History holds testimony to the fact that over the centuries many sections of our caste – ridden society have been the victim of oppression and exploitation at the hands of the dominant groups in society. Indian society has always been full of inequalities - it was a caste ridden stratified hierarchical society, and a particular segment of the society had been denied the bare human rights. Their educations, wages, living condition, social status were dictated by the whims of upper strata of society, reducing them to destitution. It is very difficult to gauge the extent and depth of social and economic exploitation that resulted in discrimination, misery, poverty and other disabilities for an appreciable large section of our population. The economic backwardness brought social backwardness which consequently made them down trodden and thus depriving them even of the dignity of life. In a society compartmentalized on caste basis, upper castes controlled the levers of power enabling them to run their whips, prejudicial to the interests of lower segment of the society. Lower castes had to serve the upper caste without having any say and grievance redressal mechanism.\(^1\)

It was natural that the higher castes were able to exploit the lower ones. Members of lower castes always suffered from discrimination in all areas of life. One of the worst effects of caste system was that access to knowledge and learning was denied to the lower castes. Since the majority of Indian population was Hindu, the impact of this caste discrimination was severe and wide. In a society as ours where

there exist forward and backward, higher and lower social groups the first step to achieve social integration is to bring the lower or backward social group to the level of the forward or higher social groups. The trinity of the goal of the Constitution viz., socialism, secularism and democracy cannot be realized unless all sections of the society participate in the state power equally, irrespective of their caste, community, race, religion and sex and all discrimination in the sharing of the state power made in those grounds are eliminated by positive measures/actions.

The founding fathers of the constitution were men of vision and wisdom well versed in law, polities and social philosophy. They were wholly committed to the good of the people and as such were best suited for evolving a framework of a welfare state of socialistic patterns of society. They felt that the caste system as it operated in India of late forties of the twentieth century had subjected a majority of the population, civil and even legal disabilities. The system needed to be abolished legally and constitutionally. The constitution made elaborated provision to remove the disabilities arising from one’s caste so as to enable a citizen to participate freely in the social, economic and political activities and attain fullest development of his personality. Equality, justice, liberty and fraternity are the chief objectives enshrined in the preamble to the constitution of India. Our founding father wished to build an edifice of democracy wherein those noble objectives might be materialized in regard to the entire Indian society which includes communities which had neither to remain disadvantaged and under-developed due to historical discrimination perpetrated in the name of caste, creed, race or the like. They therefore, designedly embodied certain provisions in the Constitution which conferred special favours and protection to the backward classes of citizens with a view to uplift them to the levels of equality with the rest of the society. The Indian Constitution embodied manifold concision, preferences exemption and above all reservation as the means of achieving social justice. The backward of all sections viz. Scheduled Castes and Scheduled Tribes are provided reservation in central and state legislatives bodies as a manifestation of political justice whereas they are provided along with other backward classes’
reservation and other special favour in numerous areas including in employment and admission in educational institutions as measures of social justice. Our Constitution has the unique distinction of outlining an extensive scheme for the advancement of the backward classes of citizens.

The Indian Constitution proclaims as Sovereign, Socialist, Secular, Democratic Republic and promises to its citizens, Justice, Liberty, Equality and Fraternity. The state created by the Constitution is pledged to political Socio-economic Equality of all citizens irrespective of sex, caste and creed, committed to social reforms, social change and removal of discriminations between one citizens and another. Every citizen irrespective of religion, caste, creed and sex, is therefore, entitled to education and employment according to his capacity. Justice is the key stone of our constitution and the principle of equality is the very foundation of justice. In pursuance of these assurances, Article 14, 15 and 16 have been enacted which embody certain fundamental rights guaranteed by the Constitution. Article 14 guarantees equality before law and equal protection of law to all persons. Clause (1) of Article 15 prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth. Clause (1) of Article 16 guaranteed equality of opportunity for all citizens in matter relating to employment or appointment to any office under the state. Clause (2) of the said Article further lays down that no citizens shall on grounds only of religion, race, caste, sex descent, place of birth, religion or any of them be ineligible for, or discriminated against in respect of any employment or office under the state.

Although clause (1) of Article 16 guaranteed equality of opportunity to all citizens alike, it would be meaningless to those for whom offices of position and dignity have been out of bounds for centuries and they are so crippled by the circumstances in which they are placed that such office are beyond their reach if they are left to themselves. In India, we have been faced with inequalities, which are mainly due to social injustice perpetuated for centuries by the upper castes of those
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belonging to the lower castes by denying them a proper social status and opportunity for their betterment. At the same time our founding fathers were not oblivious of the socio economic backwardness of many segment of our society and were convinced that mere guarantee against discrimination was not sufficient. The social backward classes needed to be brought at par with others by giving them special push through positives states action. Since independence there has been a special concern not only to promote the interest of all the groups in the country, but also to provide for protective status to certain groups or people in the society specially Scheduled Castes, Scheduled Tribes and the backward classes. So it was specially provided under Article 16(4) of the constitution that nothing shall prevent the state from making any provision for the reservation of appointment of post in favour of any backward classes of citizens which in the opinion of the state is not adequately represented in the services under the state.

