

Chapter 1

INTRODUCTION

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INTRODUCTION

The earliest description of caste system is found in the *Rig-Veda*, where groups of people are mentioned (I) *Brahmin*, the Priest (II) *Kshatriya*, the ruler of king and (III) *Vaishya*, the common people. The *Purususukta* mantra, however, speaks of four classes originating from four parts of the body of the creator. These classes *Brahmin*, *Rajanga*, *Vaishya* and *Shudra* are referred to in later literature as *chaturvarna*.

Manu in *Manusmriti*, an old sacred Hindu literature states that this *varna-vyavastha* is for the sake of the prosperity of the world. He caused the *Brahmin*, the *Kshatriya*, the *Vaishya* and the *Shudra* to proceed from his mouth, his arms, his thigh and his feet but in order to protect this universe. He assigned separate duties to and occupation to those who sprang from his mouth, arms and feet (*Manusmriti* 1, 31, 87). In the history it is described that the early society was divided in social classes or *Varnas* on the basis of duties of work but not on the basis of birth.¹

The historical background shows that there were four *Varnas* in the past:

- 1) The Brahmins**
- 2) The Kshatriyas**
- 3) The Vaishyas**
- 4) The Shudras**

1 Sagar Sunderlal. Hindu Culture and Caste System in India: First Edition: New Delhi: Uppal Book Store; 1975

The *Shudra Varna* was the lowest category of the four. These *Shudras* are the SC and ST communities in today's time. So here the *Shudras* are the Scheduled Castes and the Scheduled Tribes.

It is more than half a century when on the 26th Jan 1950, the Constitution of India came into force with the cherished object of providing Justice – Social, Economic and Political, Equality of Status, and Fraternity assuring the dignity to all its citizens. But the cast system and its prejudices, which is the biggest social evil, still persists. Inhuman treatment is still meted out to persons belonging to certain communities.

Article 23 of the Constitution prohibits *beggar* and other similar forms of forced labour, but this evil practice of bygone era still continues. With the increase in the level of education and general awareness amongst the members of SCs and STs, they started making efforts to assert their rights and resist the practice of untouchability against them and refuse to do any bonded or forced labour.² But this has not been liked by those who have not been able to get away with feudal ideas of the past. This has resulted in more crimes and atrocities being committed upon the aforesaid classes of people. In order to check and severely punish this type of crimes, various enactments and legal provisions are enacted such as The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and Atrocities Rules.

This piece of legislation has resulted in large number of cases before the court posing myriad problems. The research thesis discusses on a critical study of socio-legal issues relating to Scheduled Castes and Scheduled Tribes. The work also focuses on

2 Shukla Nigamendra. The Scheduled Castes And Scheduled Tribes (Prevention of Atrocities) Act, 1989 with Rules: Second Edition: New Delhi: Modern Law Publication; 2009

area of educational and economic development of these downtrodden communities.

For the protection of Scheduled Castes and Scheduled Tribes and OBCs, the government after Independence introduced reservation policy. Due to reservation policy the Scheduled Castes and Scheduled Tribes and OBCs can represent their community and also their economic and educational development became possible. The reservation introduced in education, economic and political area.³

What originated as a system of division of labour among the *Brahmins* or the priestly class, *Kshatriyas* or the warriors, the *Vaishyas* the trading class and the *Shudras* or those involved in menial labour, developed, over the ages, into an evil that has civilization Indian society no other.⁴

The important articles in the Constitution introduced to protect and promote the interest of Scheduled Caste and Scheduled Tribes by special enactments relating to the Scheduled Castes and Scheduled Tribes. These are the protection of Civil Rights Acts 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-1989 which specifies the atrocities which are liable to penalties. These offences under the Prevention of Atrocities Act carry heavier penalties than similar offences under the Indian Penal Code 1860.

