in shape and meaning and has been replaced by the prevalent caste-system in Hindu society. So, the caste-system kept a bulky section of people in this country outside the fold of the society who were called the untouchables.

Steadily with the passage of time elastic caste system got transformed into rigid caste based hierarchal structure which functioned for the period of over 3000 years, as a result of which Shudras and untouchables became socially, economically, educationally and politically backward and oppressed. They were compelled to live a life afflicted by grinding poverty, diseases and ignorance and have to bear persistent, unfavourable and harsh effects of discrimination, domination, exploitation and ascendancy of the higher upper castes. The classes in medieval India got disintegrated into castes and man’s position in society was resolute by birth and not by qualities and thus social mobility in the caste system was not present. This inflexibility of caste system was a reaction to call the intuition of self preservation and was to act as strong barrier for Hinduism from being submerged wholly into the Muslim culture. Whatever the reasons, Shudras during the medieval period were hated, disbelieved
and despised and were subjected to social disabilities which along with the guaranteeing of system of begaar and forced labour led to their worsen status in the society.

British rulers had shown no interest and concern to cope with the caste problem. Rather they adopted a policy of non-interference with indigenous caste and religious matters. Due to this policy of British rulers, the vices of caste system were left intact. Britishers followed this policy because it was in their interest that Hindus should remain divided on the foundation of caste. But even then, the British rule produced structural disorder in the customary hierarchization of Hindu society and opened new avenues of alteration through introduction of western education system. The western concept of equality, emancipation and egalitarianism provided powerful thrust to untouchables to challenge the legality of distinctions based on purity and pollution. During British rule there were introduction of certain legislations to perk up conditions of depressed classes or lower caste people but those legislations did not prove of much avail towards shrinking the rigidity of the caste system. However, special provisions and concessions had been introduced by the Britishers for the educational development of the Backward Classes which was afterward transformed into caste reservation for job. The policy of reservation in India was to a certain extent established during the decades of British rule but such policy was intended more to level out communal in-equality in the representation of public services rather than a social engineering gadget to redress the deep-rooted socio-economic in-equalities of the deprived sections of the society because of the past societal unfairness and discrimination.

The Indian constitutional policy was based upon the conception that certain social groups in India were innately unequal, were victims of societal discrimination and thus, required compensatory treatment. Several mechanisms including preferential treatment (reservation of seats for certain identified groups in legislative bodies, in public employment and in educational institutions) had been adopted by the provisions of the Constitution itself. The policy of initiatives used in India to balance the inequalities of society is a policy of reservation.

A policy of communal reservation in Public Services was followed by the British Government for the benefits of the minority communities like Muslims, Christians, Anglo-Indians, Parsis, Depressed Classes, Aborigines and other groups. The purpose of such reservation was to appease different sections of minorities in
India particularly Muslims and to strengthen their position. So far as provision for benefits of preferential management in favour of Muslim minorities after the partition of country in 1947 is concerned, the situation of the nation on communal lines had a strong impact on the entire troubles of minorities and lastly, the Government withdrew the reservation permitted to the religious minorities i.e. Muslims, Christians and Sikhs etc. The notion of minority was dropped on the whole as unsuitable for purposes of affirmative action plans. Conversion to Christianity or Islam lawfully disqualified Dalits from the benefits of reservation set for the Scheduled castes.

The Punjab signified ‘a remarkable exception’ to the caste categorization. However, in the face of a healthy caste atmosphere, numerous social disabilities were born by the miserable classes. As a result, fight against the untouchability and castes which were observed as core Hindu values, became implicated in the movement for a separate religious identity for the Sikhs. During the post-independence age as well this process continued. After independence, all the depressed classes of Hindu religion were documented and offered the status of Scheduled Castes under Article 341 of the Constitution. Conversely, the untouchable converts to the Christians, Muslims and Sikh religions were deprived of the acknowledgment and position of Scheduled Castes on the foundation of their religion. As a response to this provision, in 1956, the Sikhs struggled for their rights and were incorporated with Hindus in the list of recipients for getting reservations for Scheduled Castes among their group of people. Again in 1990, Buddhists were accommodated together with Hindus and Sikhs in this category.

It is a well-known fact of Indian history that women have not been equivalent associates with males. Women belong to the weaker sections of the society because like the people of depressed classes they had also suffered traditionally. The framers of the Constitution sought to check the injustices done to the women by being put in deprived position. The Constitution provided for both negative and positive actions in favour of women. Equality on the basis of sex and individuality of women has been recognized by the Indian Constitution. However, the heaven of ‘Equality’ is still beyond the reach of women in India.

The judiciousness behind reservations or positive discrimination in India is that particular opportunities should be produced for equality of opportunity for some over and above the general provisions for all. The aim was to steadily equalize the weaker sections with the other classes of people advocating for providing equal
opportunities to those who were not equally placed with others and necessitated extraordinary help. The more indispensable and fundamental way was to advance them swiftly in the economic and educational spheres which might facilitate them to stand on their own feet.

However, current Reservation Policy has not been successful to recognize the acclaimed ambition of building a caste-less society. Rather it has divided the whole motherland on caste basis. It has sown the seeds of categorization between the privileged and the under-privileged among the under-privileged classes. This policy has also resulted into a new trouble of political mobilization. The High Caste communities think discriminated due to Government policy to reserve positions for the Scheduled Castes and Other Backward Classes which in turn appears to be leading to a state of unjust reverse discrimination. Another problem attached to the policy of reservation is that it has to make compromise with merit and efficiency. It is further highlighted that this policy of reservation is going to loose its bearing owing to prevalence of the present concepts of globalization, privatization and liberalization. When the Constitution was enacted in 1950, the reservations were to come to an end after 10 years. However, having regard to the socio-economic conditions of scheduled castes and scheduled tribes, the Constitution has been amended from time to time, and the period of **10 years** has been extended to **20 years**, then to **30 years**, then to **40 years**, then to **50 years** and then to **60 years**. At present, it (new amendment in the Constitution) provides that the reservation will cease after **70 years** i.e., **after 2020**. It shows that this policy does not remain to be a time-bound policy which itself is indicative of its failure. Thus, it is quite clear that the present law and policy of reservation is inadequate and has certain loopholes, lacunas and pitfalls. Consequently, requisite and appropriate amendments in the existing law and policy of reservation are the need of the hour.

Chapter two includes various provisions of reservation policy and various other measures adopted in favour of Scheduled Castes, Scheduled Tribes including Muslims and Christians. We are proud of the fact that the framers of the Constitution have given a special place to the erstwhile untouchables under the Constitution. The so-called untouchable-castes have been named as Scheduled Castes and Scheduled Tribes. The Scheduled Castes and the Scheduled Tribes are characterized by the poor economic condition as well as by the lowest social or ritual status in the caste hierarchy. The poor and the oppressed people, who are now called as the Scheduled
Castes, were shrouded in the darkness of the repression, exploitation and the perplexity and were also the victims of an inferiority complex, deep-rooted poverty, backwardness, illiteracy, exploitation and the social subjugation before the dawn of the liberty. So, they had remained socially, educationally and economically more backward than any of the higher castes in the country. Numerous steps had been taken from time to time in the pre-independence India, for improving the status of these strata or sections of the society but they touched only the border of the problem. The noticeable progress has been registered only after the emergence of India as a Sovereign independent Republic. The Constitution of our country as a social document envisions a conversion of our society from medieval hierarchical and clogged society into modern, secular and democratic society through the extension of the improved amenities to the oppressed in order to enable them for achieving upward mobility by acquiring social, economic, educational and political authority. The constitutional policy of compensatory discrimination was formulated and implemented to facilitate the lower-status castes to change their social and economic position.

