6.1 HISTORY OF RESERVATION:

“Dead history is no history, my feeling is that the Dalits have no history, Dalits are yet to make history. And that history will have to be made on the basis of the struggles nineteenth and twentieth centuries, during which period our great ancestors struggled for us. We know about the struggles against untouchability launched in West Bengal and Maharashtra our sarkars and biswas know about the struggles of chandals in Bengal. Harch and Takur and Guruchand Takur launched those struggles in nineteenth century. Similarly in Maharashtra Mahatma Jayotiba Phule, Chatrapathi Sahu Maharaj and Babasaheb Ambedkar launched struggle against untouchability.”

India was ruled by mughals and patans. But justice was given to us only during the British period with the efforts Mahatma Jayotiba Phule. Till then, we were not allowed to acquire education, the doors of education were opened only during nineteenth century. And in the twentieth century we got more opportunities for education. In year 1902 the process of job of reservation has initiated, most of you have may be employees and are the product of reservation. But most of you may not know the history of reservation as to when and where the reservation was started and who gave the reservation. As far as my information about the recent history. The process of reservation was initiated on 26th July 1902 by Chatrapathi Sahu Maharaj of Kolhapur. The reservation has got its own history. The right to education has got its own history.
6.2 A SOCIO–LEGAL PERSPECTIVE:

The Constitutionally mandated issue of reservation for the so called backward and Scheduled Castes. In all its complexity continues to be riddled with conflicts. Confrontation and controversies in practically all spheres of collective of life here. This clearly indicate that the issue along with several other similar issues of empowerment of the weaker sections, despite being enshrined in and mandated by the law of the land, is neither expressive of, nor based on nor backed by national congress, but was brought in a to meet other exigencies. An important, but disastrous result of such ‘mere legal’ inclusion being, that the different dimensions of the issue are interpreted (and also implemented) not in the sprite of the Constitution, or in sympathy with mass of the excluded. But variously in the interests of the different influential lobbies of the entrenched social groups, leading to the virtual negation of all intended benefits to the disempowered. Understandably the both and controversies surrounding the issue tend to gravitate towards the quasi-scared, but also the least democratized sphere of the Indian nation State, the judiciary. Once the judiciary speaks, it is consensus, that the issue is not only legally settled but socially legitimized but also academically reproduced, it is in this context that the present text gain enormous significance. The pieces of writing of Late K. Balagopal included here are indeed a rare specimen of its kind in this that they do not hesitate to take laid on scrutinize, challenge and even debunk, the judiciary and its pronounce results, in their own terms, from the unassailable point of view of
the empowerment of the suppressed in society, taken together the five pieces are a fine example of socio-legal investigation on a crucial contemporary issue. They are a forceful reminder that the judiciary – law, courts, judges and adjudication is very much embedded with in the larger society like any other institution and its dynamics is not beyond or above the ideological and material contradictions within society. The writings are clear evidences not only to the authors legal acumen and passionate commitment to the cause of the down trodden. But also his wide knowledge of history culture and traditions of the country.  

6.3 RESERVATION POLICY AND THE EMPOWERMENT OF DALITS:  

Compensatory discrimination sometimes called protective dissemination is a government policy and programme preferential treatment of historically disadvantaged sections (Scheduled Castes and Scheduled Tribes) of the population built into the Constitution and then implemented through subsequent legislation and judicial decisions. It was one of the means chosen to achieve the ends of liberty, equality, justice, and fraternity enshrined in the Constitution. In pursuance of the Constitutional provisions for the historical disadvantaged, the Central and State governments have adopted a number of measures for the economic educational and social uplift of these disadvantaged groups. The measures may be classified as the protective, developmental and welfare schemes to empower the Dalits of India. Within this broader compensatory discrimination policy, the aim of establishing job reservations or quotas in government service and public
sector undertakings has been to create a just society by providing a helping hand to the disadvantaged sections of Indian society, specifically, job reservations the intended not just to provide a few jobs to some individuals, but to uplift and empower as well as provide them with opportunities for both social and economic mobility. Indeed, job reservation have served as one of the means by which members of historically disadvantaged groups, Dalits and tribals in particular, have gained some sort of social mobility, through individual mobility. 4

Article 14, which enjoins upon the State not to deny to any person ‘equality before law or equal protection of the laws’, carries special significance in the context of Indian society, which hitherto was socially graded facilitating elevation of some and degradation of others. Article 15 prohibits the State from making discrimination on grounds of religion, race, caste, sex, or place of birth. The Constitution was Amended in 1995 (Seventy – Seventh Amendment Act, 1995). This Amendment restored reservation for the promotion of the SCs, and STs by inserting clause 4(9) in Article 16, Article 16(4) (a) maintains that nothing in this Article shall prevent the State from making any provision for reservations in matters of promotion to any class or classes of posts in the services under the States in favour of the SCs and STs, which in the opinion of the State are not adequately represented in the services under the State.

The Constitution also provides reservation of seat for the backward sections in the Lok Sabha (Article 330) and Vidhan Sabhas (Art. 334) out of
the 545 seats in the Lok Sabha, 106 seats are reserved for the weaker sections.
In pursuance of Article 332 reservations of seat for SCs and STs in the State Vidhan Sabha (Legislative Assembly) is provided. In accordance with the Constitution (Seventy – Third Amendment) Act, 1992, seats in panchayats (from the village to the Zilla parishad level) are reserved for weaker sections in proportion to their population at the respective level in direction election.5

On the economic front, the Constitution not only prohibits any form of forced labour (Article 23), but also makes special provision for people of the backward sections of the society to be provided reserved posts in various government departments, both at the Central as well as State level (Article 16, 320, 335). These reservations have been offered according to their percentage of the total population of the country. Article 46 of the Constitution offers a special provision to promote with special care the education and economic interests of the weaker sections and it offers than protection from social injustice and all forms of exploitation. 6

Besides all these provisions infavour of the weaker sections, the government of India has been implementing several other plans for the last 50 years within the provisions of the Constitution. In the first Five Year Plan, the policy measures were largely confined to educational facilities, allotment of water, land and reservation in government services. The same approach continued in the Second Five Year Plan as well. In the third plan, the assistance in educational development received high priority with additional emphasis on technical and vocational training. In the Fourth Five Year Plan
the emphasis on education continued. In the Sixth Five Year Plan, significant qualification was made in the strategy towards the economic development of these sections. In this plan, the special component plan was adopted in order to quantify the flow of funds and benefits from various sectors to the weaker sections. In the seventh plan, emphasis on beneficiary orientated programmes of socio-economic uplift of weaker sections continued. In the Eight Five Year Plan, education and the programmes of economic development received high priority the programmes during the eight plan, were to be tune to meet the specific needs of these communities.

