

# DAYANAND COLLEGE OF LAW, LATUR

[Approved by the Bar Council of India Affiliated to Swami Ramanand Teerth Marathawada University, Nanded]



UGC has Sanctioned the amount Rs. 1, 30, 000 (One lakh thirty thousand only) for Minor Research Project in favour of Dr. (Prof). G. Laxman, faculty of Dayanand College of Law, Maharashtra State.

MRP entitled: **“Compensatory Discrimination in favour of Scheduled Castes & Scheduled Tribes under Indian Constitution - A Study with Special Reference to Inter-State Migrants”**.

Release of First Instalment Rs. 95, 000/- (Ninety five thousand only) received by cheque out of UGC Sanctioned Rs. 1, 30,000/- (One lakh thirty thousand only) by UGC, Letter File No. 23-753/09(WRO) Dt. 20<sup>th</sup> August 2009, financial aide to College-Teacher undertaking Minor Research Project However, Second Instalment is not received.

U.G.C., Interface Meeting is attended by Principal (Dr. Mrs. Annie John) of Dayanand College of Law, Latur, on 26. 11. 15 for Settlement of Accounts o Minor Research Project and Submission of Documents etc., held at The Joint Secretary, University Grants Commission, Western Regional Office, University Campus, Pune-411007.

The College has issued a Letter No. Per/2015-2016/687, Dated: 28:11:2015, on account of Interface Meeting Attended with certain guidelines for Settlement of Accounts of Minor Research Project.

In exercise of this guidelines, Summary of MRP Project as well as Publication of Article on MRP Project is Uploaded on the Dayanand College of Law, Latur, Maharashtra.

Finally, I wish to salute to the University Grant Commission [UGC] also deeply indebted to University Grant Commission [UGC] for providing finance under the scheme of Minor Research, such adequate financial support, I dared, myself to carried out the headway of investigation of my research work without any financial obstacles. Finally, the projected research work acquires an excellent tangible shape.

Yours Sincerely  
Dr. G. Laxman  
Principal Investigator

**EXECUTIVE SUMMARY OF  
“MINOR RESEARCH PROJECT REPORT”  
ON**

*“Compensatory Discrimination  
in favour of Scheduled Castes & Scheduled Tribes  
Under Indian Constitution  
- A Study with Special Reference to Inter-State Migrants”*

The reservation is burning subject matter in India. It is in existence more than eighty years. Compensatory Provisions engrafted under Indian Constitution with an intention to protect oppressed classes. Indian Society suppressed them economically and socially from generations to generations.

The Story of Reservation goes back to the era when the Nation was still to make its “tryst with destination”, as India’s independence came to epitomize in Jawaharlal Nehru’s words, and to that critical time when it was on the brink of a trifurcation in to three separate Nations: One for the Hindus, Second for the Muslims and Third for Backward Community – before it could get complete sovereignty, for such was the devised formula devised by the British.<sup>1</sup>

In reality, Dr. B.R. Ambedkar had never intended to achieve the reservations, benefits, and concessions for the Dalit people. The concept of reservation policy was conceived by the M.K. Gandhi for Scheduled Castes and Scheduled Tribes.

Why Dr. B.R. Ambedkar was initiated the battle? In reality, what was the stand of the Dr. B.R. Ambedkar to achieve for the oppressed classes?

Oppressed classes are untouchables, such as Scheduled Castes and Scheduled Tribes as designated under the Indian Constitution. Untouchability has been practiced more than 3000 years. It has a tragic condition that no one has taken efforts to eradicate the out dated unscientific practices of caste system, on the other hand, majority people of India have faith in the practicing the out dated and unscientific caste system.

Dr. B. R. Ambedkar was a remarkable National leader, the Champion of Dalit people, he who realizes about the status and rights of the oppressed people in India. There was no single leader who feel and verbalize on the subject of rights and welfare of depressed classes though they son of the soil of this Nation, except Dr. B. R. Ambedkar, no such leader for Dalit people. He set off efforts for protection of the rights of Scheduled Castes and Scheduled Tribes.