The various provisions of the Constitution and particularly of the Preamble, like Articles 14 to 17, 38, 39, 39A, 46, 330-342, and 366 form the corpus juris of Dalit Jurisprudence to shield Scheduled Castes, Scheduled Tribes and Other Backward Classes from socio-economic injustice and all forms of exploitation. Concentration has been focused on protective discrimination or preferential treatment for three major classes; the Scheduled Castes, Scheduled Tribes, and more recently the Other Backward Classes under constitutional provisions and a variety of laws like, Protection of civil Rights Act, 1955(Act No. 22), Bonded Labour System(abolition) Act 1976 (Act No. 19), Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act,1989 (Act No. 33) and Educational institutions (reservation in Admission) Act, 2007 (Act No.05). A number of National Scheduled Castes and Scheduled Tribes Commissions were constituted for successful implementation of various safeguards provided in the Constitution as well as of various other protective legislations.

The set of protective discrimination programmes can generally be divided into three broad categories, first are Reservations which give amenities of access to esteemed positions or resources; such as reservation in legislatures, including the reservation in Lok Sabha (House of People; the lower house of Indian Parliament) and
State Assemblies, second, Reservation in Educational Institutions, third, Reservations in Government services.

The Scheduled Castes have been provided all the opportunities for the complete development of their individuality for enabling them to come at equality with various other groups in the society. The transition so effected has provided a wider scope to this segment of the society for making selection of the occupations with higher remuneration. Periodically different amendments have also been made by the Government of India in the constitutional provisions, if established essential to be made for the emancipation of this community. To bring to an end the backwardness of the Scheduled Castes, the Government has approved them liberal concessions in all walks of the life and particularly in the field of education. Theoretically, it has become feasible for the Scheduled Castes members to gain any amount of education but practically, still in this field, their improvement is gradual. Because these concessions, relaxations of age limits provided to this category of people are proved to be just the crutches which have only spread in-efficiency among these persons. With rampant poverty among the Scheduled Castes population, many of them are still not able to take benefit of preferential policies. Because these people are very poor, their drop out rate at the higher education level is very high resulting in large mass of illiteracy found among them. A large proportion of these strata of the society live in the rural areas far removed from many of the opportunities for job and the educational reservations.

The benefits of the reservation policy provided to this segment of the people in the Government jobs had unbolted the doors of the extensive opportunities to get higher payment jobs. But with the huge amount of the illiteracy and higher drop out chiefly at the graduation and the above level have left these people with the lowest levels (Class III and Class IV) of the employments. Now owing to the poverty and illiteracy, these people are still in the catalog of the underprivileged strata of the society. The fact that the Scheduled Castes are still under-represented in Government services and educational institutions (in relation to the proportion they make up in the total population) undercuts the target of the reservations policy. It has also become obvious that the constitutional provisions for mobility in themselves are not sufficient for these categories of the people to improve their socio-economic standing.

On the other hand, the policy of the reservation has created a number of troubles such as creating ugly caste consciousness, stigmatization, reverse
discrimination, resentment, lack of initiative and self-reliance, inefficiency in services, societal tension (inter-caste mobilization and inter-caste enmities) and above all an inspiration to be dependant on concessional booty instead of providing its benefits to the genuine beneficiaries.

Another reason of the inadequacy of the policy of the reservation is that currently, in education and employment, the notion of the creamy layer is applicable in case of Other Backward Classes only. However, it does not apply in case of Scheduled Castes and Scheduled Tribes. It means when a Scheduled Caste comes into the ‘advanced class’ is not deprived of the benefits of the policy of the reservation thereby obstructing the path of these benefits reaching its real beneficiaries i.e., more backward amongst the Scheduled Castes. In reality, no solid steps have been taken until now for the periodic review of the social and economic conditions of the Scheduled Castes/Scheduled Tribes.

Religious minorities like Muslims and the Christians are denied the benefits of the reservation policy in their favour on the communal and religious basis. But after the elapse more than sixty years since independence, Muslims are observed at a twofold disadvantage with low quality of the education combined with the low levels of education. As workforce, Muslims generally work as casual labourers and the participation of Muslim workers in the remunerated jobs (both in the public and the private sectors) is relatively low even in comparison to the Scheduled Castes and the Scheduled Tribes workforce. There is overall under-representation of Muslims in the public and also in private sector service. Likewise, the same types of benefits were declined to the Dalit Christians. In case of Christians of Scheduled Caste origin (Christians converted from the Scheduled Castes) are still deprived of all the reservation amenities under the Presidential Order 1950. This denial of justice to the Dalit Christians goes against the letter and spirit of Articles 14, 15, 16 and 25 of the Constitution of India on equal justice, equal prospects and liberty of religion. This also amounts to discrimination on the grounds of religion which the ‘State’ is prohibited to effect under Article 15.

On the whole, it can be concluded that the constitutional provisions which were provided in favour of the Scheduled Castes and Scheduled Tribes in order to eliminate the discrimination, oppression inflicted upon them historically and to remove their social, economical and educational in-equalities for elevating their position and standing in the society, are confirmed to be in-adequate and in-sufficient.
Thus, these provisions are required to be re-evaluated and amended in the light of the alteration in the social, educational and the economic positions of the disadvantaged strata of the society. In addition, the implementation of the policy is also scrutinized to be politically motivated and thus, has established to be not a success in providing its benefits to its bona fide beneficiaries i.e., the neediest segment of the society (the poorest among the Scheduled Castes). In case of minorities like Muslims and Christians, they are being discriminated on the basis of the religion which is against the right to equality. The Other Backward Classes amongst the Muslims and Dalit Christians who are economically, educationally and socially more backward are left without the benefits of the policy of the reservation resulting in their worst state in the society. From this angle also, the policy of the reservation has missed to be a success.

Chapter three discusses various aspects of preferential treatment given in favour of Other Backward Classes and other weaker sections with special reference to women. The moral, political, social and the constitutional duties of the State are the social and the economic upliftment of the Backward Classes. In the Constituent Assembly when there was commencement of the debate on the reservations, it was determined that the reservations would be made available in favour of the Scheduled Castes and the Scheduled Tribes, but a little later the door was wide open to the “Backward Classes.”

The term “Other Backward Classes” is the third kind. It appears in Articles 15(4), 16(4) and 29(2) of the Indian Constitution. But this term of the three categories is the most loosely defined. The problems under this category are also different from the first two categories in numerous ways. The number of castes incorporated into this group are rising continuously and also growing at the wish of the politicians and at the public demand.

Some reservations are also made on Gender basis (around 30% of seats are for females in many institutions), Sons/Daughters/Grandsons/ Granddaughters of Freedom Fighters, Physically Handicapped, Sports personalities, Ex-servicemen in jobs, Dependants of Armed forces personnel killed in action, repatriates and widows and deserted women.

Reservations in the educational institutions and jobs understandably were provided as an valuable mechanism for helping the deprived sections of the society for rising above social and economic handicaps but it is now quite obvious that
regardless of of providing reservation facilities in favour of the Other Backward Classes in the field of education and jobs, still there is wide spread under-representation of this group of people in education and in the public service. However, according to the Economic Census, 2005, majority of the people belonging to disadvantaged categories particularly the Other Backward Classes are involved in the self-employment activities and therefore showing no interest at all in gaining education. It is indicative of the fact that the high drop out rates among this category of people is due to their involvement in self-employment activities, and this in turn, has resulted in the low representation of this category in the Government services. Therefore, under these circumstances, the reservation benefits to this category of people in the sphere of education and employment can be of no use.