The approach paper to the ninth five year plan observed that all programmes meant for weaker sections would be so designed as to as to empower them and provide both social and economic mobility. In addition to the funds allocated for the benefit of SCs and STs a number of other schemes have been launched Industrial Rural Development Programme (IRDP) National Rural Employment Programme (NREP), Training of Rural Youth for Self Employment (TRYSEM), Jawahar Rojgar Yojna, Tribal Development Programmes special component plan and the Scheduled Castes development corporation. These are several other temporary schemes by the National Safai Karmacharis Development Corporation, post metric scholarship to upgrade the merits of SC and ST students book banks, centrally organizations and the Dr. B. R. Ambedkar Foundation, which were initiated to enhance the development of the weaker sections is not traditional occupation.7
While reservation policy has been varied as important step in ensuring social justice to the Scheduled Castes in India, the commentators of this policy have pointed out its serious limitations. The Dalits studies have failed to pay sufficient attention to the differential impact that the reservation policy has on different sub sections and the need to distinguish between the most deprived Dalits from those have benefited more. This Article attempts to examine the progress of Maharashtra major Scheduled Castes: Mahar, Buddhist, Matangs and Chamhars during the last six decades of the reservation policy, primary sources such as, census reports, government documents have been used for studying the progress in the field of education employment access to economic resources and political power, it is found that the Mahar Buddhists and chamhars have aggressively progressed over the matangs in coming the benefits of policy and correspondingly this differentiation has been leading to proliferation of inequalities within themselves. The matangs as second largest community because sensitive about relative deprivation and questioning the credibility of the policy. It is no wonder if matangs demand reservations individual caste.8

As a consequence of reservation policy, some castes have substantially progressed over others and correspondingly this differentiation has produced monopoly of certain aggressive castes about the advantages or the policy. It is a characteristic feature even of Scheduled Castes (SCs) all over India that relatively two large castes are found in all States. They marked off from one another and stand as traditions rivals.
In recent years, they are fighting with each other almost as arch enemies ever the reservation policy. Mala – Madiga in Andhra, Mahars – Matangs (or Mangs) in Maharashtra. Chamars and Chuhras in north India are a few cases in point. As benefits of reservation are availed by the better off castes within SCs, the disadvantaged caste are asking for quotas within quotas. On the one hand, we witness a considerable success of this policy in budging the gap between the SCs and high caste Hindus it has also led to an emergence of mark inequalities within SCs. Most deprived Dalits and be tempted to go with their own shopping list to any political market place as the other backward classes have done. That may not be conducive to Dalit solidarity or collective efforts for the socio economic emancipation.

Editor V.T. Rajshekhar, has welcomed the rivalry among the sub castes in these words. “There is nothing to be ashamed of or worried about the inter-Dalit bickering rather this should be welcomed”. This attitude is quite in keeping with his old known not notion that if you could strengthen each jati and make them strong enough to demand their right the share according to their population from the “evil” Hindu jati people (to use the phraseology or Dr. Annamalai) then the system of jati will crash. I beg to differ with him. Some time back Bhojja Tharakam from Hyderabad had argued that it is against Dr. Ambedkar principles to think of strengthening any jati. I fully agree and endorse his view. Dr. B.R. Ambedkar had specifically advocated that the process of abolition of sub castes. He averred that if the process stops at that level, we will end up by strengthening the caste
system what applied to sub castes equally appears to castes within the SC/ST group. Why some castes among the SC/ST could not progress? This is the question one must answer with some clear vision and self introspection. It must be agreed that, inspite of equal opportunities given by the reservations which started at the same time for all SC/STs, the progress made by different castes among the SC/STs is not in uniform”.

“There are many reasons, which must be understood before we desire ways and means to bridge the gap of disparity among the SC/ST castes, the main point is that Dr. Ambedkar had given a call to denounce old mass scale education. Some people who followed his ways became Ambedkarites, and those who followed Gandhi become Harijans, they did not change”.

These people who abandoned their ancestral callings and gave up the dirty means of livelihood, which they were ordained to follow by the Brahminical order for centuries, progressed faster and those who stuck to their old professions lingered behind and Supreme Court restriction, why there is dissatisfaction? The main reason is that there is supposed to be restriction imposed by Supreme Court to limit reservations 50% under what circumstances Supreme Court has given this ruling and what all the legal ways to counter it must be debated by the legal luminaries from among the Bhujans and people should take steps, legal legislative to amend the Constitution, if needed, to ensure that every caste must get their rightful show in running of government in legislative and executive and including judiciary. When there is enough for everybody, nobody should grumble, there is now grumbling, because the share of 50% is appropriate by the 15%.
The Centre has reflected the proposal of the Parliamentary Committee on welfare of the SC/STs to provide for quota for these communities in the higher judiciary. According to law Ministry sources, the central feels that appointment of judges to the High Courts and Supreme Courts governed by the Article 124 and 217 of the Constitution, which do not provide for reservation for any caste or class of a persons. Amending the Constitution to provide for quota for SC/ST judges will send wrong signals to the judiciary and hence, rejected the committee recommendations. Only 20 Dalit judges and Parliamentary Committee had expressed serious concern over the “dismal representation of SC/STs in higher judiciary”. The committee had said that out of about 490 High Court judges only 20 were SC/STs and only one Supreme Court judge (SC). Some 159 posts of High Court judges were vacant. It send that there was no legal or Constitutional bar for providing reservation in the judiciary.12

6.4 RESERVATION HAS PLAYED BY SOCIAL SCIENTISTS:

The main institution behind reservation policy was to ensure the interests of the untouchables in the caste based social order. As per the reservation policy, the State has to look after the interests of the weaker sections so that their claims to government jobs should not be ignored merely, because they belong to untouchables castes. But the upper caste “social scientist” in India did not more harm to the concept of reservation than what all politicians did the Manu Wadi sociologists eloquently articulated the terms “Protective Discrimination”, “Positive Discrimination”
and even “Reverse Discrimination” in sociological literature. But reservation has nothing to do with discrimination, it is always against discrimination. Instead, it should be known as “Preventive Discrimination”. Reservation policy can be considered as a powerful mechanism designed to present the vested interests in the society from preventing Dalits their due share in the public life. Imagine a situation where there will not be any reservation in government sector, then what will happen to a meritorious. SC students who appears for an interview in some university along with other upper caste students who might have scored less marks than him? Do the interview committee members, usually upper castes dare to acknowledge the merits of SC students against their blood? In this case, the chances are very high that they not select the SC students saying that he did not perform well on the interview. That is why reservation is a mechanism of prevention discrimination. Even today most of the universities and educational institutions have not filled the backlog vacancies. When the upper castes are not willing to fill up back log vacancies, how can you believe that in the absence of reservation. They will select the students keeping all these mind

Dr. Ambedkar felt need of reservation to safeguard the interests of the lower castes and no to discriminate any one. In fact, Dr. B.R. Ambedkar sincere intention was top the discrimination that was being practiced by the upper castes against the untouchables, it is very sad that our upper caste social scientist and policy making jailed to high light this aspect and the involved in presenting reservation in a negative way. The term such as protective
discrimination, positive discrimination and reverse discrimination are wrongly coined and are misleading the public that reservation is a policy to benefit lower castes by discriminating against them. This will create unnecessary tension on the society. Therefore, the fact that reservation policy aims at protecting Dalits by preventing discrimination against them need to be highlighted.  