In the great struggle, under the leadership of Dr. B.R. Ambedkar, Dalit were succeeded a Communal Award for them. However, injustice caused to the Dalit, Reservation Benefits were arranged to them in place of a separate electorate, actually, what they got in the struggle of Round Table Conference(s). In other words, Hindus by showing Reservation in one hand, with another hand, they had snatched away their achievement of separate electorate. This kind of Reservation Benefits is meagerz and as good as nothing actually what they had lost. It was gimmick played by them. M.K. Gandhi went to fast unto death to modify the Communal Award.

It is a reality of M.K. Gandhi, who follows truth. He went on number of Satyagraha but he never went on a single Satyagraha for the rights of people of Dalit. It is enough to understand the veracity of Gandhi. There is a proverb

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1. Praful Sakya, *Reservation Policy Devoid of proper execution Divided India Pride & Prejudices, Page 3, (Ed. 2005), Sugava Prakashn, 562, Sadashiv Pet, Pune, Maharashtra.*

in English tongue "action speaks more loudly than words". It is the record of the people, how they succeeded over the Dalit.

### **PURPOSE STUDY OF RESEARCH**

The objective of academic research is to focus the light on socio-economic justice of Scheduled caste and Scheduled Tribes in their homeland. Even after fifty decades of our independence, in reality there is no socio-economic justice so far achieved in the life styles of oppressed classes of Scheduled caste and Scheduled Tribes in their homeland. Thus, it is a violation of Social Justice. Basic concept of Social Justice visualizes under the Indian Constitution. It is the journey of our Constitution to confer socio-economic growth in the lives of the depressed classes of our nation by way of providing reservation benefits and concessions. In this regard a range of issues crop up in this context of exploration. They are ---

1. Whether reservation policy has been properly implemented or not?
2. Whether uniform reservation policy is adopted by Union Government for achievement of goals of Social Justice in case of Scheduled caste and Scheduled Tribes or not ?
3. Whether the Apex Court has provided an extensive socio-economic decision in case of reservation matters or not?

The scholastic work reveal negative response in the above projected issues. Therefore, the basic reason is to choose this topic with an intention to flash the infringement of various rights, which adversely effects on the socio-economic life of the depressed classes. In case of the members of Scheduled Castes and Scheduled Tribes migrates in their homeland, where reservation benefits and concessions are denied in the migrating state(s). In this context, the law as well as decided products says that admissibility of reservation benefits available in the origin state but not in the state of migration. Moreover, this academic research projects the suggestions for modification of Indian Constitution by which extension of reservation benefits are made available for the interstate migrants of Scheduled Castes and Scheduled Tribes in their homeland.

In this context, the existing research work headed for certain projected objectives of study is as articulated ---

1. En route for clarification of Reservation Policy
2. In the direction of execution of Reservations by Union government and State Governments is matching with objectives of Reservation Policy.
3. On the way to provide socio-economic growth to the oppressed class irrespective of Inter-State Migrants of Scheduled Castes and Scheduled Tribes with the territory of India.

### **AIMS AND OBJECTIVES OF RESEARCH**

Research has been carried out on the topic of the Compensatory Discrimination in favour of Scheduled Castes and Scheduled Tribes under Indian Constitution – A study with special reference to Inter-State Migrants with the following among other objectives ---

01. To elaborate the concept of Reservation Policy.
02. To spectacle the origin and expansion of the reservation policy.
03. To study and draw attention, the problems of the members of Scheduled Castes and Scheduled Tribes especially with regard to Inter- State Migrants with in India.
04. To analyze and elucidate the causes and proper Implementation of the Reservation Policy.
05. To highlight the short coming of the Indian Constitutional, Statutory as well as decided product for the purpose of application.

06. To examine the actual position of the existing Reservation Benefits and its Implementation, more particularly in relation to Inter-State migrants of Scheduled Castes and Scheduled Tribes, who migrates from one State to another State of his/her origin.
07. To scrutinize the nature of the various segments of policy of Reservation as and when Controversies came before the Court and manner in which the Court advanced and upheld the Policy of Reservation for their application and other allied directions of the Apex Court.
08. To propose the modification of the Indian Constitution in relation to the application of "Uniform Reservation Policy" by the Centre and including in the all States Irrespective of language barriers, residence, and origin of the birth State etc.
09. To ignite the glow on the Nationalized Burning Problem of the Inter-State Migrants of Scheduled Castes and Scheduled Tribes and to aware & alert the targeted group of Migrants of Scheduled Castes and Scheduled Tribes in India.
10. To suggest the steps, that must to be taken for the Uniform Reservation Policy in all over India, Parliament has to take necessary steps to annihilate Nationalized Burning Problem. Moreover, recommend the necessary measures for improving the system, parliament ought to wake up and realize their duties in order to modify the Indian Constitution and to make a Central Legislation and to shape the Uniform Reservation Policy.