Unlike Article 16(4) which specially provided for reservation of jobs, there was no provision in the constitution which permitted reservation of seats in educational institutions. In pursuance to the directive embodied in Article 46 to promote with special care the educational and economic interest of the weaker sections of the people various state governments started making reservation of seats on the technical and medical institutions such a reservation was held as invalid and violated of Article 15(1) and 29(2) in State of Madras v. Smt. Champakam Dorairajan\(^2\). While examining the underlying social policy the court found that except for reservation in service, the framers did not contemplate giving any special treatment to the backward classes. The basis of the conclusion was found in the express provision in Article 16(4) for the reservation of seats in public service for backward classes and the absence of such a provision in Article 29(2) and Article 15. The court recognized the obligation of the states under Article 46 to promote the welfare and interest of the weaker section of the people but considered the underlying

\(^2\) A I R 1951 S C 226, wherein the court struck down the government order which allocated seats in educational institutions to the various communities in proportion to the population they bore to the total numbers of seats.
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Object of Article 16 and 29 (2) so sacrosanct that the promotion of welfare of such classes was not to be by way of undermining it. To overcome such difficulty the constitution (First Amendment) Act, 1951 was passed which added a new clause to Article 15. The clause reads as under.

“Nothing in this Article or in Clause 2 of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

The wording “any special provision” in Article 15(4) gives the state great leeway in prescribing the method of operation of preferential treatment for the advancement of weaker sections of society. Special measure such as housing scholarship, land distribution, health benefits are being taken under this power. The reservation of seats in educational institutions under Article 15(4) and of jobs under Article 16(4) has received a uniform interpretation by the court. This is reflected through various judgments of the courts.

Reservation in favour of Backward Classes (BC) was introduced long before independence. The policy of reservation in job was firmly established during the closing decades of the British rule but such policy was designed more to redress communal inequalities in the representation in public services rather than as a social engineering device to redress the rooted socio-economic inequalities of the disadvantaged sections of the society because of the past societal discrimination. In the South India, a scheme of communal reservation emerged as a result of a revolt by Non-Brahmins against Brahmin domination in services. In the British Province of Madras and in the Princely state of Mysore there was a preponderance of Brahmin in public services and the Mysore Government, following the Madras scheme made reservation in favour of backward classes as far as 1874. In 1895, appointment in

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3 Parmanand Singh, Equality, Reservation and Discrimination in India; A constitutional Study of Scheduled Castes and Scheduled Tribes and Other Backward Classes, Deep & deep Publication, Rajouri Garden, New Delhi. 1985.
Police Department was made reserving posts in proportions in favour of the Brahmins, Musalmans and other Hindu castes. Despite the scheme of communal reservation from 1874, the representation of other communities in the Government Departments was far from being satisfactory and the Brahmin domination continued. In January 1895 the Mysore Government issued further circular reserving posts in favour of the backward classes. Even in 1918 the Mysore Government noted the preponderance of Brahmins in the State services and desired that other under representative communities should be adequately represented in services. That year, the Government appointed a committee headed by Miller. The Miller Committee proceeded on the assumption that the expression backward classes meant castes and communities including Muslims who were not adequately represented in the services. The committee defied the term ‘Backward Classes’ to include all the communities except Brahmins. Thus the Mysore and Madras Governments followed a policy of job reservation as a result of the revolt by Non-Brahmins against Brahmin domination in public services. Similarly in Mysore until 1959 the Brahmins could compete for only three out of every ten posts. The Government of Travancore and Cochin, Andhra and Kerala also pursued a policy of caste-quota for reservation in government jobs\(^4\).

There did not appear to be any reservation for the backward classes in North Indian states mainly due to the lack of any organized movement on the part of the backward groups to press for such a demand as the Non-Brahmin movement had gone in the Southern Province\(^5\).

The Indian Constitutional policy of compensatory discrimination was very much as a result of Ambedkar’s dramatization of the deprivation and disadvantages suffered by the Untouchables and his endless efforts to ameliorate their socio-economic conditions. The foundation for this policy was laid after Gandhi’s historic

\(^{4}\) Ibid
\(^{5}\) Ibid
fast at Poona in the face of Ambedkar’s demand for the establishment of a separate electorate for untouchables\textsuperscript{6}.

The British Government followed a policy of communal reservation in public services for communities like Muslims, Christians, Anglo-Indians, Parsis, Depress Classes, Aborigines and other groups. The claims of these communities in public services were recognized and preserved in the initial stages of constitution making but were ultimately eliminated from the final draft under which only the claims of backward classes were incorporated in the constitution for compensatory treatment in the field of public services\textsuperscript{7}.

The concept of reservation is one of the crucial factors in the Constitution of India to secure socio-economic justice to the down-trodden people and to bring them to the mainstream of the national life. The political, social and economic inequalities, which existed in our country prior to our Constitution, came into being made many revolutionary and social thinkers to agitate for securing socio-economic and political justice. Consequently, when the constitution of India was being drafted the constitution makers inserted the concept of equality so that no individuals shall be treated unequal.