The **Central Educational Institutions (Reservation in Admission) Bill, 2006** has provided 27 percent reservation for Other Backward Classes in the institutions of higher learning. On one hand, it is not possible for the poor people of this category particularly living in the rural areas with less quality education and with the greatest drop-out rates to gain admission into the institutes of higher education with the aid of the crutches of the reservation and on the other hand, the data of last decade shows that the people belonging to affluent section of this category are educationally forward enough to compete themselves with the general category candidates. The data also indicates that the majority of the places have been grabbed by the Other Backward Classes by getting admission on the basis of their merit through the open (general) category, leaving place for another Other Backward Classes. In this bid, the general candidates’ quota has been reduced in size, resulting in the reverse discrimination towards them.

Furthermore, cut-off mark system given by the Colleges/Universities in favour of the Backward Classes only gets in the way of the development of the Backward Classes themselves by plunging their competitive spirit. On the other hand, the Government has to make the compromise with the efficiency, essential for a particular type of the employment. Consequently, the mediocrity over meritocracy severs at the roots of justice and injures the right to equality. Thus, theoretically the reservation may have been aiming at equality, but in practice it increases inequality among the different classes in the society and is against the philosophy of “common brotherhood”.
In addition to above, some more problems also arise because of the caste criterion as the basis for providing benefits of the reservations. Regrettably, the policy of reservations in India is based on the caste system. At the first place, The prevailing lists have enlarged to include numerous thousand “castes” which were treated as ‘Backward Classes’, only to satisfy the political mandate thus resulting in the realistic position that determination of the Backward Class in the contemporary era has itself become a substance of massive controversy. On the single issue of Other Backward Classes, class clash and the political stalemates are in larger struggle and the competition for the authority and social standing. Occasionally, these struggles manifest themselves in caste-war.

Secondly, by the policy of the Government to reserve the places for the Other Backward Castes, the high caste communities feel discriminated. In the support of this category of people, many concessions, relaxations in the age-limits etc. have also been made available. Even the numbers of chances provided to this category of persons are more in contrast to the general category of members. At the third place, for the upliftment of the Backward Classes to have such a high percentage of the reservations in addition to other measures at the cost of the promotion of the upper caste of the society appear to implant the seeds of the tension which concludes often in violence and in an open confrontation among the various deprived sections of the society. The policy of reservation instead of providing its benefits for upliftment of the deprived community has become a device for permanent division, prejudices, inequality and distress created in the society.

The really justifiable poverty ridden backward people are not included in the list of “Backward Classes” by the competent authority since by reason of the faulty procedure of issuance of false caste certificates, fairly advanced people continue to be treated as backward so as to gain a variety of facilities. The elevation in the income ceiling of the creamy layer also constitutes an obstacle in the consistent growth of the nation. It is time now for developing a suitable policy for the exclusion of the creamy layer totally ignoring caste criterion from the pale of the reservation in jobs as well as in educational institutions.

Although our Constitution and various other legislative enactments and different commissions for women have made several attempts for the attainment of the aim of gender parity, however in real practice, due rights are denied to women and they persist to be the victims of male dominance and are over represented amongst the
deprived and poverty ridden persons. The access of the women to unorganized sector—to education, health and productive resources, among others, is inadequate. So, women in India stayed largely marginalized, poor and socially excluded. In the case of women, admittedly, at the first place, there is need to remove the deficiencies of constitutional as well as statutory provisions assuring a place of honor and equal opportunity to women. And at the second place, there is need for the formulation of a foolproof and effective implementation mechanism for the proper execution of the laws and policies for the emancipation of the women is the requirement of the present era. For the liberty of women and conversion of their de-jure equality into de-facto equality, widespread Protective Discrimination law for providing reservation in political, educational and employment to women is the cry of the age.

The reservation system has matured into a sprawling venture with its own elaborate infra-structure, programme and supportive constituents. It has become a significant apparatus of politics in the nation. Thus, it seems that in the present time, the policy of reservation is being continued without any objective since even after sixty years of freedom of India for determining as to how far the purpose of reservation has been achieved / realized no solid steps have been taken so far. In conclusion, it can be held that the purpose behind providing reservation in favour of Other Backward Classes and other weaker sections like women was to compensate the inequality done towards them in the past. But, on the basis of the above study, the fact has come into light that the provisions relating to policy of the reservation in favour of the Other Backward Classes are inadequate and insufficient. This policy has on one side, proved to be a failure in providing the benefits of this policy to its actual beneficiaries and on the other side, it has, due to the caste criterion as its base, produced the problem of the inter-caste rivalry in the society. In case of women also, there is solemn requirement for appropriate implementation of the provisions provided in their favour in the Constitution of India as well as for making modifications in the provisions of the Constitution providing them with the political reservation. In an ideal world with the intention of fulfilling the needs of the deserving economically backward candidates from both the backward and the general categories, it is desirable to replace the criterion of caste with economic backwardness. Consequently, in India, the provisions providing reservation in favour of Other Backward Classes and women incorporated in the Constitution of India
required to be seriously reconsidered, properly interpreted and amended in order to make them adequate and suitable.

Chapter four examines Comparative Study of Laws of different nations related to policy of Affirmative Action. The present study reveals that Affirmative Action comprises a set of positive anti-discriminative measures wished for insuring access for members of group who otherwise would be excluded or underrepresented in preferred positions in a society. Several countries in the world have been struggling with the problem of low representation of minorities in public spaces and thus have focused attention on policies that aim to increase equality. Therefore, affirmative action often functions as a means of desegregate elite. A comparative analysis of the legal, constitutional, and political structure of other countries is relevant. The comparative analysis aids in promoting a better understanding of own circumstances of a country and also lends a hand in the appropriate evaluation of the institutions of its own. So, this comparative study is very valuable in that the experience in these countries about the affirmative action may be supportive in notifying India about the long term consequences of the affirmative action and in taking up the core for the better management of the affirmative action in this nation.

The affirmative action existing in United Kingdom, United States of America, South Africa, Brazil, Malaysia, Pakistan, Sri Lanka and republic of India are included for the comparative study in the background of Indian situation in the field. This study has analyzed the reasons for the affirmative action; the legal standing of the affirmative action; the present day application of the policy of the affirmative action as well as the future of affirmative action in these countries. It is also noticed that usually, affirmative action takes two major types namely “preferential treatment” and “quotas”. Preferential treatments add explicit or implicit points for being a member of a target group and on the other hand quotas or reservations are fixed allotments designed for members of the target group. The affirmative action in the first form i.e. preferential treatment continues to be applied in the United States of America while in India, Malaysia, South Africa and Brazil it primarily takes the form of quotas or reservations.

The existence of an enforcement mechanism is a significant strength of the affirmative action program of majority of the countries in the world. The affirmative action campaign in majority of these countries seeks to defend socio-economic rights. These socio-economic rights comprise the right to fundamental education including
adult basic education. Provision is also made in these policies for the individuals against for taking their complaints to the court who consider that they have been illegally discriminated. In the affirmative action measures, land reform plans, legal support to the impoverished and the lodging schemes are incorporated. The caste-based unbending system of quota prevalent in India has over and over again fascinated criticism since a number of troubles have been shaped because of insensible caste criteria as the leveling apparatus.