### **SCHEME OF PRESENTATION**

Research work is being set out in the form of thesis. It has been split up into Eight Chapters. The summary of the presented also summaries of the chapters are presented below:--

**CHAPTER I: Introduction** – it envelopes with surroundings of the study of the subject of research, it demonstrates with an abstract, Purpose of the study, the significance of the topic of research, the scope of research, is based on armchair research, that is to say, Doctrinal Methodology of Research. In addition, confirmed with the designed hypothesis and bound with the aims and objectives in view, this research work has been carried out with the Historical and Analytical process of Research. These manner have been measured, appropriate in view of the nature of study involved viz., legal Research.

**CHAPTER II: Nature of Indian Society-Pre and Post Position of Independence** - it describes an ancient Indian society and its social order, which based on the backbone of the Caste. Therefore, it covers the origin of the caste. How the outside people came into the territory and their practices of the caste, and alteration & application of caste against the son of the soil. It exposes, the main source of caste spirit and in real sense, the caste is there or not etc. Thereafter, it switches over, on the postposition of independence, it reveals, social reformers and their contribution in order to eradicate the evils of caste spirit, and established legal order under the Indian Constitution. The chapter also gives an historical perspective of the concept.

**Chapter III: Compensatory Discrimination Concept and Evolution** – it deals with meaning, object, and Compensatory Discrimination targeted to whom it is given. It is expressed, the rationale behind the application of reservation benefits to the Scheduled caste and Scheduled Tribes. as well as manifestation of great philosophers such as A.M. Honore, Marc Galanter, John Rawls's Principles of Justice etc. who supporters for the Compensatory Discrimination. In this framework, immense social reformers contribution, such as King Chhatrapati Shahu Maharajah, Mahatma Pule etc. There was a lot of historical background in the Round Tables Conferences for the building a separate state/Communal Award in favour of Scheduled Castes and Scheduled Tribes but there was an alteration. In place of that, Poona Pact, 1932, came into existence. It is the main source of the reservations for the safeguarding rights and interest of these

people. It is fundamental and formal recommendations for potential Reservation Policy has been adopted and set up in favour of Scheduled Castes and Scheduled Tribes.

**Chapter IV: Compensatory Discrimination In Favour Of Scheduled Castes /Scheduled Tribes under the Indian Constitution** – it wraps up with the Constitutional starting place with regard to Compensatory Discrimination for particularly targeted group. Its reflection has been materializing in the preamble of our Constitution, where distinguished civilised life of the Indian Citizens sparks by means of the basic rights and enjoyment of true life within the territory of the Bharat. There are also certain positive parameters discussed for Compensatory Provisions against Discrimination of Scheduled Castes & Scheduled Tribes including the National Commission for Scheduled Castes and Scheduled Tribes, Composition, B] Powers and Functions, C] Duties] Consultation with the Commission and Consideration of its Recommendations.

**CHAPTER V: Constitutional Perspectives of Reservation–Judicial Response** - it covers up with the Indian Constitution and its outlook of the Reservation benefits. The Policy of Reservation Benefits is for purpose of upliftment of Scheduled Castes & Scheduled Tribes. It also reflects with Judicial Response with regard to Reservations, and scrutinized the nature of the various segments of policy of Reservation as and when Controversies came before the Court and manner in which the Court advanced and upheld the Policy of Reservation for their application and other allied directions of the Apex Court. However, it observed that the apex court had not extensively applied reservation policy or implemented affirmative action in favour of the interstate migrants of Scheduled Castes and Scheduled Tribes as well as decided products of various High Courts reflected in the Chapter.