Reservation is one of the measures adopted by the constitution to remedy the continuing evil effects of prior inequalities stemming from discrimination practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposefully societal discrimination. To attack the continuing ill effects and perpetuation of such injustice the constitution permits and empowers the state to adopt corrective devices even when they have discriminatory and exclusively effects. Any such measure in so far as one group is preferred to the exclusion of another must necessarily be narrowly tailored to

\textsuperscript{6} Ibid
\textsuperscript{7} Ibid
the achievement of the fundamental constitutional goal. Reservation is meant to remedy the handicap of prior discrimination impeding the access of classes of people to public administration. It is for the state to determine whether the evil effects of inequalities stemming from prior discrimination against the classes of people have resulted in their being reduced to position of backwardness and consequent under representation in public administration. Reservation is remedy or a cure for the ill effect of historical discrimination. Although the programmes of affirmative action are essentially aimed at granting equality of opportunity, adequacy of representation and the like, they at times give rise to controversies due to the discrimination inherent there in and certainly the over enthusiasm of the policy makers many a time also ignites controversies regarding various aspects of protective discrimination. Time and again the Supreme Court of India as the final interpreter of the constitution has been called upon to determine the numerous contentious issues; yet with changing times growing demands for inclusion in the list of beneficiaries, expansion in scope of such scheme, or any decision of a court restricting / expanding the amplitude of such special favours, all are enough the start fresh spate of debates in this matter.

The principal problem in affirmative action is that of determining the target group of the benefits package. Those who are designated as the beneficiaries become entitled to certain advantages and position and in that sense get an edge over others not similarly designated. The Constitutional mandate for affirmative action designates these target groups as backward classes. Some of these identified as Scheduled Castes and Scheduled Tribes and other it leaves in nominate. The rationale for this distinction is largely historical to ensure the protection of backward classes of citizen so the power was given to the state to provide for reservation for such designated groups. States have determined as to which caste, community or groups is backward or inadequately represented in services in the state. This was clear in the mind of Dr. B.R Ambedkar and he raised his voice for representation in state services way back in 1930. He realized that unless the backward classes have share in the power, their interest cannot be protected. While addressing the all India depressed classes
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Congress at Poona in August 1930 he asserted that “the best guarantee for the protection of your own interest consists in having the power of control in your own hands, so that you may yourselves be in position not only to punish when mischief to your interest is done but to keep a watch over your interests from day to day and prevent possible mischief from arising. The safest remedy for the protection of your interest seem to me to lie in securing control over the future exclusive in self-governing India in your own hands and that you can have only a means of adequate representation in the legislature of the country. It is by this means alone that we can keep a day to day watch upon the doings of executive and thereby ensure our safety and our progress”. These ideas of Dr. Ambedkar might have been the motivating force behind the reservation for backward classes.

At another place, Dr. Ambedkar emphasized that power to administer laws was not less important that the power to make laws and the spirit of the legislators may easily be violated if not nullified by the machinations of the administrator. This is not the only reason why the depressed classes should show special concern for securing power of control over administration. Often times under pressure of work or under difficulties of circumstances law has to learn a good deal of discretionary powers in the hands of the head of the administrative department. The welfare of the people must greatly depend on how impartially this discretionary power is exercised, in a country like India where the public service is almost exclusively manned by people of one community; there is a great danger of this vast discretionary power being abused for the aggrandizement of a class. The Constitution permits protective discrimination in the form of reservation in the three specific areas:

(1) Reservation of seats in the Legislature,
(2) Reservation in the services of states and
(3) Reservation of seats in the Educational Institutions.

In order to create a politically homogeneous society, the framers of the Constitution rejected the system of communal representation and separate electorate.
and instead opted for universal adult franchise and joint electorate. Strongly enough the founding fathers weakened the concept of political homogeneity by providing for reservation of seats in the legislature for the Scheduled Castes and tribes.

Articles 330 and 332 of the Indian Constitution provide for the reservation of seats for the Scheduled Castes and Scheduled Tribes in the house of the people (Lok Sabha) and the legislative assemblies of the state. These special provisions for the reservation of seats in the legislature were provided purely as a transitory measure. Initially the reservation was for a period of ten years. However, this arrangement was extended up for further years by various Constitutional Amendments as it was felt that the Scheduled Castes and the Scheduled Tribes needed reservation for a longer period. The policy of legislative reservation, no doubt a bold imperative of equality and social justice, adopted at the time of framing of the Constitution, and its continuation by periodical extension demand a critical social enquiry.

To ensure protection of backward classes of citizens it was necessary that members of backward classes be appointed in the state services so the power was given to the state to provide for reservation of such appointments. Accordingly the provision was made for the reservation of jobs in terms of Article 16(4).

Unlike Article 16(4) which specifically provided for reservation of jobs, there was no provision in the Constitution which permitted reservation of seats in educational institutions. It was only in 1951; clause 4 in the Article 15 was inserted by a Constitutional Amendment in pursuance of the decision of the Supreme Court in the case of Champakam Dorairajan.  