Looking at the experiences of India in comparison with the United States of America, an affirmative action program is not fair if it creates a quota; creates preferences for the unqualified individuals unlike South Africa; rejects or selects any student or employee only on the basis of the race or gender without regard to merit; if it creates circumstances of unfair discrimination by providing a large amount of reservation quota in the favour of the individuals who were segregated on the basis of caste or race; or if it continues even after the achievement of its purposes. Unlike South Africa and United States of America, in India affirmative action simply means numerical quotas and the quotas in India are intrinsically rigid. The reservation system in India in favour of the Backward Classes seems to be leading to a situation of the unfair reverse discrimination. Unlike South Africa, in India, for filling quotas candidates from the lower classes are accepted even if they are not suitable, qualified or fully trained. In India, the identification of Backward Classes has become a subject of the political, legal and social interpretation. Unlike any other country, the caste identities have been made more prominent by India’s affirmative action policies when the intention was to diminish the stratification by caste. Like South Africa, the reservation policies in India will have to be so arranged that, if the advancement of the Backward Classes is to be achieved, it must not materially affect the right of the equality of the opportunity. The new anxiety for insertion (especially problem of political mobilization) into dissimilar sections made by members of different beneficiary communities has resulted into caste-war like condition. For this, there is a pressing requirement to take a lesson from Sri Lankan situation where introduction of affirmative action policies known by the ethnic conflict as one of the chief factors in the hostility of the minority population of the Tamil people, and the outbreak of the ethnic clash which was very violent. Like South Africa, the affirmative action program in India should be easily amendable according to the changes in the legal, social and political condition of Indian society. Like United States of America and
Pakistan, this policy in India should be so flexible that if required, it should be totally ended or the caste based criterion needs to be changed with the economic criterion because of the change in the social and political circumstances of the country. Like United Kingdom, it is necessary that the Government of India should enact the “Equal Opportunity Laws” to provide legal safeguards against discrimination.

There is also substantial pressure in India for the extension of the preferences to women on gender basis. The demand for the extension of the benefits under these policies beyond caste to religious minorities—the Muslims and the Christians—and to women has made setting of any viable time-table for its elimination impossible. In other countries, time-bound preferential policies have proved to be much more durable than were considered or planned to be. These policies adopted by these countries often vary in the course of time and in nature. Thus, in India also, time-bound preferential policies may be adopted as a measure for the successful accomplishment of the objectives of the plan.

Affirmative action will only function appropriately if it is fair because the aim of the affirmative action policies is always about eliminating injustices and not about to take revenge or extortion, if it is elastic and more significantly, it remains a functional weapon or instrument for the purpose of extending the economic and educational prospects. However in India, affirmative action policies have facilitated a very small section or strata of the society of India among under-privileged categories to progress towards a semblance of economic and social equal opportunity. Unlike any other country, the caste identities have been made more prominent by India’s affirmative action policies when the target was to lessen the stratification by caste. This is all indicative of the fact that the laws and policies were not well planned, inadequately formulated and badly implemented. The time has come when the laws and policies of reservation should be made need based. The poverty is the root cause of all the ills and is a world phenomenon now. Now-a-day’s world is a materialistic one therefore, all the laws and polices of reservation are needed to be based upon the economic criteria only.

For resolving the problem of the unequal opportunity in India, the policy of reservations should be based on poverty and physical disability of the people irrespective of their caste, religion or tribe. The affirmative action program in India should be without difficulty amendable in keeping with the changes in the legal, social and political circumstances of Indian society. Meaning thereby that in India this
policy should be so flexible that if essential, it should be completely finished or the caste based criterion needs to be altered with the economic criterion because of the changes in the social and political conditions of the country. It is demonstrated by the comparative study of the affirmative action programs in fashion in different nations that India could not attain in almost 65 years of its independence which can be achievable within the period of 10 years if the policy structure is so designed to eliminate the inequality of the opportunity for making equal representation to all the categories and communities in every sphere of life.

Chapter five legally analyses the judicial approach towards this policy of preferential discrimination. The judiciary has done laudable job by pronouncing extraordinarily sound judgments in relation to problems of preferential and protective discrimination. Judiciary has successfully preserved and safeguarded the fundamental rights of the citizens and helpless groups which were at risk because of the policy of reservation executed by the Government from time to time. In reality, it has been required by the court that reservation policies should be so formulated as to ‘strike a reasonable balance’ among ‘several relevant considerations’. To interpret the rule of law in action and to provide justice at the door of poorest of poor, the judiciary in India has made an adequate attempt. The judiciary has also been vigilant to create classless society and gradual abolition of caste consciousness.


In Indra Sawhney v. Union of India, the carry-forward rule was held to be valid so long as the 50% limit was not crossed by it for a given year. The Supreme Court in this case resolved to state that reservations in promotion were not allowed. After this case, in the case of Ashoka Kumar Thakur v. Union of India, it was held that the economic criteria was a legitimate criteria for the determination of the social and educational backwardness and the judges were also of the view that a periodic
assessment of the policy of reservation must be conducted. The exclusion of the creamy layer was again held by the Court to be obligatory in this case.

An important issue was solved by Andhra Pradesh High Court through the pronouncement of the ruling in the case of T. Muralidhar Rao and others v. The State of Andhra Pradesh, represented by its Secretary, Legislative Affairs and Justice, Law Department, Secretariat, Hyderabad and others by stating that reservation benefits offered in favour of socially and educationally Backward Classes (among Muslims) irrespective of caste, sex, religion and race was constitutional and legal.

In the same way, in the State of Punjab, the High Court of Chandigarh has pronounced the landmark judgments concerning the issue of 50% reservation within reservation in favour of Balmikis and Mazabhi Sikhs as unconstitutional. In the same way, in the case of Suraj Bhan Meena & Another v. State of Rajasthan & Others, the Court held that no study was undertaken by Chopra Committee with respect to Gujjar belonging to Special Backward Classes particularly when under the category of Other Backward Classes, Gujjars were already covered. Thus, there was no rhyme or reason to provide them special status for including them in Special Backward Classes without undertaking any requisite study. Thus, the judiciary has attempted its best to provide the solution to a very grave problem of inter-caste controversy which otherwise is going to take the shape of civil war in the future. In the arena of socio-economic justice, the judiciary has always aimed at the amelioration of the lot of the Backward Classes.

In the course of time, even a tendency was developed by the courts for considering all provisions connecting with positive discrimination as mandatory ones. This was consistent with the move from the treatment of reservation as a matter of right. Since the difference between mandatory and enabling provisions has emerged to be vague in the course of time fundamentally due to the rhetoric of social justice. By trial and error, still the Supreme Court has been giving shape to the Constitution in the accurate direction.

After making thorough and critical analysis of case law on the topic, it is quite clearly indicated that the commendable job has been done by the judiciary by providing remarkable and sound judgments relating to problems of preferential and protective discrimination from time to time. However, right from the beginning with the inauguration of the Constitution, the Government has at all times on one excuse or
other been flouting the judicially laid standards by making new amendments in respect of reservation benefits to be offered to the weaker sections of the society, in the provisions of Constitution. The procedure of amending the constitutional provisions has been just misused by the Government through invalidation of the numerous significant sound, concrete and solution providing judgments of the Supreme Court which strengthen the fundamental structure of the Constitution and further its objects, only for lifting up their vote banks. The Government has, in place of protecting and increasing wellbeing of real deservers of the policy of reservations, adopted the policy of reverse discrimination only for gaining electoral benefits for themselves.

Summing up the whole, it can be said that the special provisions in the form of policy of reservation for the benefits of Scheduled Castes, Scheduled Tribes Other Backward Classes and women in our Constitution are proved to be in-adequate and in-sufficient. Therefore, the judiciary has from time to time through the issuance of solid and rational guidelines in a number of exceptionally sound judgments tried its best to remove all these weaknesses and in-adequacies in the policy by ironing out the practical difficulties in effectuating the policy of the reservations. However, on the other hand, Government has misused its power in order to nullify those judgments by making a number of amendments in the Constitution only to make their vote bank intact. In this manner, the Government has hindered the way of the judiciary which was marching towards plugging the loopholes in the provisions of Constitution for the successful achievement of the objectives of the policy of the reservation.

