ANALYZING THE IMPACTS OF RESERVATION POLICY ON DALITS IN INDIA FROM RAWLS' PERSPECTIVE OF JUSTICE

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A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR
THE DEGREE OF MASTER OF ARTS (HUMAN RIGHTS)
FACULTY OF GRADUATE STUDIES
MAHIDOL UNIVERSITY
2006

ISBN 974-04-7751-8

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Thesis

Entitled

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ACKNOWLEDGEMENT

First of all, I would like to express my deepest and sincere appreciation to my major advisor, Dr. Sriprapha Petcharamesree, Director of the Office of the Human Rights Study and Social Development, Mahidol University for her valuable inputs, creative suggestions, useful comments and continuous feedback form the very beginning. All her kindness will be long remembered with respect.

I do greatly appreciate my co-advisor Ajarn Surat Horachaikul, and Chair and examiner Assistant Professor Ukrit Paetnoi for their valuable comments and suggestion for the completion of this thesis.

I would also like to thank the National Human Rights Commission, Nepal, where I began my human rights work. Furthermore, I would like to thank Hon'ble District Judge Mr. Radha Krishna Upreti for his encouragement and suggestion. My thanks are also due to all my friends of NHRC, especially Mr. Surya Deuja. Special appreciation to Dhaniram Sapkota for his kind assistance as well as insightful suggestions in pursuing high.

I would like to thank my wife Mrs. Anu Jha, who has been a source of constant help and guidance during the whole period of my study.

Finally, I am grateful to the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI) and Swedish International Development Cooperation Agency (Sida) for providing me scholarship, which enabled me to complete my study.

Dipendra Jha

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ABSTRACT

The objective of this study was to examine the impacts of the reservation policy on Dalits in India through Rawls' perspectives of justice, in particular focusing on their right to work and education in Bihar State.

The research reveals that the reservation policy on Dalits in India has not created equal opportunity for the least advantaged groups among Dalits to exercise their rights to work and education. State policies and their implementation have not properly addressed the deep-rooted socio-cultural and economic discriminations and the mind set of the people. Even the laws related to the affirmative actions for Dalits do not seem to be guided by Rawls' twin principle of justice – "equal distribution of liberty" and "the maximum benefits of the unequal distribution for the least advantaged groups".

The reservation policy also fails to create equal opportunities for the least advantaged groups among Dalits to exercise their rights to education and work. Even though the policy envisages reserving a quota for Dalits and disadvantaged people, the prevalent caste-based discrimination in education and employment sector is the major barrier to ensure justice. There is less concern on the issues of re-distribution of land, arrangement of minimum wage to the level of basic needs and dignity for the labourers at the work places. Without considering these elements, the enjoyment of justice to meet the level of Rawls' perspective is not met.

The current policy seems ineffective for the marginalized and disadvantaged groups among Dalits to fight against discrimination and exploitation in achieving the level of justice through empowerment, liberty, primary goods, and gender mainstreaming and protective measures.

Without addressing the cultural and structural hierarchy, it is difficult to ensure liberty which is the main principle of Rawls' justice for the Dalit castes. These findings also suggest that the reservation policy should be implemented in a way that could meet the level of two principle of Rawls' justice.

KEY WORDS: RESERVATION POLICY / JOHN RAWLS / JUSTICE / IMPACTS / DALITS / EMPOWERMENT

98 P. ISBN 974-04-7751-8

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LIST OF ABBRIVIATIONS

Art.	Article
BBC	British Broadcasting Cooperation
BC	Backward Classes
CP	Communist Party
CERD	Committee on Elimination of all forms of Racial Discrimination
FC	Forward Classes
GOI	Government of India
HRW	Human Rights Watch
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
MDG	Millennium Development Goal
NCRB	National Crime Reports Bureau
NCDHR	National Campaign on Dalit Human Rights
OBC	Other Backward Classes
RJD	Rastriya Janata Dal
ST	Scheduled Tribes
SC	Scheduled Castes
TADA	Terrorist and Disruptive Activities (Control and Punishment) Act
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations' Children Fund

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CHAPTER I
THE RESEARCH AND METHODS

I. INTRODUCTION

This thesis analyzes the impacts of "reservation policy" on Dalits in India from Rawls' perspective of justice. Through the conceptual framework of Rawls' perspective of justice, the research attempts to answer whether the policy creates equal opportunity for the least advantages groups among Dalits to exercise their rights or not; especially, their rights to education and work.