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8 A I R 1951 S C 226
1. 1. STATEMENT OF THE PROBLEM

The Constitution of India permits reservation for three categories of groups (a) Scheduled Castes (b) Scheduled Tribes and (c) Other Backward Classes. The Constitutions itself does not define these groups nor does it provide any standard by which they may be determined. In the case of Scheduled Castes and Scheduled Tribes the President is empowered to specify, after consulting with the governor of a state, those castes, race or tribes or parts groups within castes race and tribes which shall for purpose of this constitution be deemed to be Scheduled Caste in relation to that state. He may similarly specify tribes and tribal communities or part of groups within tribe’s communities as Scheduled Tribes.

The word “Backward” as used in the Constitution of India is nowhere defined. Article 15(4) uses the word socially and educationally backward classes and the Scheduled Castes and Scheduled Tribes. Article 16(4) uses the word ‘backward’. The word backward under Article 16(4) includes the Scheduled Castes, Scheduled Tribes and the Other Backward Classes. So far the work of this research is concerned, it is confined only with Article 16(4) of the Constitution and thus the backward word as used in this Article is the subject matter of this research work.

The ascertainment of the Scheduled Castes and Scheduled Tribes does not pose major problems. The geographical and cultural factors make the identification of the SCs / STs fairly simple but the question as to who are deemed to be the Other Backward Classes and what criteria should be adopted in determining their backwardness for the purpose of reservation in jobs and educational institutions give rise to serious difficulties. The question of backwardness has also become a subject matter of considerable litigation. No doubt the judiciary has over the years made numerous attempts to evolve a secular, scientific and rational formula for adjudging backwardness yet the judicial attempt in this direction have not resulted in concretizing any well-defined principle that could find an application in every case.
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The identification of backward classes had been left to the states. States and Union Territories adopted different criteria of backwardness, several of which have been subjected to judicial review. The judicial verdicts have thrown up several guidelines for the identification of backward classes. The demand for determining as to who the OBCs are, was made several times in parliament. The clamor ultimately led to the appointment of the several backward class commissions.

The interpretations and application of these Constitutional provisions regarding the identification and determination of backward classes under Article 16(4) constitutes the main focus of this research work. It is also pertinent to analyze some important facets of reservation in favour of other backward class which has been a hot bed of controversies since last two decades and consequently been the cause of much adjudication in recent time.

1. II. RESEARCH QUESTIONS AND HYPOTHESIS

The questions relating to reservation are so many and so vast that it is not possible to incorporate and to answer all the questions relating to reservation. The reservation in favour of SCs and STs in Independent India was provided by the India Constitution. But the reservation in favour of Other Backward Classes was so controversial and sensitive that no Central Government, after the coming into the existence of the Constitution could implement the policy. Although two important Commissions were set up by the Central Government, the First one was Kaka Saheb Kalelkar Commission (in 1953 when Jawahar Lal Nehru was the Prime Minister) and Second Commission was Mandal Commission (in 1979 when Morarji Desai was the Prime Minister). It was only in the year of 1991, the policy was implemented by the then Central Government, under the Prime Minister ship of V.P. Singh. Considering the vastness of the concept ‘reservation’, each aspect of reservation demands a
separate research. So it is not possible to cover each and every aspect of reservation. For this present research work I have selected the following research questions:

1. Whether the present policy of reservation could bring the people of backward classes to the level of forward class and the objectives of reservation to promote and protect educational and economic interest of the weaker section of society is achieved?

   No doubt reservation is one of the measures to uplift the downtrodden people who have been historically neglected by the so called forward classes and were deprived the access to administration and higher education. Could this bring any positive change in the economic and educational conditions of the weaker section? That invites intensive study.

2. Are caste-based reservations not perpetuating the evil of caste system and not accentuating caste consciousness besides impeding the goal of secularism?

   The founding father felt that the caste system as it operated in India of late forties of the Twentieth century had subjected a majority of the population to several social, economic, political, civil and even legal disabilities. The system needed to be abolished legally and constitutionally. Then why should there be reservation based on caste? That has to be examined in the context of Indian society.

3. If 74 percent of Indian population is treated as backward then any reservation to backward may cause reverse discrimination to forward as they are forming minority of population.

   By providing reservation to 74 percent of population whether we are doing injustice to the rest 26 percent of population? That require a relook to the policy of reservation and that is to be researched.
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4. How long reservation should continue and how long backward class will remain backward?

There is no dispute regarding the rationality of the concept of reservation for backward classes but this policy was conceived as a temporary measure to bring them to the level of forward class. But now this phenomenon has become a permanent feature of Indian Politics. Even after the elapse of seven decades of independence the backward citizens could not be brought to the forward level. Should a Government of a state or the Central Government on evaluation after five or ten years direct a group or collectivity to be excluded from the test of backward classes if it finds it adequately represented? All these are matters to be investigated and a clear conclusion is to be made.

5. In a secular state, should there be any provision like reservation which is based on caste, community and religion etc.? Whether Muslim should be included in the fold of backward class and makes them entitled for the benefit of reservation?