**CHAPTER VI : Reservation Problems of Inter-State Migration of Scheduled Castes and Scheduled Tribes in India– Legal & Constitutional Perspective** - In this chapter, it reveals, the fundamental Problems being faced by the Migrants of Scheduled Castes and Scheduled Tribes in their Homeland, even after extensive Indian independence celebrated and enjoyed. The energetic problems are clearly marked out. It also exhibits problematical Constitutional provisions which cause violation of the Reservation Policy in favour of Inter-state Migrants of Scheduled Castes & Scheduled Tribes in India. In addition to that, vibrant Statutory barriers are against to the Inter-state Migrants Scheduled Castes & Scheduled Tribes.

**CHAPTER VII: Inter-State Migrants and Protection of Rights** - In this chapter, it discloses the rights of the Inter-State Migrants of Scheduled Castes and Scheduled Tribes in their motherland. The rights are with regard to Political, Social, Educational, Economic and Public Employment as provided under Indian Constitution, including the rights as reflected under Human Rights and the Rights of Indigenous Peoples.

**CHAPTER VIII: Suggestive Measures & Conclusion** - provides a summary of the thesis, the findings of the researcher and suggestions to get improved the system of reservation policy and extension of reservation benefits to the inter-State Migrants of Scheduled Castes and Scheduled Tribes.

### **: ACHIEVEMENTS FROM THE PROJECT:**

A variety of achievements were found out this project are as follows:-

- 1) It is a first project in India, which flash out the tragedy being faced by the Migrants Scheduled Castes and Scheduled Tribes in the Homeland.
- 2) The problems and complications are being faced by the Migrants Scheduled Castes and Scheduled Tribes in the Migrating-State(s) even though they belong to Scheduled Castes and Scheduled Tribes under Indian Constitution are clearly described in this project.

- 3) Admissibility of reservation is denied by the law also declared law which result into a grave violation of Human Rights and Fundamental Rights since 1950.
- 4) The problems and complications are being faced by the Migrants Scheduled Castes and Scheduled Tribes is scholastically solved also achieved targeted goal project work.
- 5) The existing project work paves the way to bring into reality.

## SUGGESTIVE MEASURES AND CONCLUSION

### PROJECTED GUIDELINES SET OUT FOR THE UNIFORM RESEVATION

Guidelines for the Uniform Reservation for Scheduled Castes & Scheduled Tribes They must be allowed to move more freely and settle anywhere in India with Benefits of Reservation or any Concessions.

- Let them to carry out any profession and allow them in any State Government services in their **Homeland** with all Reservation Benefits.
- With in the territory of India, there shall not be cramped by imposing barriers on the Reservation Benefits.
- **Providing only State wise Reservation Benefits** to Scheduled Castes or Scheduled Tribes is discriminatory and very harmful to the Nation, and violating the fundamental rights of our Constitution. Furthermore, it is harmful to the **Unity** and **Integrity** of the Nation as well as violation of human rights.
- Articles 341 & 342 of the Indian Constitution are the **Nationalized Index** of the Scheduled Castes or Scheduled Tribes in order to confer Reservation Benefits to them but not otherwise imposing irrational restrictions upon the aboriginal of Scheduled Castes & Scheduled Tribes.
- Articles 341 & 342 of the Indian Constitution are the framework for the **Nationalized Index** of the Scheduled Castes or Scheduled Tribes in order to identify them National wide and confer Reservation Benefits to them but not otherwise imposing residential based reservation in their own homeland upon the aboriginal of Scheduled Castes & Scheduled Tribes.
- Article 16(4) of the Indian Constitution is neither sword nor axe to cut off the necks of the same brethren of the other state(s). Article 16(4) shall be exercised by the state with care and caution. Moreover, constantly keep in the minds and hearts about the **Unity** and **Integrity** the Nation at large. India is more federal than state.
- Article 352 (1) (24) of the Indian Constitution, Scheduled Castes Means such castes or tribes or parts of or groups within such castes, races, or tribes as are deemed under Article 341 to be Scheduled Castes for purpose of this Constitution.
- Article 352 (1) (25) of the Indian Constitution, Scheduled Tribes Means such tribes or tribes communities or parts of or groups within such castes, races, or tribes as are deemed under Article 342 to be Scheduled Tribes for purpose of this Constitution.
- The **Unity** and **Integrity** is the spirit of Indian Constitution by which it possible to generate the patriotism and goodwill among the people of India. Moreover, unity and integrity is the basic structure of the Indian constitution. In this connection, the legislature and the judiciary shall not ignore it, grasp the ideology of the Indian Constitution, suppress the mischief, and advance themselves to protect the integrity and make Nation Building in the welfare State.
- In the case of **N M Thomas vs. State of Kerala**, SC has held that Art 16(4), which the prime source of compensatory discrimination, is not an exception to Art. 16(1) but only an instant of classification. **It further held that reservation could do even without art. 16(4) and under Art. 14 that reasonable classification.**