The rules framed under the Act in the year 1995 under its provisions [12(4)] further directs the District Magistrate or the Sub-divisional Magistrate or any other Executive Magistrate to make arrangements providing immediate relief in cash or in any kind both to the victims

3 Sagar Sunderlal. Hindu Culture and Caste System in India: First Edition: New Delhi: Uppal Book Store; 1975

4 Krishnan Anirudh and Sudersan Harini. Law of Reservation and Anti-Discrimination with Special Emphasis on Education and Employment: First Edition: New Delhi: Lexis-Nexis Butterworths Wadhwa Nagpur, 2008

of atrocity, their family and dependent. For the protection of weaker section certain legislation are there.

The Government has established certain Executive machinery for the implementation of reservation policy in the country. Like a District welfare officer at district level, Liaison Officers, SC/ST Cell, Scheduled Castes and Scheduled Tribes Commission, National Commission for Other Backward Class, so that proper implementation of reservation policy can be possible.

Government of India have issued comprehensive instructions to provide reservation for SCs and STs both in direct requirement as well as in promotional posts including a number of relaxations/concessions in terms of the provisions made in the Constitution of India.

The following Articles of the Constitution of India are discussed in an appropriate chapter which are as under:

Articles 46, 15, 15(4), 15(5), 16, 16(4), 16(4A), 16(4B), 17, 29(2), 30, 31(B), 330, 332, 334, 335, 340, 341, 342.

The study of this subject is **mainly based on Article 46** of the Constitution of India.

Article 46 says: *'The State shall promote with special care an educational and economic interest of the weaker section of the people and in particular the Scheduled Castes and Scheduled tribes and shall protect them from social injustice and all forms of exploitation.'*⁵

5 Basu Durga Das. Constitutional Law of India: Seventh Edition: New Delhi: Prentice-Hall of India Pvt. Ltd.; 1998

Reservation is one of the most talked about subjects now-a-days. There will be no newspaper, periodical journal or electronic media without something about reservation. One day, it will be regarding reservations in IIMs/IITs, the other day regarding private sector reservation, *Sachhar Committee Report*, Creamy layer, reservation for females, reservation in case of religious converts and so on.

Reservation is a mechanism of protective discrimination, as a social policy of the state enshrined in the constitution to ensure the participation of the traditionally neglected section of the society involving fixation of quota in the electoral, employment and educational institutions.

The issue of reservation in the private sector has now-a-days drawn the attention of the nation on so many platforms such as print and electronic media, formal/informal Public Functions, Political Platforms and the Parliament as well.

The demand for a job reservation in the Private Sector has also been kindled, particularly because of the diminishing scope of reserved jobs in the State sector, which is constrained to rationalize the work force, as also a strong call upon the state for outright closures, disinvestments etc. in public sector resulting into manpower surplus in the state services.

This question has assumed urgency because of the undesirable haste by which the public sector is being dismantled with the inevitable consequence of loss of opportunities for employment for a large segment of job aspirants in general and also those from the Scheduled Castes and Scheduled Tribes and Socially and Economically Backward class in particular who are coming out of

institutions of higher education, with high hopes of making a career in Public sector.

National Human Rights Commission (NHRC) of our country has also mentioned in its one of the recently published report on Atrocities on Scheduled Caste/Scheduled Tribe made detailed remarks about applicability of reservation in the private sector.

The Prime Minister of India Dr. Manmohan Singh stated in his one of the very important press conferences that "it is the high time for introduction of reservation provision in the private sector" (a Gujarati daily newspaper *Sandesh* dated 25 October 2004). The remark of the Prime Minister, who himself a world class economist hardly needs any reiteration about concern of this entire issue.

1.1 Objectives of the study

Shudras of ancient Indian were denied certain rights for a healthy living in the society by the *Smritakars*. When Dr Ambedkar studied the ancient Indian literature as translated by the western scholars, he raised very strong voice against the atrocities perpetrated by the caste Hindus on the *Shudras*. They were christened schedule caste in the Government of India Act 1935 and Mahatma Gandhi called them '*Harijans*'.