6. Can we all our honesty declare that the sole aim of all reservation as they stand today, is the upliftment of the weaker and disadvantaged sections of our society, especially when they blindly ignore the whole segment of economically disadvantaged cutting across all castes? One wonders whether it is a case of deliberate myopia or simply that of offering the sacrifice of national interest and integrity on the demanding alter of political ambition.

7. What is the impact of reservation on society? Whether our society as a whole is benefited by the policy of reservation?

If we say that reservation is necessary as the socio-economic status of segment of society has to uplift, at the same time we have to assess the impact of reservation on society. Whether Governments are really interested in eradicating the evil of caste discrimination or the backward people are being misused by the politicians?
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8. The criteria for providing reservation which is based on the recommendation of Mandal Commission are to be re-examined. Whether those criteria still prevail in our contemporary society, should reservation be based only on those criteria? Those are the matters to be investigated and to find out a suitable solution to the problem.

9. Nobody would oppose giving of benefit of reservation to the deprived and poor but the criteria as laid down by the government for providing reservation which is based on the Census of 1931, is still hold good and no change occurred in their condition since 1931 till now, we need a fresh look into the matter? A close look is required to watch the real beneficiaries of reservation. Whether the creamy layer among the backward classes should be excluded from the preview of reservation and whether there should be reservation in case of promotion? Whether the single post should be reserved?

10. Why there is no caste wise census beyond 1931?

11. Whether reservation can be made on economic basis?

12. Does reservation not create the reverse discrimination against the so called forward classes?

There are so many questions related with the subject which require sincere research. An attempt has been made in this work to discuss the aforesaid issues analytically on the basis of prevailing scenario and to suggest appropriate solution.

For the sake of better presentation of entire research work / thesis has been divided into seven chapters including the introduction and the conclusion. Only the Supreme Court cases have been taken for the study on different issues concerning the subject matter. The First Chapter i.e., Introduction introduces the subject. It gives an overall idea about the entire work in brief. It contains the problems for which the
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answers are being sought in subsequent chapters. The Second Chapter, i.e., *Historical perspective* deals with the origin development and impact of caste attitudes which has not been vanished even after more than fifty years of efforts by the government legislature, the judiciary and the voluntary agencies. Harijans are still despised and exploited. The framers of the constitution kept caste system in mind and specifically provided for a guarantee against discrimination on ground only of caste, place of birth, race, sex, religion etc. The untouchability has been abolished and its practice by any one has been made punishable. The caste system in India is as old as our civilization and culture. It is a system on which the traditional order of the Hindu Society is based and it is believed to have immemorial antiquity. Caste in India is a social institution, deriving and intimately interwoven with the Hindu religion. Membership of a caste is compulsory and not a matter of choice. A person is born into it. It is practically impossible for individual to change his caste. The complex nature of the caste structure is evident from the fact that even after a century and a half of painstaking and meticulous research in the history and function of the social system, we do not possess any conclusive explanation of the circumstances that might have contributed to the formation and development of this unique system in India.

It is obvious that such a system of social stratification divides the society into thousands of small, hereditary and endogamous groups, each cluster of groups having its own distinctive set of customs and practices, which together form a hierarchy. In Rig Veda, the term Sudra is mentioned for the first time only in the Purusha-sukta. Dasyu and Dasa are known to the Rig Veda, both as aborigines, independent of Aryan control and as conquered slaves. The term Sudra was evidently applied to the inhabitants of the villages as well as to the wild hills tribes which lived by hunting and fishing and acknowledged the over lordship of their Aryan neighbors. In course of time it included even Dasyu-Varna who remained beyond the pale of the Aryan state and who were virtually excluded from the religious and ritual cult of the Aryans. The development of the caste system in a rigid form with sticktly hereditary and mutually exclusive caste groups did not take place till the time when the Vedic Aryans had
settled down in the middle country and were already Brahmanised enough to look upon the vratyas because they did not follow the strict caste system. The Rig Veda used the term Varna to mean colour or light and this varna is associated with groups of people having a skin of a dark or fair colour. Brahmans and Kshariyas are mentioned in the Rig Veda, but the word Varna has not occurred in the Rig Veda except in the Purusha Sukta but even in that hymn the word varna is not employed with reference to them. It may be conceded that at the time when the purusha sukta was composed the community as divided into four groups vides Brahmana, Kshatiyas, Vaisya and Sudra.

Many of the Samhitas and writers of Digest quoted several Vedic passages on the point of disabilities of Sudras. According to those passage sudras were not allowed to read Veda. Not only was the sudra not to study the veda but veda study was not to be carried on his presence. The sudras were not to concentrate sacred fires and to perform the solemn Vedic sacrifices.