Landmark judgment on the special protection given to the Scheduled Castes Scheduled Tribes, and other backwards classes ended the Constitution. The Supreme Court judges who delivered the Mandal judgment in 1992 have elaborately dealt with the reasons for the protective discriminate in for all of the depressed classes. The majority judgment Stated “untouchability is some thing, which no other country in the world had the misfortune to have not the blessed caste system. There have been equally old civilizations on the earth like ours, if not older, but none had evolved these precision, principles, much less did they stamp them with scriptural sanction”. One judge wrote “this country remained under the shackles of slavery for over a thousand years. The reason for our inability to right the foreigners was the social degeneration of India, because of the caste system. To rule this country, it was not necessary to divided, we are come and rule us”. This Constitution benefits judgment deals with reservation in promotion in public employment. Though this ruling prevailed Supreme for several years, this has been overruled by the Mandal Judgment in 1992.
1. Reservation in selection post valid:

G. M. S. Railway V/s Rangachari:

**Facts:** The Railway Board declared reservation posts in class III of the railway service in favour of SC/ST. This was challenged by a southern railway employee in the Madras High Court. The court restrained the railway from implementing the direction. Therefore, the railway appealed to the Supreme Court, the effected person argued that Article 16, 335, 338, and 339 would show that the Constitution drew a clear distinction between SC/ST and other backward classes. He argued further that Article 16(4) applied only to reservation at the appointment stage and not at the selection stage it was also contended that if the railway circular was implemented he would be reverted to a lower post causing loss to have both financially and in status. The railway argued that Article 16(4) covered not only SC/ST but all backward communities.

**Ruling:** The Supreme Court reversed the High Court decision. The railway circular was not ultra virus. The promotion was included in Article 16(1) and (2) High Court judgments contrary to this ruling was disapproved of by the apex court.

The majority judgment stated that the initial appointment was only one of the matters relating to employment. The other matters are salary periodically increments, terms as to leave, gratuity pension and age of superannuation. All these are “matters relating to employment” stated in Article 16(1) and matters to employment include all matters in relation to
employment both prior and subsequent to the employment, which are incidental to the employment. The key clause of Article 16(4) unambiguously indicates that the word “posts” cannot mean ex-cadre posts. The context requires that ‘posts’ should be deemed to be posts inside services and not outside them. The conditions of reservation is the satisfaction of the State that the backward classes are not adequately represented in the services.15

2) Caste based reservation in valid:

M. R. Balaji V/s State of Mysore

This is a case in which the reservation policy of the State of Mysore (Karnataka) was struck down by a Constitution Bench unanimously. In this significant judgment, reservation based only on caste was held unconstitutional.

**Facts:** A large number of candidates to professional colleges filed writ petitions in the Supreme Court alleging that the reservation made by the State government, they would have been admitted. On the other hand, students with less marks have been admitted, it was violative of Articles 15(1) and 29(2). The basis adopted for specifying backward classes was unintelligible and irrational. The extent of reservation was so unreasonable that it amounted to a fraud on the Constitution. The government disputed all these and said that its order was protected by Article 15(4).

**Ruling:** The Supreme Court laid down several important points in this judgment it held that it was not necessary for the government to appoint
a commission under Article 340 before passing an order under Article 15(4). The appointment and report of the commission was only recommendatory it was not a condition precedent for taking action under Article 15(4). It was further ruled that the executive can pass orders on reservation it is not necessary for the legislature to make provision for reservation. Article 15(4) is a special provision, which was added to the Constitution in 1951. If an order is justified under Article 15(4) it is validity cannot denied under Article 15(4) its validity cannot be denied under Article 15(1).

Classification between backward and more backward classes made by the government was held to be unconstitutional. According to this criterion, nearly 90 percent of the State population became backward reservation of 68 percent, with Article 15(4) as it was unreasonable. The interests of the weaker sections must be balanced with those of society in general. It is a difficult task but in the guise of making special provision, practically all seats cannot be reserved. Reservation should be less than 50 percent. The court concluded that the State governments order was a fraud on the Constitutional power conferred under Article 15(4). The court said that it was not its task to categories the valid and in valid classification. It cannot also lay down what is the valid percentage. Article 15(4) gives that discretion to the government. 16
3) Backward list based on caste valid:

Desu Rayndu V/s Andhra Pradesh PSC

The Andhra Pradesh High Court up holds the State decision to cancel a backwardness list based solely on caste.

**Facts:** The petitioners wanted to contest in the competitive examinations to the State services on the basis of their inclusion in the backward list. But before the examinations, the list in vague was cancelled and a new list was published under which they were not eligible for the reservation. Therefore, they challenged the new government order as illegal. It was argued that under Article 15(4) and 16(4) give Constitution the criteria for determining backwardness. Could only be castes as the term “Backward classes” was confined to the Hindu castes which were socially and educationally backward. While the earlier list was based on caste, the later one did not follow the test. The governors competence to issue the latter order was also challenged.

**Ruling:** The High Court dismissed the petition. The term “Backward classes” in Articles 16(4) would not be decided exclusively on the basis of caste. The High Court followed the Supreme Court judgment in AIR 1962 SC 36 and AIR 1964 SC 179, Two conditions are necessary to invoke Article 16(4) firstly there must be a backward class of citizens and secondly that class in the opinion of the State, was not adequately represented in the services give State. Excessive reservation would also be bad in law, as it would be derogatory to the main clause in Article 16 on the same analogy.
under Article 16(4) caste could be one of the several factors for determining the backwardness, but it could not be the sole to predominant basis. The earliest list was exclusively based on caste and hence, was bad both under Article 15(4) and Article 16(4). The State government was perfectly justified in canceling it. The judgment also stated that the governor could make rules regulating recruitment and conditions of service until the legislature made such provisions. It was also held that under Articles 340, 15 and 16 the President could not issue instructions to States which would have a binding force the memorandum of the backward class commission was not binding on the States. It could not have greater validity than his Supreme Court ruling which had stated that backward class lists based on caste was bad.  

4. Classification for promotion valid:

C. A. Rajendran V/s Union of India:

This Constitution Bench Judgment deals with classification of staff and reservation of posts only in certain classes. The classification was upheld.