The 'Reservation policy' was formally adopted by Central Government for Center and Individual States under the Poona Act in 1931 under British rulers. Later the policy was formalized in 1947 under the provision of Independent India's constitution. (Galanter, 1991: 86).The preamble of the policy proclaims to provide **justice** to those who bore injustice and exploitation since long time. The policy has been implemented with the objective to provide equal liberty to the least advantaged groups of Indian society. Especially, it has been sought to empower Dalits communities to exercise their rights to education and work.

The concept and practice of 'reservation policy' is not new, it has long history with lot of reactions and impacts, and has been criticized by many scholars. N.R Narayana Murthy, Chairman and chief mentor, said "I'm not against reservation, but it should be based on economics and not caste. If a person is hampered by resources, I think those people should be given reservation."[1] The formation of the policy has been intent to provide opportunities to the backward people, who faced social oppressions and to eliminate social discrimination so that they could be treated as equal to every one else. In practice, however, the policy-makers did not take into account the "*social acceptance*" and rights factor.

[1] Human Rights Watch Report, *Broken People,* published in 1999, in the summary section available on www.hrw.org/reports/1999/india/India994-02.htm

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Reservation system that has placed in an affirmative action is, to borrow the words of Nicholas Smith, "preferential access to social resources for persons who are members of groups that have been previously disadvantaged by adverse discrimination"[2]. Those who have faced injustice for too long need preferential treatment to come up at the normal position. However, there are some valid arguments given in support of the reservation system in India. The policy of reservations has been used as a major legal strategy to overcome discrimination and socio-economic injustice. It has existed since the independence mainly because of the discrimination on the basis of caste and class remains the same as it was before in Indian society.

In India, despite affirmative action, many Dalits, especially, in rural villages, are still marginalized, with little access to education, limited resources, and unskilled or menial jobs as their only option (New World Outlook, 1999). The reservation of jobs and seats in educational institutions has been used as effective measure to protect and promote Dalits rights to education and work. However, very few have been benefited from this effective measure. It's very hard to find any interconnections between reservation system and the caste-based discrimination. Caste based discrimination is a social problem, where fixed quota in certain sectors seems to be ineffective measure. That's why, in spite of the policy, almost in all the rural areas the vast majority of Dalits are illiterate. They face the economic hardships, social humiliation and the oppression of untouchability by the so-called "higher caste people".

There is limited concern about the primary level education and the enforcement of the minimum wages in agriculture in rural areas where the vast majority of Dalits are living with inferior status. It is not appropriate to think that the Dalits can enjoy benefits of reservation (quota) by applying for enrolment in various undergraduate and graduate courses of general, technical, medical and other professional education without getting primary or high school education. The

[2] Sukhadeo, (2005) *Thorat in the introduction of his workshop paper for Inter-Regional Inequality Facility*, on Addressing Inequality, *Affirmative Action Policy in India, Dimension, Progress and Issues*.

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reservation in employment is only able to assist limited numbers of people, as government-related jobs are being drastically reduced due to globalization. The agricultural areas have been transformed into industrial zones and traditional occupations are no more sufficient for survivals. Approximately, 80 % of the Dalits population lives below the poverty level. Most cannot afford primary education, so their literacy rates remain very low and only a small minority can benefit from these quotas[3] .

Without looking at its impact to the grassroots level, the reservation policy has been accepted as an effective policy to combat injustice, discrimination and exploitation in all the states of India. On the other hand, government bureaucracy, judicial institutions, and also Parliament are blindly supporting and implementing reservation policies without looking into the specific nature of the interconnections and variations of caste and class oppressions at all levels.

The affirmative action has limited to reservations (quota) in educational institutions, employment and representation in legislation, which has led to a tendency toward the neglect or lack of emphasis on the problems that affect the poorest of poor in these groups. It's hard to find any concern or debate about the evaluation of 'reservation policy' in eliminating discrimination, especially, the reaction of its long implementation. The more concern is that every South Asian governments including Nepal tries to follow the same policy without looking at its impact in India. Therefore, this research tries to look at the impacts of the policy specially in terms of realizing justice and enjoyment of rights. It also tries to analyze whether the implementation of the policy has benefited the least advantaged groups among Dalits to meet Rawls' perspective of justice or not.