In the 18th century, the Hindu society was divided into four parts, viz., the Brahmans, Kshatrias. Vaisyas and Sudras. The Brahman was the priest, the sole exponent of religious as well as the teacher and guide. Both the ignorant and the educated were superstitious and the Brahmans exploited the innate human fear of the unknown. The hereditary occupation of the Ksharias was to wield temporal power. The kings, ministers and soldiers generally belonged to this class. The vaisyas were the community of businessmen. They had two broad divisions. One branch took to trade and the other to agriculture. The Sudras comprises the mass of the people. They included the aborigines admitted to the Hindu community. Their salvation was supposed to lie in the direct and indirect service rendered by them to the three upper classes. Below these four castes were the Antyajas with their eight guilds of craftsmen. They had to live at a distance from the higher castes and still rendered their services to them.
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Despite the social reform movement of 19th and 20th centuries, rapid expansion of trade and industries, influence of western thoughts and the Constitutional abolition of all castes distinctions, the caste system still exists and shows no sign of dying. Chapter- 3 of the work shows the Conceptual and Constitutional Foundation. In this chapter the concept of socialism and welfare state have been analysed elaborately, specially the post independent Constitutional provisions. When India became independent and it framed its own constitution, India decided to establish a socialistic pattern of society based on parliamentary democracy. To late Prime Minister Jawaharlal Nehru “the establishment of a socialist order means a controlled production and distribution of wealth for the public good”. “The socialist way of life” observes Jayprakash Narayan” is a way of sharing together the good things that common endeavor may make available”. Mahatma Gandhi upheld that idea of sarvodaya which sought to achieve the material as well as moral well beings of all section of the community and more especially of the poorest and the lowest strata of society. The constitution of India directs that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political, shall inform all the institution of national life”. It has been stated that all citizen have “the right to an adequate means of livelihood” and that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good”. The Directive Principles also enjoys the state to ensure that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

The Preamble of the Indian constitution says, we, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizen: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all; fraternity assuring the dignity of the individual and the unity and integrity of the nation. By the constitution 42nd Amendment, Act, 1976,
the words, socialist secular and integrity were inserted in the preamble. It indicates the source from which the constitution derives its authority and also states its objects which the constitution seeks to establish and promote. It is a key to open the mind of makers.

The principal aims of a socialist state as envisaged in the preamble are to eliminate inequality in income and status and standards of life. The basic from work of socialist is to provide a decent standard of life to the working people and especially to provide security from cradle to grave. The constitution of India is not a mere pedantic legal text, but it embodies contain human values, cherished principles and spiritual norms and recognized and uphold the dignity of man. It accepts the individual as the focal point of all development and regards his material moral and spiritual development as the chief concern of its various provisions. The core constitutional objective of social and economic democracy in other, just social order cannot be cannot be established without removing the inequalities in income and making endeavor to eliminate inequalities in status through the rule of law and legislative actions. A just social order can be achieved only when in equalities are obliterated and everyone is provided what is legally due.

From the statements of objects and reasons of the 42nd Amendment Act, 1976, it appears that the words socialism was inserted to spell out expressly the high ideals of socialism. What is meant by socialism is explained in the same context but there is no reference to collectivism or nationalism but mere social justice these words are the objective of social economic revolution which would end poverty and ignorance and disease and inequality of opportunity. This amongst other on economies side envisaged economic equality and equitable distribution of income. This is a blend of Marxian and Gandhism learning heavily toward Gandhian socialism.

Reservations are the devices for removal of the historical distortions that have crept into our social system. These denote the body of rules recognized and enforced
by the state in the administration of social justice. Reservation is the means to promote the goal of social justice. To put it simply social justice we mean abolition of all sorts of disparities resulting from inequalities of wealth and opportunity, race, caste, religion, sex and title. In the words of the supreme court of India, it is the harmonization of the rival claims of the interests of the different groups and sections in the social structure, by means of which alone it is possible to build up a welfare society.

Reservation is meant to remedy the handicap of prior discrimination impeding the access of classes of people to public administration. It is for the state to determine whether the evil effect of inequities stemming from prior discrimination against classes of people have resulted in their being reduced to positions of backwardness and consequent under representation in public administration. Reservation is a remedy or a cure for the ill effect of historical discrimination. The concept of reservation is one of the crucial factors in the constitution of India to secure socio-economic justice to the downtrodden people and to bring then to the main stream of the national life. The political, social and economic inequalities, which existed in our country prior to our constitution, came into being made much revolutionary and socio-economic and political justice. Consequently, when the constitution of India was being drafted, the constitution-makers inserted the concept of equality so that no individual shall be treated unequally. They thought that the meaning of equality based upon individual achievement was to hypocritical in our caste ridden society where group identification had been historically used for the purpose of discrimination and separateness. Therefore, the makers of the constitution adopted a policy of preferential treatment in favour of certain weaker section of the society to offset the effects of inherited inequalities and remedy historic injustice.

Article 14 which guarantees equality before law would by itself, without any other provision in the constitution, be rough to validates such equalizing measures. The founder of the constitution, however, though it advisable to incorporate another provision, viz, Article 16 specifically providing for equality of opportunity is matter
of public employment. Further they emphasized in clause (4) therefore that for equalize the employment opportunities in the service under the state the state may adopt positive measure for reservation of appointment or post in favor of any backward class of citizen which in the opinion the state, is not adequate represented in such service by hind sight, the foresight shown in making the provision specifically instead of leaving it only to the equality provision is more than vindicated the absence of such provision may well have led to total denial of equal opportunity in the most vital sphere of the state admit. And democracy cannot be realized unless all section of the society participate in the state power equally irrespective if their caste, community, race, religion and sex and all discrimination in the sharing of the state power made on those grounds are eliminated by positive measures.