Facts: The petition moved the Supreme Court challenging the government memorandum under which there was no reservation for SC/ST in classes I and II services. In classes III and IV, appointments by promotion were given to SC/ST. This was challenged as violative of Article 16(4) of the Constitution as it discriminated by making provision for reservation in certain types of classes III and IV only and not in classes II and I. It was also argued that Article 16(4) was not an exception to Article 16 but was in itself a
fundamental right granted to SC/ST and backward classes the prayer was to strike down the same.

**Ruling:** The petition was dismissed holding that the government can make reasonable classification of employees for purposes of appointment and promotion. Article 14, 15 and 16 form part of the same Constitutional Code of guaranties and supplement each other. Article 16 gives effect to the doctrines of equality. It follows that there can be a reasonable classification of employees for appointment and promotion. The equality of opportunity in Article 16(1) means as between members of the same class of employees, and not equality between members of separate independent classes. It is well settled that clause (4) of the Article 16 is an exception clause and is not an independent provision and it has to be strictly continued. Article 16(4) should be interpreted in the control of Article 335. In other words, in making a provision for reservation the government has to consider not only the claims of the members of the backward classes, but also the maintenance of efficiency of administration which is a matter of paramount importance. The court argued with the government that in class I and II posts a higher degree of efficiency and responsibility was required and therefore, reservation was considered harmful to those classes. 18

5. **Reservation in judicial service upheld:**

**V. Harihaln Pillai V/s State of Kerala**

The Kerala High Court upholds the reservation made under Article 309 give Constitution to the State judicial service.
**Facts:** Though certain candidates were placed high in rank for recruitment to the Kerala judicial services, they lost their chance due to reservation for a number of communities. Therefore, they challenged the selection in a writ petition. They argued that equability in public employment guaranteed in Article 16(1) was infringed, as also Article 16(2) which bars discrimination on the ground only of caste, decent or place of birth.

**Ruling:** The Kerala High Court by majority dismissed the petition stating that the reservation was within Article 16. The extension of reservation to judicial services with retrospective effect was valid in view of Article 309. It was valid as it was not based exclusively on caste or religion. The members of the castes and seats mentioned in the government rules were backward society and educationally. The State government had further applied its mind to the problem and found that more classes were not adequately represented in the services. Articles 15(4) and 16(4) enabled preferential treatment in favour of weaker sections, since the Constitution is secular, the classification cannot be made only on the basis of caste on religion. Quoting AIR 1964 SC 1823, the court struggled that only whereby and large the entire members of a community belong to backward class that a classification could be made by listening them on the basis of caste. The court also advised the State government under take a detailed study of backward classes for a fresh appraisal of the questions involved.
6. SC/ST, Status only within State:

This judgment of the Orissa High Court emphasizes that the SC/ST list is one State is valid only within State. Those in States cannot claim the benefit even if they are in Central government services.

**Facts:** The petition was a residing of Orissa belonging to Konda Kapu (ST). He was promoted on the basis of that he belonged to ST. Later was reverted on the ground that Konda Kapu was not recognized as ST in Orissa where he was a permanent resident. He challenged his reversion in a writ petition. He argued that Konda Kapu was recognized as ST in Andhra Pradesh under the Constitution (ST) order 1950. Since, he belonged to the central services he must be considered as ST wherever, he was residing or posted. It was pointed out that section 2 of the public employment (Requirement as to residence) Act provided that all requirement as to residing in a State or Union Territory shall cease to have any affect. Therefore, residence in a particular area or State would not be a bar to public employment under the central government and the State wise classification for employment should not be recognized. Therefore, it was enough to show that he belonged to SC/ST, and not to particular.

**Ruling:** The Orissa High Court dismissed the contention, basing its reasoning on Article 341(1) and 342 (1) give Constitution. These Articles State that the presidency shall noting the list of SC/ST in relation to the State. These words are not without significance it showed that in order to get the benefit of being the members of the SC/ST in the matter of public
employment, the person should be a member of such caste or tribe in relation to the particular area or State where he was residing and where he sought employment. The Public Employment Act could not over side the provisions of the Constitution. The Constitution (ST) Order 1950 provides that the tribes specified in Part I to XII of the schedule to that order shall in relation to that State to which those parts respectively relate, be deemed to be the ST, so far as regards members residing there. It is therefore, clear that the particular ST recognized only for that particular areas. This view is reinforced by the Supreme Court judgment in AIR 1965 SC 1557. Educational and backwardness in regard to castes and tribes may not be uniform of the same intensity in the whole State, it may vary in degree or kind in different areas and that may justify the divisions of the State in to convenient and suitable areas for issuing the notification. In the present case, Konda Kappu is mentioned in the 1950 order in retention to A.P., not Orissa. The petitioner while residing in Orissa cannot, therefore, claim the benefit of reservation the court said. 20

7. Judges Views on Reservation:

K. C. Vasantha Kumar V/s State of Karnataka (AIR 1985 SC 1495)

This is peculiar judgment as it is not a decision on facts, but opinions of five judges on reservation for SC/ST, the Supreme Court has been criticized for writing such a document which has no binding value.

Facts: The Karnataka government proposed to set up a commission to study reservation following intense debate on this point in the State.
When the issue was taken to the Supreme Court by the petitioner, counsel only sought the judges, views to serve as guidelines to be followed by the proposed commission for SC/ST/OBCs Chief Justice Y. C. Chandrachud, who headed the five judge bench wrote

“A somewhat unusual exercise is buy notes taken by the court in giving expression to its views, without reference to specific facts, but institution profit by well meaning innovations”.

**Ruling:** Since there is no ruling as such, the following are the same views expressed by the individual judges. These can be used to bitterness one’s arguments. Reservations must continue as at present (1985) without the means test, for at least 15 years. The test of economic backwardness ought to be made applicable even after 2000 A.D., Reservation policy must be periodically reviewed (Chandrachud). The time has come to review the criterion for identifying the backward classes ignoring the caste label. The only extension should be economic backwardness. Benefits of reservation have so far been snatched by the creamy layer of the backward castes. This must be avoided at all castes (D. A. Desai).

There is neither statistical basis nor expert evidence to support the assumption that efficiency will necessary be impaired if reservation exceeds 50 percent, if reservation is carried forward or if it is extended to promotion posts. Class poverty, not individual poverty is the primary test, other tests are the standard of living, the place on the hierarchy, the habits and customs etc. (Chinnappa Reddy) economic backwardness in the test to determine backwardness. Caste should be used only for identification since the
problem of reservation cannot be resolved through litigation the Central government should consider setting up of a Permanent National Commission for backward classes (A.P. Sen).

It is necessary to re-examine the question of backwardness of the various castes, tribes and communities in the right of the latest figures and to prefix the extent of reservation for backward classes. There are in all castes and communities poor people who deserve to be given liberal grants of scholarships and other educational facilities to attain a high degree of proficiency (E. S. Venktaramaih).