- In the case of **Indira Sawhney vs. Union of India**, the Supreme Court has upheld the view given in NM Thomas case. Thus, such provisions do not go against principles of equality. In the case of Pushpa and others...
- Extending Reservation Benefits to the Inter-State Migrants of Scheduled Castes and Scheduled Tribes is not an offence. However, it is only a just necessity.
- Scheduled Castes and Scheduled Tribes so designated must have right under Article 14, 19(1) (d), 19(1) (e), and 19(f), in as much as these are applicable to him in his area whereas he migrates or where he goes. The expression 'in relation to state' would be nugatory if in all states, the special privileges or the rights granted to Scheduled Castes and Scheduled Tribes are carried forward. Though it will also inconsistent with the whole, propose of the scheme of Reservation.
- There must be uniform Reservation Benefits for Scheduled Castes Scheduled Tribes in the State(s) and Centre without any discrimination on the ground of Religion, Race, Caste, Sex, or Place of birth.
- Nowhere it is clearly mentioned or directed, in the Indian Constitution that the cessation of Reservation Benefits by migration of Scheduled Castes and Scheduled Tribes. It is an innocent interpretation of the Constitution. Such kind of approaches against the members of the Scheduled Castes and Scheduled Tribes are the enormous insult to the Democratic, Welfare State. It should have a common sense that, the Reservation Benefits are targeted to such people, who are depressed by the orthodox society from generation to generation all over the country.
- The Lawmakers, the Judiciary, the Executive, and the people of India must be kept in their minds and hearts that, the Scheduled Castes and Scheduled Tribes in India are the aboriginals/son of the soil and rest of them are the actual migrated.
- In order to realize the aims and objectives of the Reservation Benefits, Harmonious and Beneficial Constructions of interpretation are invited but not strict interpretation is allowed or followed.
- Supreme Court of India having no Constitutional power to impose any restrictions on the conferring Reservation Benefits and it cannot fix the boundaries or any limitations on the Reservation.
- Supreme Court of India covers in the light of "State", it requires to uphold the human rights and the rights of indigenous persons as guardian people of Dalit.
- Providing reservation and concessions to the Inter-State Migrants of Scheduled Castes and Scheduled Tribes is not an offence. It is an obligation of the Welfare State, Purpose of Reservation Policy and Pledge of Indian Constitution.
- At the last, but least, suggestive measure is that the Indian States are not created on grounds of the CASTE or CATEGOTY. Caste person cannot cease/finish by the act of migration of within their home land. However, it is to be noted that the States are came into the light on the basis of the Language.

## CONCLUSION

The subject matter of Reservation benefits or Concessions has been targeted to specified classes of Scheduled Castes and Scheduled Tribes. In India, Dominated community had oppressed the aboriginals from generations to generations cause of that this people became poorest of the poor in the soil of Indian society though they belong to sons of this soil. It is tragic condition of the India, it has been continuing even after considerable Indian independence.

Providing Reservation benefits or concessions for the Scheduled Castes and Scheduled Tribes in India is an ideology of the Indian Constitution, so reservation policy is not mere a slogan of the Indian Constitution. It has Constitutional command and holding Constitutional status, in the direction of Compensatory discrimination in favour of Scheduled Castes and Scheduled Tribes.

In this regard, Scheduled Castes and Scheduled Tribes are the poorest of the poor Indian citizen's list is made available in the Indian Constitution under Articles 341 and 342. This has been conveniently arranged to find out easily for providing the Reservation benefits or Concessions.

The object of Reservation is to provide with an intention to make them equal in all walks of life with other people of the society. However, the policy of reservation is not implemented properly for the achievement of reservation policy, in course of considerable independence.