Chapter six critically analyzes the experience and opinions of the persons belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes among Hindu religion as well as the persons relating to Muslim and Christian communities in relation to the implementation of the policy of reservation in the State of Punjab. Empirical study of: (a) various aspects concerning the policy of reservation in India like caste-criteria as the foundation of the policy of reservation, its justification in the present times, concept of creamy layer, steps taken for its exclusion, various problems arising from this policy like demands for the reservation within reservation, demands for political mobilization and the agitations based upon these demands and their justification on the basis of the views and opinions (regarding these aspects) held by the respondents belonging to various categories getting benefits of this policy as well as the excluded categories like General sections, Muslims and
Christian Community, and (b) the actual social, educational and economic conditions of the people belonging to different categories and communities constitute the central theme of the present research effort. The investigative technique is essentially based on the social sciences research methodology which has endorsed the work with much desired realistic and functional approach. The field study is instrumental not merely in evaluating the societal utility of the prevailing caste-criteria for providing the benefits of the policy of reservation to its beneficiaries but provides one with the objective criteria for assessing the suitability of various policy alternatives thrown up earlier by the study of diverse foreign legal systems in keeping with the needs and conditions of the contemporary Indian society, so as to serve the broader policy aims at the amelioration and upliftment of the weaker sections of the society. The study was conducted on the lines pre-supposed in the hypothesis articulated to examine and analyze (a) the adequacy of existing law and policy of the reservation and the degree of legal awareness; and (b) changes dictated in the current social and legal structure; and (c) the desirability/feasibility of having changed/amended criteria (economic) for the successful achievement of the objectives of the law and policy of reservation in India. Parameters of data collection spread over a wide range of factors covering age, sex, religion, educational and marital status, occupation, category and availing the benefits of the policy by the beneficiaries. The enquiry further extended to ascertain the legal awareness of the respondents about the different provisions regarding the policy of reservation, opinion of the people in respect of justification of caste-criteria, requirement of the change of the caste into economic criteria, justification for the exclusion of the creamy layer and the evaluation of the proper measures and steps taken for successful implementation of the rules and regulations for the exclusion of the creamy layer etc. The two other significant aspects on which the probe sought responses were:

(a) Whether the demand for reservation within reservation is justified;
(b) Whether the demand made by persons belonging to one category for their inclusion in other category is justified.

Other important questions aimed at finding whether the present policy creates obstacles in the creation of casteless society, whether present policy which denies its benefits to Muslims and Christians amounts to discrimination on the basis of religion towards them, whether women have adequate representation in legislature/educational institutes or Government employment. Yet the most significant questions regarding
the policy of reservation further objected at extracting out whether the policy of reservation has been successful in the process of the achievement of the objectives of the amelioration of the weaker sections in the Indian society and in the creation of a ultimate casteless and classless society, whether policy needs to be totally wound up or amended in the light of the changed social, political and economical conditions of the society in India and finally whether the policy is losing its overall impact and relevance in the present era of globalization, privatization and liberalization.

The data concerning different aspects and issues regarding the policy of reservation in the State of Punjab particularly in the city of Jalandhar reveals: first, that the respondents almost have the legal awareness about the law and policy of reservation in India. Due to the changes in the social, political, educational and economical conditions in Indian society, the people now resort to the adoption of the new criteria i.e., economic criteria as the basis of the policy of reservation. Majority of the people desire to take proper measures for the exclusion of the creamy layer from the policy of the reservation. Secondly, new demands for the reservation within reservation by certain under-privileged strata among the under-privileged categories, demands for mobilization to new categories by the persons of particular categories and further demands being made by the excluded categories of persons for their inclusion for the purpose of getting the fruits of the policy of reservation, are now taking the shape of caste-war in the country and are not at all justified. These demands, agitations, frustrations not only among the excluded sections but different groups/Castes among the beneficiary categories in the name of this policy are creating obstacles in the peaceful creation of the casteless and classless society in India. In addition to it, the fruits of this policy have been swallowed by only a small section among the under-privileged and deprived categories of people. Majority of the people belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes are still under-represented in the various spheres of the life because of non-exclusion of the creamy layer from the Scheduled Castes category at the first place and unsatisfactory implementation of the law and rules by not taking proper measures and steps regarding its (creamy layer’s) exclusion from the category of Other Backward Classes at the second place. This policy is not providing its benefits for the welfare of the Muslims and Christians on the basis of religion thereby violating their rights to equality and also this policy has done nothing special for the empowerment of the women in India. Thus, denoting them (women) political reservation amounts to do the
discrimination towards them on the basis of sex, which itself is against their right to equality under Article 14 of the Constitution. The Muslims, Christians and women remained altogether politically orphans and as a result, they became more and more socially, educationally and economically backward. In the era of liberalization, privatization and globalization, there is throat cut competition among multinational companies to grab more and more share in the market; and there is only the demand of the efficient work-force. So, there is increasing apprehension that the employment opportunities in private sector for Scheduled Castes, Scheduled Tribes and Other Backward Classes would also shrink because of the fear that the policy of reservation will bring in-efficiency. At present, also the Scheduled Castes and Scheduled Tribes employees in the private sectors are observed to be numerically insignificant except at the shop-floor level. So, this policy is losing its importance altogether. Thus, the two important findings of the empirical study are that the provisions regarding the policy of reservation in India are in-adequate and the policy of reservation has failed to achieve its objectives of the amelioration of the under-privileged sections at the first place and of the creation of a casteless and classless society at the second. Due to this policy, India has been divided into a number of categories and segments on the caste lines.

The second part of the empirical study aims at an in-depth probe about the social, educational and economical status of the people belonging to different categories and religions through the adoption of the tool/ method of observation. The main focus of this part of field survey is to critically evaluate the various reasons as well as effects of the long lasting backwardness of the people relating to the different categories and religions in the Indian society such as, insufficiency of the steps taken for the exclusion of the creamy layer through the issuance of false Caste Certificates without making proper verification about the real economic/income status of the persons belonging to the Other Backward Classes and inability of the poorest segments in different categories and religions to pay the large amount to be charged by various coaching centers for enabling the candidates to compete at par with the candidates of the forward sections of the society in the technical and medical streams. The hypothesis again raises the crucial questions about the adequacy of the provisions regarding the policy of reservation and its success and failure to achieve the desired objectives. The observational field study gives rare insight into all the above-stated
aspects and provides us with the valuable guidelines for future action in the matter of law reform.