8. Reservation for school teachers:

Bharat, Sevasham Sangh V/s State of Gujarat:

In this case, the Supreme Court upheld the provision for reservation of teaching posts in Gujarat schools for SC/ST.

**Facts:** The Gujarat Secondary Education Act 1973 was assailed on several grounds. One of the provisions challenged was sanction 34(1), it provided that 15 percent of vacancies of teaching staff of a registered private school shall be filled up by SC/ST candidates. It was argued that this interfered with the managerial functions.

**Ruling:** The Supreme Court dismissed all the arguments against the law, including the point relating to SC/ST. The court pointed out that a large number of teachers whose salaries are met by the grants given by the State under the grantees in Aid Code, are improved by their managements. The State should therefore, have a voice in the method of recruitment.
The State should also make provision for reservation of certain percentage of seats for SC/ST under Article 16(4) of the Constitution. The insistence on having teachers belonging to SC/ST is also in public interest. Children should be brought up in an atmosphere, where there is an opportunity to mix freely with students and teachers belonging to traditionally disfavoured communities also. The opportunity to show reverence to teachers belonging to SC/ST will in the long run enable the child brought up in that atmosphere to shed the feeling of superiority over SC/ST. Section 34, serves this land able objective. Even the teachers belonging to SC/ST must posses the requisite qualifications for the posts. Therefore, there was no illegality, the court ruled. 22

9. Promotion for Buddhist converts in police force:

**Gopalkrishna V/s State of Maharashtra**

**Facts:** Certain inspectors of police questioned the validity or interpretation of the Maharashtra government resolution making reservations for SC/ST and denotified tribes/nomadic tribes in the category of inspectors of police and promotion from that category to that of assistant commissioners of police in greater Bombay. The judgment deals in detail with the resolutions and the factual aspects. But its significance is mainly in its findings on two aspects of questions raised as summarized below.

**Ruling:** The court held that the State government was right in laying down norms for all government services in the State for representation to SC/ST and notified tribes. Determining adequacy of representation cadre
wise, or for each particular service, would lead to confusion and chaos. The court said that though different services may have their own nuances, all services are equally important and there could be also discrimination among them.

Once the power to make reservation is exercised under Article 16(4) of the Constitution. A point wise roster of vacancies must be brought into effect. A carry forward rule must be properly enacted. It should be so applied that for reservation for a particular year. The percentage of reservation should not exceed 50 percent the judgment rejected. The fear of the petitioners counsel that if the roster system was followed and the limit of 24 percent prescribed by the resolution was sought to be made unlimited, the result would be that by 1992 as many as 69 posts of ACPs in greater and Bombay would at the cost of efficiency, be filled up by backward classes. The court gave a three fold answer: (a) reservation is not sought to be made unlimited (b) inefficiency need not necessarily be associated with members of the backward classes (c) Supreme Court judgments have favoured upon and repelled such attempts at prophecy.

Then the judgment dealt with the effect of conversion of SC member. It is correct that he ceases to be a SC member when he renounces Hinduism and embraces Buddhism. But what touches this tense human problem is whether Buddhist converts, despite their attempt to escape the shackles of backwardness foisted on them by society, continue to be backward. The court said they did suffer backwardness. In their oppressive severity in
the new environment of a different religious community. They were untouchables then and now, nothing has changed, the stigma persists. The judgment quoted several study reports and documents to assert this view. Therefore, the reservation in favour of Buddhist converts was upheld and the petitions were dismissed. 23

10. Reserved seats in Gram Panchayat polls:

Communist party of India V/s State of Maharashtra

This case deals with reservation for ST in panchayat elections and the basis on which seats are reserved in Maharashtra.

**Facts:** The CPI and an organization known as Adivasi Arakshan Sanrakshan Samiti formed to promote the rights of ST in Zilla Parishads and Panchayat Samitis challenged the Amended definition of the expression population in the State Zilla Paraishads and Panchayat Samatis Act as arbitrary, discriminatory and violative of Article 14 of the Constitution. According to the definition, “population means the population as ascertained in the 1971 census until the relevant figures for the first census taken after the year 2000 have been published.” The second question raised by the petitioners was that even if the new definition of population was valid, reservation of seats for ST in the elections based on the population figures ascertained in 1971 would mean the population figures of the original census of 1971 as modified by SC and ST order (Amendment) Act 1976.
**Ruling:** The petitions partly succeeded. The Bombay High Court held that the definition of population was not violative of Article 14 and was not liable to be struck down. It was open for the government to adopt the population figures of 1971 census in joining electoral divisions and electoral colleges for panchayat elections. However, it was held that so far as the population figures of 1971 census in regard to SC/ST are concerned, they would be the figures for the said census as notified under the 1976 Act. The expression “as far as reasonably practical” in the Act indicates the limitation of the alleged right of representation on the basis of population figures. The nature, extent and the manner of representation is a matter solely within the discretion of the legislature. Therefore, the expression was not violative of Article 14 on the ground that it artificially froze the population figures upto the first census after 2000 AD.  

6.5 **THE NEED FOR CLARITY ABOUT JOB RESERVATION:**

When weighing the recent decisions, as well as the earlier judgment on this issue and the misunderstanding exited by the opponents of the reservation policy, it is necessary to review the entire job reservation policy so as to avoid further distortions and misconceptions. As a result, job reservations have become a sensitive and controversial issue. The SCs and STs were demoralized by the Supreme Court arguments that where there is reservation there is no merit and that the reservation is contrary to the national interests. Not only were these arguments insulting, but they also ignored the harsh reality of caste prejudice in the selection and promotion
process. Two decisions of the Supreme Court on the reservation issue have created a lot of hue and cry. The first, delivered on 10 August 1999, ruled that in the competitive examinations for government or public sectors jobs there cannot be a wide disparity between minimum qualifying marks for candidates in the reserved category (that is SCs, STs and OBCs). Moreover, no special provisions for candidates in the reserved category are permitted for admission (as students) into super speciality courses as that would be contrary to national interests. The next blow came barely a month later when the same court ruled that reservations should not be applicable in cases of job promotions. A five judge justice of the Supreme Court held that Articles 16(4) and 16(4A) of the Constitution. Do not confer any fundamental rights nor do they impose any Constitutional duties of enabling provisions vesting a discretion in the State to consider providing reservations if the circumstances so warranted. These two Articles of the Constitution are concerned with equality of opportunity in matter of public employment for SCs and STs and OBCs. The court also over ruled an earlier judgment which had held that a government rule could be issued either to provide for reservations or to relax the rules for reserved category candidates. The court also held that the roster point promotes (reserved category) could not count their seniority in the promoted category from the date of their continuous affixation in the promoted posts vis-à-vis the general category candidates who were senior to them in the lower category and who were later promoted. 25
Although theoretically sound in conception. It has shown some unanticipated results over the last fifty years. Tables 6.1, 6.2, 6.3, 6.4, 6.5 and 6.6 provide data both about the results of reservation policy and about trends in its implementation. 26