Though the untouchability was abolished by the Constitution of India and reservation in State services was granted to the Scheduled Castes and Tribes in 1950, yet the *Harijans* and *Girijans* where not assimilated in the society as respectable human beings. The atrocities on the *Harijans* and the *Girijans* by the caste Hindus continued unabated. This was the reason that Parliament has to

enact the Schedule Caste and Schedule tribes Prevention of Atrocities Act 1989.

The main objective for providing reservation in appointment to Scheduled Castes, Scheduled Tribes and Other Backward Classes in civil posts and services of Government is just not giving jobs to some persons belonging to these communities and thereby increase their presentation in services but to uplift the people of society and merge them in main stream of society.

Following are the salient objectives of the study:

1. To find out what was the position of scheduled castes, scheduled tribes and other weaker section in the past and what is the position at present.
2. The Scheduled Caste and Tribe people are how much benefited from the reservation policy. The reservation policy is properly implemented or not. It means that the reservation implemented properly in the State by the authority.
3. It is also aim of the study that how far or what extend the Scheduled Castes and Scheduled Tribes and Other Weaker Sections are socially and economically developed after the 50 years Independence of our country.
4. Whether Scheduled Castes and Scheduled Tribes candidates are really promoted for the Educational and Economic aspects or not.
5. The objects of the study are to find out the drawbacks in the legislation and their removal through Executive Implementation.

6. The main aim of study is not only economic development of Scheduled Castes and Scheduled Tribes is enough but along with economic development, social development is required.
7. How the Scheduled Castes and Scheduled Tribes and other weaker sections people are facing social injustice. Only reservation policy is not enough to reduce the inequalities among the people of the society but along with reservation policy some programme of social awareness should be arranged.

Thus, the main area of study is aimed at examination of the various rules framed by legislation such as recruitment rules, promotion policy, reservation in Educational Institutions and public sectors. It is also aim to promote the economic and educational interest of Scheduled Castes, Scheduled Tribes and other weaker section. The special care is taken for Scheduled Castes and Scheduled Tribes and the study of the role played by the executives in the Government Department and Educational Institutions in implementing these rules.

The study is also aimed to study the role of judiciary in ensuring framing of rules according to the constitutional provisions and its implementation by the executives.

1.2 Scope of the study

The present study is confined to the rights of Scheduled Castes and Scheduled Tribes and other weaker sections, their role in the general administration of the country, their relationships with the general category and their protection under the Constitutional provision.

A detail study is conducted with special reference to SCs and STs in their promotional interest in Educational and Economic area.

The study is expanded to cover the cases decided by Hon'ble Supreme Court and High Court in concerning the protection of and Scheduled Castes and Scheduled Tribes under the Article 16, 17, and 46 of Indian Constitution.

The scope of study is informative and educative for the Scheduled Castes and Scheduled Tribes. It is informative because it gives detailed account of their history. It is educative because it inspires them to think in new term so that they can create a new culture and society.

1.3 Rationale of the study

Issue of reservation is not confined apportionment of few jobs here and there but a socio-economic upliftment measure for those who remained behind for centuries because of typical social conditions prevailing in the country. The nation cannot ignore the chronic social inequalities prevailing in social life.

To improve the conditions of Scheduled Castes, Scheduled Tribes and OBCs and to bring them to the level of the more advanced section of the community it is essential to give all possible concessions in the matter of admission without seriously affecting the standard of Education.

The reservation policy have adopted for the Scheduled Castes, Scheduled Tribes and Other Backward classes so that their

economic conditions improve. Without promoting all the backward community in the country it is difficult to develop the country.

If reservation policy has not been introduced by the government then the poor people remained poor and rich people will become richer. So there will be inequality and imbalance in the country.

Untouchability is still prevailing in the country. Untouchable persons are considered as animal and they are not treated as human being. To improve their social status and untouchability as per Article 17 certain Acts were enacted which works effectively.

After enactment of The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act 1989 along with Rules the conditions of SCs and STs are improved.