The study reveals: first that the people belonging to effluent sections irrespective of the category and religion in which they fall are not at all deserve to be the beneficiaries of this policy. However, still they are eligible and are included in the list of beneficiaries at the place of real backward poor persons. Only the poverty ridden persons of each and every category and religion are backward in the real sense and so, in the present society now, the caste-criterion as the basis of the policy has nothing to do with the backwardness of the people of the society. Secondly, this policy not only has hampered the initiative power and stamina of its beneficiaries but has also created a lot of other problems for them. This policy saps the will and moral strength of those people to discard their crutches and face the world on equal terms. Thus, this policy tends to stigmatize those events whom it is designed to assist. In the present modern world, where only the efficiency is counted, the in-efficient and un-trained low castes people have no place left in any field of life. Women to which category they belong, are always exploited in the male patriarchal society in India. So, they need to be provided with the particular provisions in their favour in addition to their proper and adequate implementation. Muslims and Christian Communities are totally ignored and discriminated and as a result of it, they have now become even more backward than even the Dalits/ Scheduled Castes in India. It is also sufficiently and clearly observed that the procedure for the issuance of Caste Certificates suffers from a number of irregularities like, un-limited discretionary powers vested in the authorities for the issuance of such certificates, corrupt and mal-practices adopted by them and issuance of the certificates without making proper investigations and enquiries. The issuance of false certificates in turn vests in favour of even the forward classes (creamy layer) the right to get the benefits of this policy leaving nothing for the more backward poor groups among the different categories. The high amount of costs charged by different coaching centers for providing coaching and guidance to the candidates to enable themselves for the entrance examination of PMT and CET etc. indicates that only the creamy layer was able to get the higher education and in turn better job opportunities which itself results into their better financial position and higher standard of living. And the vice versa is applicable to the poor people irrespective of the castes and religion.
On the basis of above study, finally it is asserted that poverty reduces a person to a situation of ignorance and helplessness. The poor do not have any societal standing. They have no access to education and over the years, they perpetually become socially and educationally more backward. They may have no place in the social order and no education for improving their circumstances. Employment in services on the basis of merit for them is a distant cry. Consequently, the economic, social and educational backwardness of the poor people again creates a vicious circle of grinding poverty which cannot be busted but only through economic or other special benefits/assistance provided from the Government side in their favour. This vicious loop has enlarged the gap between the forward and real backward poorer people in the nation like India. From the above study, it is clear that the poverty is the culprit—cause as well as the result of social and economic backwardness. Thus, it is quite visible beyond every reasonable doubt that real backwardness at the present time stems from the poverty but not from the rigid caste-structure of the populace in India.

Even after sixty four years of independence, the overall economic inequalities in India are characterized by such remarks as “the rich are becoming richer and the poor poorer” and “the gulf between the rich and the poor is broadened.” It is evidently specified that poverty levels for members of various religious factions are not homogeneous in India and are observed to vary considerably across ethnic and caste-based identities of group members. On the other hand, it is well documented fact that the intensity of poverty is higher among the Scheduled Castes, Scheduled Tribes and Other Backward Classes on the whole and also amongst other group minorities such as Other Backward Classes, Scheduled Castes and Scheduled Tribes within the Muslim and Christian communities and also people belonging to General category in India. The dawn of freedom is yet to bestow an enthusiastic smile on the Scheduled Castes, Scheduled Tribes and Other Backward Classes who are still striving to achieve liberation from socio-economic domination. Liberty, equality and justice so luxuriantly enshrined in our Constitution have yet to attain any meaningful proposition for these people. Since only “cream of the crop” i.e., the richer and the more affluent sections among the Scheduled Castes, Scheduled Tribes and Other Backward Classes have grabbed and chewed the larger chunk of the cake. The policy of reservation has only produced small elite among the Scheduled Castes, Schedule Tribes and Other Backward Classes and has not lent a hand in elevating the socio-economic standing of the fragile and the underprivileged groups. The members of the
backward beneficiary categories are differentiated into superior and inferior. Consequently, the poorer and the really backward sections among them kept on getting poorer and more backward. The poorest of the poor have received nothing but promises. The discrimination which was practiced on the inferior poverty ridden class by the superior class is in turn practiced by the affluent members of the backward class on poorer members of the said class. However, it is often observed that comparatively rich persons in the beneficiary categories—though they may not have acquired any higher level of education—are able to move in the society without being discriminated socially. However, these rich persons of the beneficiary categories particularly category of Scheduled Castes, even if have crossed the barriers of backwardness but while identifying the class they still come within the collectivity.

The “indicators” invoked to determine backwardness were invariably applied to the castes and not to the individuals. It means that no individual of a family were subjected to the “indicators”. Only the castes were tested and results obtained. However, poverty never discriminates; it chooses its victims from all religions, castes and creeds. No statistics can hide the fact that there are millions of people, who belong to the so-called elite castes, are very poor and often a great deal poorer than a very large proportion of the Backward Classes. It is a fallacy to think that a person, though earning thousands of rupees or holding higher posts is still backward simply because he happens to belong to a particular caste or community whereas millions of people living below poverty line are forward because they were born in some other caste, or communities. The reality of present-day life is that the economic standards confer social status on individuals. Thus, poverty has a direct nexus to social backwardness. It is an essential and dominant characteristic of poverty. A rich person belonging to the Backward Caste—depending upon his disposition—may be or may not be socially backward, but a poor Brahmin struggling for his livelihood invariably suffers from social backwardness. Thus, unless every person is provided equal opportunity to access public assets and sharing of fruits of development, disparities will grow, taking away even the existing capacity of already impoverished persons to avail of opportunities provided by development. It is in this context, an Equal Opportunity Commission is found necessary to ensure inclusive growth fulfilling the goals of social justice incorporated in the directive Principles.

Caste based policy of reservation based on “quota system” has institutionalized complete fragmentations of society and the actual victims of neglect
are the real poor, a social category which cuts across religion, caste or region. The policy of quota-based reservation comes into direct conflict with the real problem by the real poor to transcend every level. But on merely class issue regarding the really exploited classes neither the Indian State nor the theorists of group representation show any attention or concern. The reason for this is that the “deprived strata of society” are politically orphans. Thus, at present it has all become a grimy political game with vote making propensity. Caste-based reservation is a populist measure and it just aids in strengthening casteism, communal divisiveness and corruption in the public life, university campuses and public offices. With group identities and interests lifted up to a keystone of political struggle, India now faces the long running scenario of a caste war fought out on various social and economic fronts, at varying intensities. This is due to the policy of caste based reservation because its success is guaranteed by Divide and Rule. In a nutshell, it can very straightforwardly be derived that the present policy of reservation has failed to accomplish the desired objectives for which it was formulated. Social and economic inequalities continue to persist. And the Indian State has self-consciously created a state of affairs of solidation and consolidation of social divisions by pursuing a policy of selective reservations for “groups” identified on the foundation of “Status of birth”. The Indian State by following a policy widening patronage to “social fragments” on the basis of reservations has fugitive performing its responsibility towards the rural and urban under classes who transcend the “categories defined by birth” and belong to the army of the oppressed and the exploited. The current policy is generating tension among the different castes thereby endangering the very existence of India as a Nation and is creating a caste conscious society instead of cohesive, unified, caste-less and classless society, the authentic aim of the Constitution of India. Dr. Ambedkar visualization did not end at the horizon of Dalit power; but he envisioned an India liberated from caste consciousness, an innovative society no longer trapped in the feudal binaries of master and slave, privilege and privation. Discarding caste as the basis of social structure, Bhim Rao Ambedkar emphatically stated:

“You can not build anything on the foundation of caste. You cannot build up a nation; you cannot build up a morality. Anything you build on the foundation of caste will crack and will never be a whole”

However, his visualization has been annulled by the preservation of caste attitudes in an electoral democratic system whose political dynamics are fuelled by
group antagonisms. Thus, to employ the words of Raj Kumari Amrit Kaur, there is no rejection of the reality that,

“The benefits offered under the policy of reservation are a definite bar to unity”.

Shri N. Sanjiva Reddy, former President of India was tremendously critical of the present reservation policies. He was holding the views that for providing the assistance to the poor and the down-trodden, caste should not be the criterion. Consequently, the warning was given to the country by him in the following expressions:

“On communal lines country is going to spell disaster. We are treading on dangerous ground and we are going back to the worst”.

Further more there will be a challenge to the integrity and unity of whole of the nation because the present caste based policy of reservation is causing political instability in the country and is posing direct danger to the survival of our democratic polity.