Table - 6.1

Presentation of SCs and STs among employees in public sector banks, 1986 – 96 (14 nationalized banks, State bank of India and its associate banks)

<table>
<thead>
<tr>
<th>Category</th>
<th>1986</th>
<th>1996</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SCs</td>
<td>STs</td>
</tr>
<tr>
<td>Officers</td>
<td>7.30</td>
<td>1.84</td>
</tr>
<tr>
<td>Clerks</td>
<td>13.63</td>
<td>3.70</td>
</tr>
<tr>
<td>Sub staff and (including sweepers)</td>
<td>24.94</td>
<td>4.39</td>
</tr>
</tbody>
</table>

Source: Government of India, 1998

Table - 6.2

Representation of SCs, STs, OBCs and others in different categories of posts in the Indian embassies (in percentage)

<table>
<thead>
<tr>
<th>Category</th>
<th>SC</th>
<th>ST</th>
<th>OBC</th>
<th>Upper caste</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group A</td>
<td>8.0</td>
<td>1.00</td>
<td>0.00</td>
<td>91.00</td>
</tr>
<tr>
<td>Group B</td>
<td>4.20</td>
<td>0.60</td>
<td>5.00</td>
<td>94.00</td>
</tr>
<tr>
<td>Group C</td>
<td>4.30</td>
<td>1.20</td>
<td>1.50</td>
<td>93.00</td>
</tr>
<tr>
<td>Group D</td>
<td>7.0</td>
<td>1.00</td>
<td>0.20</td>
<td>91.83</td>
</tr>
</tbody>
</table>

Source: Government of India, 1998
Table – 6.3
Representation of different social groups as judges and additional judges in High Courts

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>SC</th>
<th>ST</th>
<th>Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 1982</td>
<td>325</td>
<td>4 (1.23%)</td>
<td>-</td>
<td>321 (98.77%)</td>
</tr>
<tr>
<td>March 1993</td>
<td>547</td>
<td>13(2.38%)</td>
<td>4 (0.73%)</td>
<td>530 (96.89%)</td>
</tr>
</tbody>
</table>

Source: Government of India, 1998

Table – 6.4
Representation of SCs, and STs in the services of the central public sector enterprises as on January 2000

<table>
<thead>
<tr>
<th>Group</th>
<th>Total number of employees</th>
<th>SC</th>
<th>Percentage</th>
<th>ST</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>204,127</td>
<td>21,125</td>
<td>10.35</td>
<td>6,057</td>
<td>2.97</td>
</tr>
<tr>
<td>B</td>
<td>175,159</td>
<td>19,355</td>
<td>11.05</td>
<td>7,317</td>
<td>4.28</td>
</tr>
<tr>
<td>C</td>
<td>1,013,917</td>
<td>191,931</td>
<td>18.93</td>
<td>85,744</td>
<td>8.46</td>
</tr>
<tr>
<td>D (Excluding Safai Karmcharis)</td>
<td>407,425</td>
<td>91,729</td>
<td>22.51</td>
<td>46,463</td>
<td>11.40</td>
</tr>
<tr>
<td>Total</td>
<td>1,800,628</td>
<td>324,140</td>
<td>18.00</td>
<td>145,581</td>
<td>8.09</td>
</tr>
<tr>
<td>Safai Karmcharis</td>
<td>27,903</td>
<td>20,412</td>
<td>73.15</td>
<td>878</td>
<td>3.15</td>
</tr>
<tr>
<td>Grand Total</td>
<td>1,828,531</td>
<td>344,552</td>
<td>18.84</td>
<td>146,459</td>
<td>8.01</td>
</tr>
</tbody>
</table>

Source: Government of India, 2001

Table – 6.5
Representation of SCs and STs in the service of the central ministries department and their subordinate offices

<table>
<thead>
<tr>
<th>Group</th>
<th>Total number of employees</th>
<th>SC</th>
<th>Percentage</th>
<th>ST</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>93,320</td>
<td>10,558</td>
<td>11.29</td>
<td>3,172</td>
<td>3.39</td>
</tr>
<tr>
<td>B</td>
<td>104,963</td>
<td>13,306</td>
<td>12.68</td>
<td>3,512</td>
<td>3.25</td>
</tr>
<tr>
<td>C</td>
<td>2,396,426</td>
<td>378,115</td>
<td>15.78</td>
<td>145,482</td>
<td>6.07</td>
</tr>
<tr>
<td>D (Excluding Sweepers)</td>
<td>949,353</td>
<td>189,761</td>
<td>19.99</td>
<td>66,487</td>
<td>7.00</td>
</tr>
<tr>
<td>Sweepers</td>
<td>96,435</td>
<td>63,233</td>
<td>65.57</td>
<td>5,314</td>
<td>5.51</td>
</tr>
<tr>
<td>Total (Excluding Sweepers)</td>
<td>3,544,262</td>
<td>591,740</td>
<td>16.7</td>
<td>218,653</td>
<td>6.17</td>
</tr>
<tr>
<td>Total (Excluding sweepers)</td>
<td>3,640,697</td>
<td>654,973</td>
<td>17.99</td>
<td>223,967</td>
<td>6.15</td>
</tr>
</tbody>
</table>

Source: Government of India, 2001
One can see in these tables the job categories for which the SC and ST quotas have been filled. They are heavily concentrated in the lower level, class III and class IV jobs, whereas there is a heavy backlog in the higher level class II and Class I services. There is also a heavy backlog in almost all institution. There are 239 universities (including 12 central universities) in the country, in which 23 percent of the jobs are reserved for Dalits and STs. Accordingly, almost 69,000 individual should have been employed through the reserved quotas in these universities. However, only 2 percent of the 23 percent posts have been filled. In its report, the national commission has expressed its dismay over this sorry State of affairs. There is no quota in the judiciary. In March 1993, only 13 of the 547 judges and additional judges in the High Court throughout the country were Dalits and only four were STs. Although their share has increased over the years, even then it is almost nothing in proportion to their percentage of the population.