1.4 Importance of the study

After the effective implementation of reservation policy for SCs, STs and OBCs, they become educated and also aware of their rights given in the Constitution of India. They also represent themselves in the Parliament by way of election on reserved seats.

Article 17 of the Constitution abolishes untouchability and forbids its practice in any form. As per the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act 1989 if public servants wilfully neglect the investigating of any offence punishable under this Act, he shall be deemed to have abetted an offence punishable under this Act.

The government has established separate Commission for different communities like Commission for SCs, Commission for STs and Commission for OBCs.

A complainant can directly approach the commission for any grievance and an action will immediately be taken by Commission. The commission shall work as a civil court.

1.5 Utility of the study

The utility of any reservation policy is broadly to provide equality and social justice in the society. Thus reservation policy during colonial regime was half hearted, short sighted and ill motivated, besides lacking it need-based coverage.

It includes numbers of minorities which never suffered social discrimination, but surprisingly ignored inclusion of those tribes deserted from the mainstream society and leaving in mountains and forests in a very pitiable condition.

The utility of the research work lies in the fact that it discusses at length various measures initiated in India after independence for the freeing of socially deprived and economically backward people of the nation who are known as Scheduled Castes, Scheduled Tribes and other weaker sections of the society.

The discussion in the research work mainly deals with the issue of 'reservation' which is the focal point of matter since long back. Sixty years of implementation of any specific socio economic measures like reservation needs its evaluation since the whole world has undergone a fast sea change during this period.

Reservation system also need to be re-examined in light of economic reforms in the era of liberalization, privatization and globalization, as also number of judicial pronouncements, Constitutional modifications etc. and simultaneously also taking into serious consideration, on and often up-roaring from the society, changing political considerations, increasing judicial activism all around reservation.

Indian reservation system has remained under constant debates and attacks. There are lot of misconceptions and misunderstanding prevailing around reservation or say positive discrimination. The published reports of *Justice Rajinder Sachhar Committee* and *Justice Rang Nath Mishra Commission*, Gurjar agitations in Rajasthan etc. all have kept the issue of reservation alive in media and society at large. It has simultaneously also evoked lot of confusion and concern on both the sides.

Social tension in the Country has been highlighted with gradual realization of frustration of those deprived and off a sense of lose to those well-established. The violent reaction in the country has been deepening on caste lines, which are bound to have serious implications on caste lines and Indian society. Gruesome incidents like *Kumher* massacre in Rajasthan, *Tsundur* in Andhra Pradesh, frightening crimes in *Gohana* and *Jhajjar* in Haryana and going little ahead historic anti-reservation in Gujarat, all are painful stories of extreme form of caste hatreds prevailing even today in the Hindu upper caste mindset.

A time has ripened when the whole issue of upliftment of these masses has to be considered through a historical approach with a comparative advance approach on the basis of the Indian Supreme Court Judgments. This won't materialize merely by argument for

and against the continuance of reservation. It has to be instrumental in breaking caste barriers, and provides the maximum benefits to the left out fractions of the oppressed.

The issue of upliftment of entire backward communities is a multi dimensional social issue calling for an honest and sincere concern with a long term vision. Our nation is undoubtedly to establish a harmonious egalitarian society through socio economic engineering and accelerating the process of upward mobility of more and more backward caste families.

The Constitution of India has also vowed to promote with special care by the state to improve the present position of SCs, STs and OBCs. The real power could be shared by the weakest section only if the doors of the uppers decks were opened to them. The strength of a chain lies with its weakest part.

In the words of Justice Krishna Iyer: " The real solution to the issue of reservation is lies in growth" i.e. to enlarge the size of the cake. The vast human potential of the Harijan and Girijan, the 1/5th of the Indian people goes to thistles and every communal effort to twist the politics of power for promoting the chances for equal growth becomes inevitable, caste being a deep rooted pathology in our country.

1.6 Methodology adopted to conduct the study

The Methodology adopted in the study is doctrinal. The study is carried out on a legal proposition or propositions by way of analyzing the existing statutory provisions and the cases applying reasoning power.