The purpose of the reservation is to help of the weaker section the society whose weakness is quantitative and not as they suffer from qualitative infirmities due to lack of educational facilities, economic opportunities, social status, places or habitation and nature of occupation followed.

The reservation are aimed at securing proper representation in administration to all section of the society, intelligence and administration capacity being not the monopoly of any one class, caste or communities this would help to promote healthy administration of the country avoiding sectarian approaches and securing the requesting talent from all available sources. The objects of the reservation policy in stated to be to promote and protect educational and economic interest of the weaker section of society such reservation is said to be permitted under Article 15(4) and Article 46 for admission to educational institutes while under Article 16(4) read with Article 335 as well as Article 46 provide for the reservation of claim of the Scheduled Castes and Scheduled Tribes service ad post. The main objective of providing reservation for the Scheduled Castes and Scheduled Tribes and the backwards class in civil posts ands service of the government is not just to give jobs to some person belonging to those communities and therefore increase their representation in the
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service but to uplift these people socially and educationally and to provide proper place for them in the society. Chapter 4 of the work i.e., Identification and Determination of Backward Classes deals with a vital issue of reservation rather it is the main topic for discussion in this research work. The Constitution permits preferences in the form of reservation under protective discrimination provision for three categories of people:

(a) Scheduled Caste (b) Scheduled Tribes and (c) Other Backward Classes. The constitution permits protective discrimination in the three specific areas: reservation of seats in the legislature, reservation of jobs, and reservation of seats in the educational institution.

Although clauses (1) of Article 16 guarantees equality of opportunity to all citizens alive it would be meaningless to those for whom office of position and dignity have been out bounds for centuries and they are so crippled by the circumstances in which they are placed that such offices are beyond their reach if they are left to themselves. In India we have been faced with inequalities which are mainly due to usocial injustices perpetuated for centuries by the upper castes on those belonging to the lower castes by denying them a proper social status and opportunities for their betterment. Because of its pernicious castes system which may truly desorbed as its original sin the Indian society has for ages remained stratified. Hindus constitutes 80% of the country’s population and overwhelming majority amongst them "belong to the castes which suffered social disabilities in some degree or the other. Every Hindu born in particular castes which he cannot change. Hitherto he had to follow the occupation assigned to his castes and he could not even think of changing it. The nobility to upper castes is forbidden one of the worst effects of castes was that access to knowledge and learning was denied to the lower castes for centuries. It was not till the advent of the British Rule in this country that the doors of education were opened to theme as well as to women who were considered as much disentitled to education as the sudras. Naturally all the parts in the administrative machinery were married by the higher castes which had the monopoly of learning.
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The concentration of the executive power in the hands of the select social group had its natural consequences. The most invidious and self perpetuating consequences was the stranglenald of a few high castes over the administration of the country from the lower to the higher rungs to the deliberate exclusion of others. Consequently all aspects of life were controlled directly and regulated mostly to suit the sectional interests of a small section of the society which numerically did not exceed 10 per cent of the total population of the country. The state of the health of the nation was incurred through their eyes and the improvement in its health was effected according to their prescription. To ensure protection of backward classes of citizens it was necessary that members of backward classes be appointed in state’s services and so the power was given to the state to provide for reservation of such appointments.

Unlike Article 16(4) which specifically provided for reservation of jobs, there was no provision in the constitution which permitted reservation of seats in educational institutions. In pursuance to the directive embodied in Article (16) to promote with special care the educational and economic interests of the weaker sections of the people, various state governments started making reservations of seats in the technical and medical institutions. Such a reservation was held as invalid and violation of Article 15(1) and 29(2). In the State of Madras v. Smt. Champakam Dorairajan⁹, the Supreme Court held that Article 29(2) was not controlled by Article 46 and that the Constitution did not intended to protect the interest of the backward classes in the matter of admission to educational institutions, while examining the underlying the social policy, the court found that except for reservation in services, the framers did not contemplate giving any special treatment to the backward classes in the matter of admissions to educational institutions. To overcome such difficulty, the Constitution (First Amendment) Act, 1951 was passed which added a new clause to Article 15. The clause reads as under: “Nothing in this Article or in clause (2) of Article 29 shall prevent the state from making any special provision for the

⁹ AIR 1951 SC
advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”\(^{10}\).

For determining the backwardness of the people different criteria have been laid down for different benefits under the constitution. So far SCs and STs are concerned, their determination dose not pose much difficulty, because the constitution itself defines these groups but so far OBCs are concerned, neither the constitution define them nor laid down any criteria for their determination. In this chapter I tried to find out a proper solution to this problem.