Table - 6.6
Employment profile of SCs and STs in the central government

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Class – I</td>
<td>19,376 – 65,408</td>
<td>318 – 6,637</td>
<td>1.64 - 10.12</td>
<td>52 – 1,891</td>
<td>0.27 - 2.89</td>
</tr>
<tr>
<td>Class – II</td>
<td>30,621 – 108,857</td>
<td>864 – 13,797</td>
<td>8.88 - 16.15</td>
<td>103 – 2,913</td>
<td>0.34 - 2.68</td>
</tr>
<tr>
<td>Class – III</td>
<td>1,082,278 – 2,341,863</td>
<td>96,114 – 378172</td>
<td>8.88 - 16.15</td>
<td>12,390 – 133,179</td>
<td>1.14 - 5.69</td>
</tr>
<tr>
<td>Class – IV (Excluding sweepers)</td>
<td>1,132,517 – 1,041,082</td>
<td>101,073 – 221,380</td>
<td>17.75 - 21.26</td>
<td>38444 – 67453</td>
<td>3.39 - 6.48</td>
</tr>
<tr>
<td>Sweepers</td>
<td>177,527</td>
<td>78,719</td>
<td>44.34</td>
<td>12,269</td>
<td>6.78</td>
</tr>
</tbody>
</table>

Source: Government of India, 1998
Note: Figures relating to sweepers in 1965 one including in the figures for the class IV group
Table – 6.7
Reservation of SC/ST in different categories of higher posts as mentioned below (in percentage)

<table>
<thead>
<tr>
<th>Category</th>
<th>SC</th>
<th>ST</th>
<th>Secretary</th>
<th>Additional secretary</th>
<th>Joint secretary</th>
<th>Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher category</td>
<td></td>
<td></td>
<td>Secretary</td>
<td>Additional secretary</td>
<td>Joint secretary</td>
<td>Director</td>
</tr>
<tr>
<td>Group A</td>
<td>11.1</td>
<td>4.6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group B</td>
<td>14.3</td>
<td>5.5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Group C</td>
<td>16.0</td>
<td>7.8</td>
<td>149</td>
<td>108</td>
<td>477</td>
<td>590</td>
</tr>
<tr>
<td>Group D</td>
<td>19.3</td>
<td>7.0</td>
<td>SC%</td>
<td>2 (1.9%)</td>
<td>31 (6.5%)</td>
<td>17 (2.9%)</td>
</tr>
<tr>
<td>Scavengers</td>
<td>39.3</td>
<td>6.2</td>
<td>ST%</td>
<td>4 (2.7%)</td>
<td>15 (3.10%)</td>
<td>7 (1.2%)</td>
</tr>
</tbody>
</table>

Sources: P. M. Office, Assistant Minister, V. Narayan Swamy (TTG) Government of India, New Delhi, March 2011. 28

The evidence shows that a lot of misconceptions about reservation have been found in the government service in higher official level belonging to SC/ST categories. Assistant to P.M. Office Shri. V. Narayan Swamy Union Minister, Government of India has given detailed report and placed before the Lok Sabha and Stated that SC/ST posts higher officer were not selected against their available posts in higher categories on March 2011 number of secretary posts are in total is 149, out of which only four (4) secretary were available, additional secretary one total number of 108 and each of one SC and ST by total is two and under the their subordinate working categories were such as joint secretary is 477 of one of which joint secretary were 31 persons (6.5%) SC belonging to this categories and ST Joint Secretary were 15 percent persons belonging to ST categories and to other categories of Director Posts were 590 SC out of which 17 (2.9%) people were there. This policy of job reservation intends to bring about proportional equality as it is a made of distributing benefits based on the proportion of population.
That is 15 percent for 15 SC and 7.5 percent for STs and other categories are 27 percent it is based on the principles of distribution justice and of compensation for the posts disadvantages and imbalance in way of appointment of higher officer. Like, IAS, IPS and IFS were less comparative to other categories as such. In UPSC examination in service that total selected higher officer are 3251, IAS of which are 13.9% and ST 7.3% and OBC one 12.9 percent are selected and less than others, still, job reservation have become as sensitive and controversial issue and not filled up the backlogs posts were remained vacancies, but they also ignored the harsh reality of caste prejudice in the selection and promotion process.

6.6 DENIAL JOB IN SECRETARIAT:

Lok sabha secretariat under speaker Meira Kumar, who is herself a Dalit, is for the first time being accused of failing to implement reservation policy and harassing two schedule caste (SC) employee. It has been alleged that the due, despite qualifying the recruitment examination about five years back was denied the opted cadre in the secretariat. Having failed to get justice from the secretariat, the two employee – Nishant Mehra, and Amrish Kumar – have now appointed the Constitutionally empowered national commission for Scheduled Caste (NCSC) they sought a direction on their contention that Lok Sabhas decision was unconstitutional, illegal and discriminatory as no candidate belonging to SC category was allocated the post of executive officer (EO) despite being found eligible and vacancies existing. 29
6.7 ON PROMOTION QUOTAS:

Anup Surendranath who is an Assistant Professor of Law at National Law University, Delhi, who has written in his article winning the case on promotion quotas. The decision to Amend the Constitution to ensure reservation in promotions for the Scheduled Caste and the Scheduled Tribes has been the subject of much scouting without paying critical attention to the discourse of the Supreme Court on the issue. While court is not opposed to reservation in promotions perse. It has left many critical questions unanswered and has not classified the precise content of the conditions on which is willing to permit reservation in promotions. It might serve us well to understand the position of the Supreme Court on this issue before evaluating the contents of the proposed Amendment.

This is the background at the centre of the current controversy is a judgment delivered by two judge bench of the Supreme Court in U.P. power cooperation L.T. Dys. Rajesh Kumar in April 2012. It had already been held in M. Nagaraj V/s Union of India (October 2006) that the State must demonstrate backwardness. Inadequacy of representation and maintenance of efficiency before providing reservation in promotions. However, what the U.P. power corporation did for the first time was strike down reservation in promotions for not meeting these criteria. Reservation in promotions has been a sphere of intense disagreement between Parliament and the Supreme Court. To overcome the decision of a nine judge bench in India, Sawhney and other judgments that disallowed reservation in promotions and
Consequential seniority. Parliament enacted three Constitutional Amendments in 1995, 2000 and 2002. While upholding the Constitutional validity of the Amendments, the Supreme Court in Nagaraj made it very clear that Article 16 (4A), which was inserted through these amendments, was only an enabling provision. In essence, every time a government or the legislative sought to provide reservation in promotions under the Article 16 (4A), it would have to pass Constitutional minister. While justifying each attempt provide reservation in promotions the State would have to demonstrate backwardness, in adequacy of representation and maintenance of efficiency. The U. P. Government servant’s seniority rules challenged in the U. P. power corporation case was one each attempt. The three conditions laid down in Nagaraj raise a number of concerns. It must be remembered that Article 16 (4A) permits reservation in promotions only for the SC/STs and not for the OBCs. In this context, the first condition in Nagaraj requiring the State to demonstrate backwardness of the beneficiaries is problematic. It is problematic, because it amounts to bringing in the creamy layer. Test for SC/STs through the backdoor. It has been held numerous times by the Supreme Court, including in the judgment in Indra Sawhney, that the test of creamy layer is not applicable to SC/STs, the settled position of law is that all members of recognized SC/ST groups automatically satisfy the conditions of backwardness and there is no burden on the State of further establish the backwardness of those individuals benefiting from reservation while his requirement exists for the OBC in terms of the creamy layers test,
justice (as he then was) Kapadia’s opinion in Nagaraj does not provide any justification for not following the position endorsed by a layer bench in the context of the SC/STs. On the question in adequacy of representation, the text of Article 16 is clear that it is a matter for the State to determine and the Supreme Court has also failed to address certain other aspects of adequacy of representation and Dr. B.R. Ambedkar, demonstrated tremendous foresight in the Constituent Assembly when he called for deleting the phrase “is in the opinion of the State, not adequately represented” – from Article 16(4). He believed that it would become a better of litigation and the courts could substitute their judgment on adequately of representation by holding that a reservation was being made despite being adequately represented and there has been no judicial discussion about the role of efficiency across different categories of public employment, what does it really mean to talk about efficiency in the context of a railway ticket inspector, an IAS Officer, a Group D employee, a nuclear scientist, etc? the quality of discourse on this issue, in terms of the arguments from the governments side and the Supreme Courts judgments, leaves a lot to be desired and the government is response, as reflected in the 117th Constitution Amendment Bill introduced in the Rajya Sabha, is unsatisfactory, while the proposal remedies the error in Nagaraj on the issue of backwardness of the SC/STs, etc., approach to adequacy of representation and efficiency is counter productive. The proposed Article 16 (4A) which seeks to substitute the existing Article 16 (4A), has done away with concerns of efficiency by stating that nothing in
Article 335 can be an impediment and the reference to adequacy of representation has been deleted.