The burning issue is that there is a noticeably legal discrimination against the Inter- State migrants of Scheduled Castes & Scheduled Tribes and Reservation benefits.

Let us now learn as to what happens to the Caste/Tribe status of persons who migrates to a State other than his original State. If a person migrates from one State to another State, he can claim to be a SC or ST only in relation to that State to which he originally belonged and not in respect to the State to which he has migrated. (This means that an SC/ST employee will be continued to consider as SC/ST for the purpose of Central Government Jobs irrespective of his State of Migration but not for the State Government jobs It is as per the Government rule i.e. 259 MHA letter NoBC-12025/2/76 SC T (1) dated 22-3-77 and letter No.35/1/72 RU (SCT-V) dated 2-5-75 –Brochure-p265.

In the above Government letter, and Supreme Court Decision reveals adverse effects on the Inter- State migrants of Scheduled Castes & Scheduled Tribes and Reservation benefits

- 1 **Firstly**, State wise reservation another is Central wise,
- 2 **Secondly**, in State wise Reservation benefits are applicable only to that State but not applicable in other Indian States migrants of the Scheduled Castes and Scheduled Tribes. In this regard, for better understanding Central Government Letter is cited, as per the 259 MHA letter No. BC-12025/2/76 SC T (1) dated 22-3-77 and letter No.35/1/72 RU (SCT-V) dated 2-5-75 –Brochure-p265.
- 3 **Thirdly**, in the support of the Supreme Court decision in Marri Chandra Shekar Rao Vs Dean, S.G.S., Medical College, (1990) 3 SCC 130,
- 4 **Fourthly**, Suppose Scheduled Caste or Scheduled Tribe migrates for employment who availed reservation benefits under the Central Government but his son or daughter will not get any reservation benefits or concession in that migrated State. Furthermore, they [son&daughter] treated as open category.
- 5 **Fifthly**, Article 16(4) of the Indian Constitution is neither sword nor axe to cut off the necks of the same brethren of the other state(s). Article 16(4) shall be exercised by the state with care and caution. Moreover, constantly keep in the minds and hearts about the **Unity, Integrity and Constitutional Status** of Scheduled Caste and Scheduled Tribes of our Nation. India is more federal than state. [Empowers the State to make "any provision for reservation in the appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State"]

Therefore, in the above said circumstances, fundamental rights are violating, Articles **14, 15, 19(1), (d), 19(1) (e), & 21** of the Indian Constitution. In the Constitution, no where it is clearly negatively expressed that reservation benefits or concessions are not admissible to the inter-state migrants of Scheduled Castes and Scheduled Tribes. Such form of application of interpretation is considered as very bad in the law and in the legal wisdom of the world. Moreover, it is also breach of human rights.

Articles 341 Scheduled Castes & 342 Scheduled Tribes of the Indian Constitution are the Index of the Scheduled Castes or Scheduled Tribes in order to confer Reservation Benefits to them but imposing irrational restrictions upon the sons of the soil. Furthermore, Miss-interpretation and Strict Interpretation of the respective provisions of the Indian Constitution is carried out in order to arrive the ideology the framers of our Constitution. There is a general rule for the



interpretation of these provisions, which is a Beneficial and Harmonious construction shall be allowed to achieve the object of the reservation.

Besides, Art. 15, says that the State shall not discriminate on the grounds of religion, race, caste, sex, or place of birth. Articles 341 & 342 of the Indian Constitution are the **Nationalized Index** of the Scheduled Castes or Scheduled Tribes in order to confer Reservation Benefits to them but not otherwise imposing irrational restrictions upon the sons of the soil.