The case law study method is adopted which help the researcher to know how legislative provisions are implemented and how the judiciary has been vigilant to point out the human rights violations. By adopting this method the contemporary position of this fundamental right to equality is specifically known.

Different aspects are studies keeping in mind the existing laws relating to right to equality, Supreme Court and High court judgments and different published articles. Various Constitutional provisions affecting education and fundamental rights of studied in detail.

The source material for the study is basically collected from the secondary sources like relevant statues, published books by eminent authors on equality, castes, case-laws, articles published in Indian and Foreign journals, parliamentary works, Judgments of Supreme Court and various High Courts.

As the study is legal and social in nature, historical and doctrinal methods are adopted. Various related cases and verdicts of the Supreme Court and High Courts are covered to have an effective conclusion at the end of the study.

1.7 Hypothesis formulated to conduct the study

It was never so in the hearts and mind of our visionary framers of constitution who very well aware of the barbaric conditions of the downtrodden known as scheduled castes and scheduled tribes who were alienated form social mainstream, economic justice and human freedom since centuries. These great visionaries were of the firm opinion that the Nation cannot progress

equitably undermining the woeful conditions of this one fifth fraction of the society.

Thus, reservation is not a number game of apportioning a percentage of vacancies for the eligible community candidate. But it is a mission abscission of deeply rooted object social animosity. Social backwardness is not insurmountable and establishing as their caste, creed or religion shall have an open, impartial and abundant opportunity as also vowed in our constitution.

The researcher has framed following broad hypothesis for the research work:

1. Still a practice of untouchability prevailing in the country. The Scheduled Castes and Scheduled Tribes are considered as lower categories.
2. The general bias towards the reserved category candidate the Scheduled Castes, Scheduled Tribes and Other Backward Classes are considered as less intelligent and less efficient towards their work.
3. The executives are not taking the due care in implementing the rules framed by the legislature concerning promotion, recruitment and protecting and safeguarding Scheduled Castes, Scheduled Tribes and Other Backward Classes people.
4. Provision of reasonable opportunities to Scheduled Castes and Scheduled Tribes are not properly provided.
5. Lack of awareness among the Scheduled Castes and Scheduled Tribes about the reservation policy and benefits provided to them.

6. Scheduled Castes, Scheduled Tribes and Other Backward Classes have been oppressed for the past 2000 year and that they need reservation to progress.
7. The Higher Caste groups show the feelings of social distance more or less in the same pattern towards scheduled castes and scheduled tribes.
8. Many years after Independence, yet Scheduled Castes and Scheduled Tribes people are dependant on the others.
9. Whenever reservation is applicable, result of implementation of it is less than satisfactory and very poor.
10. The Scheduled Castes and Scheduled Tribes have been considered as the lowest and the weakest communities of the Indian society since time immemorial.

1.8 Limitations of the study

Right to equality covers vast aspects with special reference to reservation can be studied in detail. However, due to constraint of time the researcher has limited the area of study and has focused to Equality of Opportunity in Public Employment and Reservation in Educational Institutions for the Scheduled Castes, Scheduled Tribes and Other Backward Class people. The study is limited to the legal principles involved in equality of opportunity in public employment as fundamental rights of constitution.

Hence, the study is more focused on existing Legislations, Government Office Memorandum, Reservation Policy and land mark judgments of Supreme Court and various High Courts.

1.9 Review of the Chapters

The **first chapter** deals with the introductory part. In this chapter the researcher has given the introduction of the topic of A Socio-legal study relating to Promotion of Educational and Economic Interests of Scheduled Castes, Schedule Tribes and Other Weaker Sections. It shows why the topic is so important and significant to study. The object and scope of the study is also laid down by putting questions to find their answers during the study. Hypothesis has been formulated on the basis of various assumptions on social and economic conditions of Scheduled Caste, Scheduled Tribe and Other Backward Classes, equality of opportunities in matter of public employment, reservation of appointment and post in favour of backward class of citizens, social and economic conditions of SCs, STs and OBCs.