This leads to the anomalous situation where the above two factors continue to be relevant for the OBCs, the SCs and STs as far as initial appointments are concerned since Article 16(4) will not be similarly amended, the proposed amendment offers us to no insight in to why these factors are irrelevant in the particular case of reservation in promotions for the SCs and STs it would have been for more legitimate to argue for a more meaningful understanding of efficiency before the Supreme Court rather than completely negating it as a factor through a Constitutional Amendment. Similarly, removing the reference to adequacy of representation will only further question the legitimacy of reservation in promotions.  

In OBCs, the efforts the Marathas Dalit Christian leaders culminate is an order issued by the Social Welfare Department of Maharashtra on February 13th, 1978. As per this order, the people who were converted to Christianity from Scheduled Castes were included in OBC category (social welfare, cultural activity, tourism and sports department, government order no. 57485/D.V.). Thus, neo Christians become eligible for reservations and concessions applicable to the OBC.

In the list of OBCs for the entire Maharashtra, Dalit Christians (converted from backward classes) were placed at the end, at serial no. 192, Tamboli a section of Muslims converted from backward classes was also
included in the same list. Thus, the government of Maharashtra accepted that social backwardness is not related to religion.

It was the first major success for the organized Christian community in Maharashtra through the Dalit Christians did not get the status of Scheduled Caste community it was accepted in the government records that the Marathi Neo-Christian community was from the untouchable community. For the first time, it was underlined that the community had a just right to reservation and other facilities enjoyed by the other Dalit communities. The progressive graduate association had played an important role in this entire process.  

6.8 SYSTEMIC DYSFUNCTION:

Reservation in promotion will lead to systemic dysfunction. On the contrary the nation is being subjected to the government’s experiments with systematic dysfunctional principles and ideas. A blatant case today is the government’s bill seeking the 117th Amendment to the grant reservation for promotions in government jobs to Scheduled Castes (SC) and Scheduled Tribes (ST) to the extent of 15 percent and 7.5 percent respectively. The backdrop to the government move in that there are no SC and ST officers at the secretary level in the government of India, while they are under represented in most creates of the bureaucracy. The government is factually correct and a corrective step is needed to overcome this anomaly. But the path that the government has chosen reservation in promotional
notwithstanding parliamentary affairs minister P. K. Bansals declaration that the government is committed to it, is certainly not the best courage.

The introduction of the Bill on the Rajya Sabha itself was a Immolations recent in the last session of Parliament at the honourable members descended from their seats for a free style fighting and did not augur well for our democracy even if the bill is highly contentions.

Significantly, the Supreme Court on April 28, 2012 had struck down the Uttar Pradesh government servants seniority rules, which were it had introduced reservation for promotions and termed it “unconstitutional and done without any sufficient data”. The government is required to take cognizance of the judgment and take a correct action and in the larger interest of the SC and ST and not take any step and could divide the civil service or institutionalize bitterness and prejudiced conduct in the bureaucracy. The government must do a through study to understand why the SC and ST are not represented or under represented in the higher echelons of the bureaucracy.

The all India combined Competitive Examination for the Civil Service (CECS) conducted by the Union Public Service Commission (UPSC) attracts many graduates in India and passing the examination opens the door to the best government jobs in the world. The IAS, the IFS, IPS, the Indian revenue services, the Indian railway traffic service etc.

The CECS, however, is not an easy examination and the competition is intense, is many are unable to succeed in the first attempt, the UPSC
allows a limited number of attempt for all. For the general category and the creamy layer of the OBC only four attempts, for the SC/ST any number of attempts till the age of 35 years and the translates to a maximum of 15 attempts. And with a retirement age fixed at 60 years, a normal tenure in the civil service thus ranges from 25 to 38 years. If belonging to the IAS, or IFS, the officer after 30 years of service attains the rank of a secretary to the government of India. Most candidates from the SC and ST graduate level and thus join the civil service level; many therefore, have shorter tenure of 25 – 30 years which denies them promotions to the higher echelons such as an additional secretary or secretary to the government of India. The government bill on reservations in promotions to favour the SC and ST will result in giving promotion when its not due. This would disturb the order of precedence’s disrupt the rational of hierarchy and interrupt the drain of command and last but not the least the current level of foundational efficiency will way to systemic dye function. 33

6.9 CONCLUSION:

While reservation policy has been varied as important step in ensuring social justice to the Scheduled Caste and Scheduled Tribe in India. The Dalits studies have failed to pay sufficient attention to the differential impact that the reservation policy has on different sub sections and the need to distinguish between the most deprived Dalits.

Land mark judgement on the special protection given to the Scheduled Castes, Scheduled Tribes and other backward classes ended the
Constitution. Article 14, which enjoins upon the State not to deny to any person “Equality before law” or equal protection of the laws”.

In cases of five judge of the Supreme Court held that Article 16(4) and 16(4A) of the Constitution. Do not confer any fundamental rights nor do they impose any constitutional duties of enabling provisions vesting a desertion in the State to consider providing reservation of the circumstances so warranted.
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15. Ibid, pp. 1-2, (AIR 1962 SC. 36)


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22. Ibid, p. 69 (AIR 1987 SC 494)

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