So far as the people of India are concerned, the conditions of untouchables and depressed sections of Indian society have not changed much. The pitiable situation of the depressed classes has not revealed the predictable progress. A baby born on the eve of inception of the Constitution of India i.e. 26.01.1950 now attains the age of almost 60 years the normal date of retirement from public service but still he is not empowered enough to get a square meal in independent India. It is not the tale of only a Scheduled Caste, Scheduled Tribe or other Backward Classes but also of a General category citizen. Now, the need of the hour is to get rid of policy of snatching from one person in order to give to the other in the name of policy of reservation on caste basis because now this policy is just and just creating strong social prejudices among different segments of the society instead of serving the neediest factions of the people of India.

Visibly, the economic criteria instead of caste can only take care of such problems. Incidentally, the observational study reinforces the previous findings that the existing law and policy of reservation on the basis of caste is inadequate and miserably falls short of the requirements and expectations of the people.
Suggestions

The study puts up the shutters with its conclusions as also it advocates certain ways for the reform and modification in the criteria for providing the benefits of the policy of reservation so that it could serve the society better and safeguard the interests of the really needy and deserving vulnerable (poorest of the poor) segments of the society irrespective of castes and religion they belong and the real and purest ambition of the constitution makers of making a caste – free society, where everyone would be capable of getting equal rights as well as equal opportunities of making their life prosperous and blissful, could be achieved. For the last more than 64 years, this policy has not proved to be a success but to make it a success now; it should be revised or amended. Thus, in the light of the foregoing discussion, the following suggestions may be incorporated for amending the law and policy relating to reservation in order to create a casteless society as well as to improve the social, economic and political conditions of the weaker section of the social order:

1. Like Pakistan and Sri Lanka, in India also firm and determined efforts are required to be made for systematic and fundamental modification of the policy of the reservation due to caste-war like situation created by the policy of reservation based on caste-criterion. The Government should think seriously in this respect to create an affirmative action program based on caste neutral measures i.e., on economic basis. In order to stop the inter-caste conflicts and other caste-wars, caste criteria should be totally eliminated to be considered while providing the benefits of the policy of the reservation to poorest segment of the nation.

2. Basic criteria of this policy should be changed. Only economic criteria should be adopted as the basis for the purpose of identification of the beneficiaries while providing benefits of the policy of the reservation. Like Malaysia, South Africa and Brazil, in India too the present reservation policy should be transformed into a ‘National Economic Policy’ for giving the right to equal representation/ equal opportunities to all the communities alike based only on the economic status of the beneficiaries without any discrimination as to caste and religion.

3. It is suggested that in clause 4 of the Article 15 of the Constitution of India for the words “any socially and educationally backward classes of citizens or for Scheduled Castes or for Scheduled Tribes” the words “Economically Backward Citizens.” Should be substituted. Further, in clause 4 of the Article 16 of the Constitution of India for the words “any Backward Class of citizens which in the
opinion of the State, is not adequately represented in the services under the State”,
the words “Economically Backward Citizens” should be substituted.

4. There should be strict implementation of the concept of exclusion of the creamy layer so that the benefits of the policy of the reservation should reach the real and needy people among them. The raised limit of the creamy layer of 4.5 lakhs should be revised and again decreased to Rs. 2.5 lakhs for including more and more economically forward people in this limit so that the benefits of policy of the reservation could reach its really deserving and needy beneficiaries. The Question of excluding the creamy layer from among the Scheduled Castes and Scheduled Tribes is also required to be considered and reviewed by the Apex Court unless and until the Parliament amends the Constitution to do so. Proper procedure should be formulated for the identification of poor segment among the people of India so as to exclude the creamy layer from the beneficiaries of the reservation policy.

5. The Equal Opportunity Commission was required to be set up immediately after the enactment of the Constitution of India i.e. 26 January, 1950. But no steps in this regard were taken by the Government. It is, therefore, suggested that the Government should act now to constitute an Equal Opportunity Commission without any further delay on following lines:

a). It should be adapted to the specific Socio-economic, judicial and institutional context of the country. The identity of the deprived sections is not so much based upon caste and religion but on their common plight of deprivation and consequent inability to access equality of opportunity. They are poverty ridden people. They do not belong to any one caste or religion. They largely come from among the Scheduled Castes, Scheduled Tribes, Other Backward Classes, disabled persons, minorities and even from some sections of the majority communities.


c). Equality of Opportunity Department should be established in each and every university and research centers across the country to help the Equal Opportunity Commission in generating, collecting, processing and disseminating various kinds of data on equal opportunity issues-generic data, reporting data, indices and data
from case studies for creation of level playing field in securing equal opportunities to the disadvantaged sections of people as this action will prove to be key to the success of the Equal Opportunity Commission.

d). The terms and references of the Equal Opportunity Commission should be such as to give it the power of making regular and timely review of the Policy of reservation. This Commission will review the benefits provided and problems occurred due to this policy during the last five years and also will recommend the changes or amendments, if required to be made in the present policy of reservation on the basis of its review report. The Commission’s recommendations should be binding upon the Government.

6. There should be no reservation at educational level of any kind as it will ensure quality of education and merit would not suffer. Instead of providing reservation quota in favour of poor people, affirmative action policies should be given the lead. The following affirmative action measures are suggested:

a). Free guidance, extra coaching and training should be provided to the poor segments of the society irrespective of caste and religion for the purpose of making them equipped for various entrance examinations in order to get admissions in the technical, medical and all the other professional courses so that they could compete at par with children belonging to privileged classes or advanced categories on the foundation of their own efficiency and capability without using the crutches of reservation.

b). Government should divert maximum of its resources for educational upliftment of the impoverished segment amongst each and every category and community of the society to make them capable of enjoying the benefits of reservation. Educational scholarship of at least Rs. 1000/- per month should be provided to each and every child of un-privileged (poor) strata of the country irrespective of caste and religion, so that they could get education instead of going in search of employment. It will also help to curb evil of the child labour and also to bring the drop-out rate among them to a halt. Such an allowance should continuously be paid till they become so efficient and capable to earn themselves. Providing free education up to graduation level to the people on the economic lines (i.e., to poor segments) is the demand of the time.
c). Free library facilities and free access to computers with internet facilities should be provided by the Government to the poor irrespective of caste and religion society in near proximity to their homes.

d). Extra classes after school hours for improving the level of competence viz. training fundamentals on the subjects/courses, aptitude development, development of communication skills etc. for the students of poor segments of the society irrespective of caste and religion should be arranged by the Government in order to bring them at par with privileged class students.

7. There should also be no reservation in higher educational level particularly in the institutes for specialization and super-specialization because this would result in the compromising merit. This policy of reservation is going to loose its relevance due to globalization, privatization and liberalization. In the era of liberalization, privatization and globalization, the main feature of the policy of liberalization include reduction of the Government role in the economic governance, privatization and more dependence on market forces resulting in depletion in the Government jobs and services. The policy of reservation kills the initiative power, confidence and morale among its beneficiaries and thereby reducing their overall efficiency. However, in the modern times, there is only the demand of the efficient and specialized work-force particularly in private sector.