**Galanter** (1991) has attempted one of the most comprehensive explorations of the Indian affirmative action programme. A monetary cost-benefit evaluation is not possible because of the manner in which the Indian programme is formulated. However, he undertakes a crude assessment of the SC/ST affirmative action programme and some of his major findings are as follows:

- The programme has shown substantial redistributive effects in that access to education and jobs is spread wider in the caste spectrum than earlier, although redistribution is not spread evenly throughout the beneficiary groups. There is evidence of clustering, but Galanter believes that these reflect structural factors, since the better situated enjoy a disproportionate share of the benefits in any government programme, not just in affirmative action programmes.
- The vast majority of Dalits are not directly affected by affirmative action, but reserved jobs bring a many fold increase in the number of families liberated from subservient roles.
- In the short run, beneficiaries might get singled out and experience social rejection in offices, college hostels and other set ups where they are introduced through affirmative action. However, in the long run, education and jobs weaken the stigmatizing association of Dalits with ignorance and incompetence. Moreover, "resentment of preferences may magnify hostility to these groups, but rejection of them exists independently of affirmative action programmes".
- Affirmative action has kept the beneficiary groups and their problems visible to the educated public, but it has not motivated widespread concern for their inclusion beyond what is mandated by government policy.

Thus, Galanter concludes that affirmative action has been a partial success. It has accelerated the growth of a middle class and SC/ST members have been brought into central roles considered unimaginable a few decades ago.

in this correlation, it necessary the expression of K.M. Munshi, replying to the various criticisms levelled against the draft article, referred to the fears expressed by members belonging to the Scheduled Castes and said:

"I cannot imagine for the life of me how, after an experience of a year and a half of the Constituent Assembly any honourable member of the Scheduled Castes should have a feeling that they will not be included on the Scheduled Castes should feeling that they will not be included in the backward classes so long as they are backward ...Look at what has been going on in this House for the last year and a half. Take this article 11<sup>2</sup>...there has not been a single member of the non Scheduled Castes who has ever raised any objection to it. On the contrary, we members who do not belong to the Scheduled Castes, have, in order to wipe out this bolt on our society, been in the forefront in this matter ... what we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State...At the same time, in view of the conditions in our country prevailing

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<sup>2</sup> Corresponding provision in the Constitution: Article 17

in several Provinces. we want to see that backward classes, classes who are really backward, should be given the scope in the State services; ... **the word "backward" signifies that class of people-does not matter whether you call them untouchables or touchable belonging to this community or that-a class of people who are so backward that special protection is required (for them) in the services"**<sup>3</sup>

Moreover, the States were formed on the basis language but not on the basis of Caste(s). India is a secular country also a welfare State. Hence, the avoiding reservation benefits or concessions are considered illegal against the Constitution.

It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or a girl gets full scope to flourish. These however, are problems of social adjustment i.e., how far protection has been given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the same country must be given protection so long as and to the extent they are entitled in order should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. Equally, the Scheduled Castes and Scheduled Tribes say of Maharashtra in the same case do require protection in the state of Maharashtra, which will have to be in balanced to other communities. This must be the basis approach to the problem.

For the purpose of policy of reservation and Indian Constitution must be given full effect. The words 'for the purposes of this Constitution' must mean that a Scheduled Castes and Scheduled Tribes so designated must have right under Article 14, 19(1)(d), & 19(1)(e), in as much as these are applicable to him in his area whereas he migrates or where he goes. The expression 'in relation to state' would be nugatory if in all states, the special privileges or the rights granted to Scheduled Castes and Scheduled Tribes are carried forward. It will also inconsistent with the whole propose of the scheme of reservation. In Andhra Pradesh, Scheduled Castes or Scheduled Tribes may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be, if a boy or a child goes to that atmosphere of Maharashtra as young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot said to have that reservation which will discard the children or the people of Maharashtra belonging to any segment of that state who may still require protection. After all, it has to be born in the mind that the protection is necessary for disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus balancing must be done as between those who need protection and those who need protection i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Article 341 & 342 of the Indian Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 and 342 read with Article 15(4) of the Indian Constitution.

The issue that Scheduled Caste and Scheduled Tribe who get the protection of being classed as Scheduled Caste and Scheduled Tribe in the States of origin when, because of transfer or move to other States as a matter of voluntary (sic involuntary) transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances either of employment of such situation, it appears that where the migration from one State to another State is involuntary, by force of circumstances either

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<sup>3</sup> C. A. Deb., Vol. VII, pp. 696-7

employment or profession, in such cases if student or persons apply in the migrant State where without affecting prejudicially the rights of Scheduled Castes and Scheduled Tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has or migrated then some consideration is desirable to be made on that ground.