Chapter 5 of the work entitled *Limits of Reservation* deals with the extent of reservation, exclusion of creamy layer and period of reservation etc. The Constitutional mandates that the state need reserve any minimum number of post in government service or seats in educational institutions; or diverts any minimum part of its resources to benefit of backward people are not mandatory but only permitted. In absence of any specific limits on the extent of reservation under the constitution, various Governments have been resorting to implement reservation in educational institutions and governmental jobs to the maximum possible extents. The claimants of reservation under the constitution the three categories, the scheduled caste, the Scheduled Tribes and the backward classes, constitute 74.5% of the total population of India; Their percentage being 15%, 7.5% and 52% respectively. At present the Scheduled Castes are given 15 percent seats in the total number of vacancies on account of their 15 percent population. The Scheduled Tribes are given 7.5% seat and the other backward classes (OBC) are given 27% reservation. Apart from this, the central Government has made a reservation of seats to the tune of 27% for socially and educationally backward classes in central educational institutions.

Chapter 6 entitled *The Impact of Reservation* contained the overall impact of reservation on our society. In some areas efficiency of administration is badly

\(^{10}\) Article 15 (4), Constitution of India.
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suffered because of the reservation. Therefore, in those areas the reservation cannot be appreciated and it could be dangerous to recommend reservation of seats in government services. Apart from this, there are some posts which require only merit, for those posts of super-specialties also reservation can bring adverse impact on society. This chapter also deals with some related matters like use and misuse of reservation policy, reservation in private sector and reservation and social changes. Chapter 7 leads to Conclusion and Suggestions.

1. III. RESEARCH METHODOLOGY

Since the adoption of the Indian Constitution, a number of studies have been conducted relating to the scope of the right of reservation. A good number of judicial pronouncements have been delivered by the Supreme Court and High Courts over the issue of reservation. In this study, the historical analytical methodology of research will be applied and a systematic analysis will be made. The method to be applied for this study is primarily doctrinaire research. A doctrinal research involves analysis of case laws, arranging, ordering and systematizing legal propositions and study of legal institutions. Our is the welfare society and the aim of law in such a society is to adjust the conflicting interest of various components of the society by applying the principle of reasonable classification. The task of a doctrinal research is not purely mechanical one. While inferring a principle on the basis of available knowledge in the area of research, he may apply logic, ethics and requirements of the day and out of several alternatives he may choose the best one which best serves the interest of the society. In modern context, the doctrinal researcher has to find out and propose those principles, rules and regulations which can serve the purposes what Roscoe Pound has termed as ‘social engineering’. In doctrinal research the research is carried on the basis of facts and data stored in the library, archives and other data base.
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In analytical research the researcher uses facts or information already available and analyze to make a critical evaluation of the existing state of affairs e. g whether the existing state of law is conductive for the development of law or it needs to be amended to make it more flexible or rigid for necessary development; whether the law is necessary for development should be remedial, or penal or enabling in character etc. Due to the uniqueness of the statutes, the analytical method applied in legal research relies on specific interpretation methods namely the mischief, literal and golden rules.

In the area of law Historical research is of much significance. It utilizes historical sources like documents and other records to study events of the past or ideas prevalent in the past, the social values and philosophy of the past, the cultural element of the past of the people in general as well as individual components of the society to ascertain what changes have taken place? Whether they are good or bad? Whether they can be continued or need modification to be more effective? Whether the present is good or the past was good etc?

For this purpose survey has been made of the various statutes, books, Articles, journals and reports available in the library of Department of Law, North Bengal University, Central Library, N.B.U and other important Law Libraries in India including the Indian Law Institute, New Delhi. Besides the judicial decisions of the Supreme Court the opinions of individual judges and academicians shall also be taken into account for the purpose of the study. Besides the judgment of the Indian Supreme Court, the important decisions of the American courts shall also be investigated in my present work. Only the decisions of the Apex court are to be taken and as such it will be collected from All India Reporters and Supreme Court Cases for this purpose. Materials and data available in different websites will also be taken in to account. The present study mainly concentrates in relation to the Indian position. However a brief reference to the provision prevailing in other countries shall be taken into account. Some foreign cases which have attracted the attention of the Indian judiciary will also
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be referred to. The historical analytical approach shall be applied to study the relevant materials to evolve a conspectus conclusion.

1. IV. SIGNIFICANCE OF THE STUDY

The continuation of reservation under Articles 15(4) and 16(4) for over the decades produced increasingly resentment among them who were discriminated against by such reservation. Our vision of building a casteless society that recognizes merit and knowledge has become an illusion. This issue involves the future of the youth of the nation. Therefore, the present research is of great public interest and importance.

The present reservation policy is made on the basis of the criteria which were laid down and recommended by the Second Backward Classes Commission. In the present work a humble attempt was made to examine the relevancy of reservation in present day India and the rationality of its basis for determination of backwardness under the Constitution of India.

The aims and objectives of this study are as follows:

1. To study the scope of the right of reservation in India.
2. To examine the criteria as laid down in the present policy for the benefit of reservation and also to examine its relevancy in present time.
3. To study the nature and rationale of the present reservation policy and find out its lacunae’s and to place useful suggestion.
4. To examine the role of the judiciary in promoting and protecting the right of reservation.
5. To assess the impact of reservation on society and to suggest future strategy for better protection and promotion of the interest of the weaker section of the society (SCs, STs and OBCs).