This chapter shows as to how the study will be utilized by researcher as well as by other people interested in this field. The chapter also focuses on the limitations of the study. The methodology adopted has been explained and the scheme of the study is to have an overall view of the whole study.

The **second chapter** explains as to how origin of the caste system came into existence i.e. historical background of the Scheduled Caste and Scheduled Tribes. It explains various concepts relating to *Varnas* (castes), history of the four *Varnas*, determinants of untouchability, other backward classes.

The chapter deals with Dr. Ambedkar's entry to the march towards reservation, situation before Simon Commission 1930, franchise committee and communal award 1932, Gandhi's fast unto death and reservation policy. Finally, the concept of historical background

of caste system in India and concept of Other Backward Classes have explained in detail which is followed by a conclusion.

The **third chapter** explains as to how the Reservation policy and Scheduled Castes, Scheduled Tribes and Other Backward Classes are relevant. The researcher has tried to establish the linkage right up to equality and equality of opportunity in employment. It also explains how the concept of reservation policy originally came into existence vide The Government India Act, 1935.

The chapter focuses on how the Mandal Commission came into existence and what were the repercussions of implementation of Mandal Commission Report. The researcher has broadly classified them into three categories – the Socially, Educationally and Economically. It also deals with recommendation of Mandal Commission for Educational Concessions, for economic upliftment, reservation to Scheduled Castes and Scheduled Tribes in Universities and colleges.

The **fourth chapter** deals with different Constitutional provisions in India relating to reservation. It also deals with different Commissions for the Scheduled Castes, Scheduled Tribes and Other Backward Classes established by the Government. It also discussed about the reservation extended self-finance Educational Institutions. It deals with reservation in Promotion for the Scheduled Castes, and Scheduled Tribes. It also included different Office Memorandum of the Central Government relating to the reservation policy.

This chapter deals with Article 17 of the Constitution of India and different legislations like Protection of Civil rights Act, 1955, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 other various Acts.

The **fifth chapter** deals with Protective Discrimination; Implementation of reservation policy includes appointment and functions of commissioner for Scheduled Castes, Scheduled Tribes and Other Backward Classes. It deals with how the reservation policy can be effectively implemented for the Government appointing liaison officers and establishing special cells for Scheduled Castes, Scheduled Tribes and Other Backward Classes. It also deals with how the reserved post can be de-reserved and what procedure should be adopted by the institution or employer for de-reserved the posts.

It also discusses about how the National Commission for Scheduled Castes, National Commission for Scheduled Tribes, and National Commission for Other Backward Classes are working for the effective implementation of the reservation policy in the country.

The **sixth chapter** deals with the role of judiciary in implementing reservation policy in Educational Institutions, in Public Employment. Various directions given by the Courts and the principles laid down in the judgments are discussed. The Supreme Court has given a positive thrust to the nature and content of this right by imposing an obligation upon the state to take effective steps for proper implementation of reservation policy in the State.

Some of the landmark judgments in the area of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes such as *Indra Sawhney v. Union of India*⁶, *T.M.A. Pai Foundation v. State of Karnataka*⁷, *K. Nagaraj v. State of A.P.*⁸, *Pradip Jain v. Union of India*⁹ and many others have been discussed in details.

6 AIR 1993 SC 477

7 AIR 2005 SC 3236

Hence various cases relating to reservation for, and affecting directly or indirectly to, the scheduled castes, the scheduled tribes and other backward classes are studied to reach the core of the aspect.



The **seventh chapter** deals with the suggestions ensuring how the reservation policy will be effective and conclusions that the researcher has reached after the study on hand. The suggestions will show as to how this reservation among the Scheduled Castes, Scheduled Tribes and Other Backward Classes could be brought into reality and reach up to the needy rural illiterate poor Scheduled Castes/Scheduled Tribes and Other Backward Classes people and various steps needed to be taken in order to ensure their right to equality.

8 (1985) 1 SCC 524
9 (1984) 3 SCC 654