Further, What I meant to say that the main roots connect in the Communal Award, the Poona Pact 1932, and the government of Indian Act, 1935. The Ideology Communal Award ends with the act of modification by the Poona Pact 1932 and it paved the way for Reservation Benefits to the entire Scheduled Caste and Scheduled Tribes of our nation. That is to say, the POONA PACT, 1932 is fundamental base for the reservation policy, in which it is discovered that, no- where it is mentioned that migration ceases the reservation benefits. Therefore, the POONA PACT, 1932 is meant for Uniform Reservation Policy and it is ideology of the M.K. Gandhi.

Furthermore, Supreme Courts is treating them a "State" within the meaning of Article 12 of the Indian Constitution. "It is an admitted fact that the Judiciary is a part of the State. The word "State" in Article 12, Article 13 and Article 37 has to be given the same meaning. Hon'ble Justice Mathew in Kesavanand Bharati's case held at page 830 (1973 Supp.SCR1)"

"The definition of the word "State" both for the purpose of Part III and Part IV is the same. Whereas article 45 of the Irish Constitution addresses the directive only for the guidance of the oireachtas, i.e., the legislature, all the directives from Articles 38 to 51 of our Constitution are addressed to the 'State' as definition in Article 12. The Judicial process is also "State Action" seems to be clear. Article 20(2) which provides that no person shall be prosecuted and punished for the same offence more than once is generally violated by the judiciary and a writ under article 32 should lie to quash the order. In his dissenting Judgment in Naresh Vs. State of Maharashtra (1966 (3) SCR 744) Hidayutullah J. took the view – I think rightly – that the judiciary is also "State" within the definition of the word "State" in Article 12 of the Constitution (see also Shelly Vs. Kraemer, 334 U.S., 1; Budhan Vs. State of Maharashtra 1955 (1) SCR 105) @ page 834"

Therefore, what I want to say, Denial of Reservation Benefits and Concession with regard to the Inter-State Migrants of Scheduled Castes & Scheduled Tribes within their homeland [In Marri Chandra vs. Dean, S.G.S., Medical College, (1990) 3 SCC 130, the Supreme Court] by Supreme Court reflects a bad precedent. a negative impact on the human rights as well as the rights of indigenous peoples.

**It would, therefore, be necessary and perhaps desirable for the legislatures or Parliament to consider appropriate legalizations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Caste and Scheduled Tribes by virtue of the portions under Article 341 and 342 of the Constitution. This is a matter, which the State legislature or the Parliament may appropriately take into consideration.**

At the last I want to bring to close it now, as per above located reasons, it is necessary to modify the Indian Constitution with view to achieve the **Uniform Reservation Formula** for the betterment and to offer full growth of scheduled castes and scheduled tribes in India. In addition to it is alarming situation to overcome with the constricted concept of reservation.

India begins with, **we the people of India**, It is the spirited and united souls of India. This kind of energetic force everlastingly kept in the minds and hearts of the citizens of the Bharat. As a result, Citizens of the Bharat are obligatory to think positively, encouraging, uplifting thoughts and the negative will soon disappear. That is to say, the citizens of the State have to ignite the dreams for the future, better than the past. The future belongs to those who believe in the beauty of the dreams. The **Citizens, Legislature, Executive, and Judiciary** are obligatory to understand the strength of the Indian Constitution, bring out the inner competence, and put into right direction for the Man-Making and National Building.

## **: CONTRIBUTION TO THE SOCIETY:**

Contribution to the Society by this is project is as follows:-

- 1) It is a first project in India, which flashes out the tragedy being faced by the Migrants Scheduled Castes and Scheduled Tribes in Home-land.
- 2) This project helps to create awareness among the people in the society about the violation of rights of Migrants Scheduled Castes and Scheduled Tribes.
- 3) Admissibility of reservation is denied by the law also declared law which result into a grave violation of Human Rights and Fundamental Rights since 1950.
- 4) The problems and complications are being faced by the Migrants Scheduled Castes and Scheduled Tribes is scholastically got to the bottom of the reality and achieved targeted goals.
- 5) On this project efforts are being initiated to make out a publication on the same title of the project in order to formulate aware the people at large.
- 5) The existing project work paves the way to bring into accuracy for making laws.

Name and Signature of the Researcher

Dr. G. Laxman