8. Reservation in employment should be provided on economic basis. It is thereby suggested that:

a). Appropriateness for the job and efficiency consideration should direct the decision of the selection committees and not the reservation. No compromise should be made with the efficiency at the time of employment in competitive examinations by providing the provision of minimum marks requirements in favour of the beneficiaries of the policy. Like South Africa, in India also more flexible “numerical goals” are required to be adopted which ensures the appointment of only suitably qualified candidate in comparison to the unqualified candidates. It means in India, there is dire necessity to follow and maintain the system under which no compromise with the efficiency of the candidates will be made in the name of affirmative action programme.

b). Special opportunities should be provided for ‘after job training’ to the poverty ridden beneficiaries of whatever caste and religion they belong, for the purpose of improving their capacity and efficiency.
c). The policy of reservation should not be made applicable at promotion level in case of job reservation i.e. Constitutional 77th Amendment Act, 1995 should be repealed. Because after appointment every employee including those belonging to the poorest segment of the Indian society will come at par with the other employees and so needs to be guaranteed that “among the equals, provisions should be equal and should be equally administered”. And the discrimination will raise inequality among the equals in the society by giving excessive weightage to the incompetent employees and thereby engendering job dissatisfaction among others affecting efficiency in service.

d). The upper limit/extent of reservation should be limited to 20 percent instead of 50 percent and it should be applicable to whole of India alike after making a provision in clear terms in this respect in the Constitution of India. The posts remained unfilled in a year should not be allowed to be carried forward to the next year. i.e. Constitutional 81st Amendment act, 2000 should be altogether repealed.

e). Similarly, no reservation should be provided in the top class, Class I and purely merit requiring services as far as possible.

9. Capabilities and manpower of downtrodden and under-privileged people should be utilized to fullest extent by guiding them properly. The Government should not leave these segments of society to repent upon their fate, with the hope of getting alms in the shape of reservational benefits for their children. On the other hand, if these people are guided properly to utilize their capacities to make progress in order to improve their lot then these poor sections of the society on receiving a very small hand of help from the Government, can change even the fate of the country and will be able to give life of dignity and a futuristic path filled with stars of prosperity and happiness to themselves and to their children. In this regard, it is suggested that:

a). Poverty ridden sections should be provided with the employment or jobs in the same fields in which they are expert. There is a great need to realize their real man-power and to provide them proper guidance, financial help and certainly with jobs suited for them instead of making just promises of giving reservation benefits to their children. These steps, if taken by the Government will prove a boon not only for the under-privileged and most deserving people but also for our country which is again being divided on the caste-lines because of this caste based policy of reservation.
b). The small business-men of these sections should be provided with incentives loans and advances at subsidized rates for the purpose of starting their own business and in addition to that facility, free training should also be provided to them for helping them in the smooth functioning of their business.

10. Since majority of those who were regarded as untouchables due to the rigid caste structure existed among Hindus had been converted to Islam and Christianity to escape that status. However, their social and economic status remained unchanged even after conversion and they continued to face the similar kind of oppression and exploitation. Denying them the reservational benefits merely because now they are Muslims or Christians is the discrimination towards them on the basis of religion. In this regard, the following suggestions can be very helpful:
(a). The reservational benefits in favour of economically Backward Classes among Muslims and Christians should be provided.
(b). Judiciary should issue guidelines in this respect to avoid the discrimination made towards this category of people on the foundation of religion.

11. In the United States of America and South Africa, the affirmative action policies have given stress on improving the status of women. Getting a lesson from this approach of the Unites States of America, women, as they are still socially, economically and educationally backward in India, should be included in the list of beneficiaries and should specifically be provided its benefits in political, educational and employment fields. In this respect, the following are the suggestions:
(a). Women should be provided free and compulsory education up to Graduation level by amending Article 21A of the Constitution of India.
(b). They should be given free counseling, guidance and coaching for availing better career opportunities at the higher educational level.
(c). The Representation of People Act, 1951 should be amended to compel political parties to provide for mandatory nomination of the women candidates for at least one-third of the seats to avoid de-recognition as a national party. All the women organizations should come on a common platform with single target of pressing the political parties to either support the passing of Reservation Bill or face the anger of women voters in the next general elections. Every effort should be turned into a success one for getting the Women Reservation Bill enforced. The media both print as well as electronic can play an important role in creating
awareness in the society. It can act as an agent of political socialization for inculcating the values of gender equality and gender justice. In case they are given proper representation in the Parliament and State Assemblies, they can raise the quality of the Parliament and State Assemblies. Besides, they can think to improve their lot in social, political and economic point of view.

12. Like South Africa, land reform programs, legal aid to the indigent people and the housing schemes should also be the parts of the affirmative action measures in favour of deprived sections of the society in India. Nehru has also pointed out the need of special treatment to such unprivileged classes for humanitarian reasons, from the point of view of the democratic commitment and from the point of view of repairing their sufferings. But he pointed out that the best way to do so was not on the political plane by the reservation of seats and the rest. In case, they are given proper representation in the Parliament and State Assemblies, they can raise the quality of Parliament and State Assemblies. Besides, they can think to improve their lot in social, political and economic point of view.

13. Like America, the presence of an enforcement mechanism is a significant move in the right direction for the definite success of the affirmative action program in India.

14. Like South Africa, simple revocation method should be adopted in case of the affirmative action policy. It means when the purpose of the affirmative action policy is felt to have been achieved by the Government, simple revocation of that law and the policy should be allowed or like Brazil, adoption of flexible affirmative laws is the need of the hour.

15. In India, time-bound preferential policies should be adopted because in almost all the countries in the world where affirmative action programmes were made applicable, time-bound policies have proved to be more successful or durable than were intended to be.

16. The concept of independence of the Judiciary which is the corner stone of our Constitution should be preserved and promoted at all costs so that no decision of the court could be adversely affected by the political pressure. Therefore, the following steps are suggested:

   a). In order to check the Government from making amendments in this policy of reservation just to nullify sound and solution giving judgments of the Apex Court and to keep intact its vote-bank policy, before making amendments in the
provisions of the Constitution especially affecting the fundamental rights of an
individual provided in part III of the Constitution, a National Constitutional
Review Committee should be formulated by the President of India at the floor of
the Parliament House. It should get its power from Article 13(1) in order to make
review of the proposed amendments. The eminent Jurists, Chief Justice of India,
other judges of the Supreme Court and an academician of eminence in the subject
of Constitution should be the members of the committee.
b). All the amendments which have been made by the Government to nullify the
judgments of the Supreme Court should again be reviewed judicially by the Apex
Court to check their constitutional validity.
c). Whenever there comes a question of making a review of the law and policy of
reservation before the Supreme Court, the Constitutional Bench should be
equivalent to or larger in comparison to the earlier Benches.

17. Reservation policy is based itself upon the enabling provision. Right to equality is
a fundamental right. Judiciary and Parliament should focus its emphasis upon
fundamental right to equality as compared to laying emphasis upon enforcement
of policy of reservation in favour of Scheduled Castes, Scheduled Tribes and
especially Other Backward Classes.

18. Legislature and Judiciary should act within their own spheres and should not try to
encroach upon each other’s area of action. Both of them should function in the
harmonious way so that benefits of reservation policy could arrive at its real
beneficiaries i.e., poverty stricken factions among the populace of Indian society.

19. The requirement of disclosing caste titles (surnames) should be discouraged
totally by the Government for official purposes and a unique identity number
should take the place of caste titles/surnames in all the official documents.

20. All the policies regarding preferential treatment should be formulated at central
Government level and no discretionary powers what so ever in this matter are
required to be given to the State Governments.

A glance at the broad spectrum of this work points out that the
abovementioned suggestions are the most important measures which require an
immediate consideration of the Government and the judiciary. So long as a
comprehensive and adequate law and policy relating to the reservation on the lone
basis of economic criteria is not modeled and enacted, the present policy may be
made applicable to all the citizens alike on the basis of their economic standing
irrespective of their castes and religions in India. It of course goes without saying that any reform or formulation of law has to take into account not only country’s prevailing social and economic conditions but has to confirm to the ethos and aspirations of its people. In case a law and policy is to be re-drafted on the suggested lines, it is hoped that the dreams and the ambitions cherished by the makers of our Constitution for the upliftment of the poor, needy and weaker segments of the nation as well as the creation of a casteless, classless and just society can be fulfilled with the new amended and reshaped policy of reservation in India.