[3] *The Delhi belly*, April, 27, 2006.

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II. STATEMENT OF THE PROBLEM

In the recent years, 'Reservation Policy' has become one of the most controversial issues not only in India but also through out the whole of South Asia. Almost all the governments step in power with a slogan to implement the 'Reservation Policy' to protect the rights and deliver justice to the Dalits. They have tried to tackle social injustice of 'discrimination' and 'untouchability' by implementing reservation policy. It is believed that it is the only way to get rid of caste-based discrimination and the same method has been applied all over the India. The formal reservation policy was adopted due to the structural inequalities based on the institutions of caste and ethnicity.

According to the 1999 HRW's report , 'Broken People', most Dalits continue to live in extreme poverty, without land or opportunities for better employment or education.[4] With the exception of a minority who have benefited from India's policy of quotas in education and government jobs, Dalits are relegated to the most menial of tasks, as manual scavengers, removers of human waste and dead animals, leather workers, street sweepers, and cobblers. Most of the reports from local and international non-governmental organization show that the positions of Dalits in Indian societies are still the same. There is kind of rigidity in social structure. The historical exclusion and continuation of the same reservation policy reflected in lack of access to education and employment.

Reservation policy in India has been designed as a policy of anti-discrimination. There are two important features of the provision in India, the provision of principle of 'Non-discrimination and Equal Opportunity' and the provision of empowering state to take steps to ensure equal opportunity. Somehow, it has been construed as concessions extended with the intent of uplifting the so-called low caste people. But when we look at its impacts, it has more negative than the positive, mentioned above, it did not hit the social-cultural structure of dominance or failed to combat discrimination (Rao, 2001) for which it is constructed.

There is no interaction or debate to look at the side effects of the policy, or to

[4] *Broken People-1999*, published by HRW under heading no-vii *Discrimination and Exploitative Forms of Labour*, visit on http://www.hrw.org/reports/1999/india/India994-09.htm#P1695_354939

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look whether the policy able to create the condition to realize justice for the least well off or not. The continuation of the policy by every elected government in India has been used as an instrument to gain popularity or to attract these vast majorities of the people for the coming election (Panandiker, 1997). No single government tries to develop the effective or useful measures to uplift these downtrodden people or to combat the discrimination, so their situations remain the same as it were. That's why the continuation and extension of the same policy implemented by British rulers raises the question, whether the policy violates the rights or it helps to prevent and protect their rights. Now, there are lots of doubt and uncertainty about the effectiveness of the policy especially in terms of responding to discrimination and injustice.

The total reservation for Dalits (known as quota system in India) stands at 45% in almost all states of India and this includes the Scheduled Castes, Scheduled Tribes, and the Other Backward Classes. The Indian Government has used two types of strategies for the Scheduled Caste (SCs) and Scheduled Tribes (STs): (a) legal safeguards against discrimination (b) Pro-active measures in the form of 'Reservation Policy for state sector and state supported sector. Reservation for both SC, ST in government's services educational institutions and political bodies like legislature falls under anti-discrimination but pro-active measures as mentioned in Indian Constitution. The reservation policy is limited to small state run and state supported sectors and the large private sector where more than 90% of the Dalits workers are excluded from the equal sharing of benefits of the policy (Thorat, 2005). The pro-active measures have been limited to use small participation in few public fields. So, when we look at the real situation of the vast majority of the Dalits especially in the rural areas the policy is questionable.

There are very limited pro-active measures under affirmative policy to break traditional discrimination, injustice and oppression of the dominant castes against the Dalits in the social structure of Indian societies. The Indian anti-discrimination policy is limited to 'Reservation policy' in three sectors, which seems to be failure to hit traditional caste hierarchy, which is the root cause of the discrimination. Overall, the current policy fails to achieve its purpose of giving equal opportunity to everyone, because of lack of infrastructure in the rural areas of the country, where the proportion of backward classes is significant (Dholakia, 2005).

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It would be wrong to say that the policy does not have any positive impacts at all. However, it seems very weak to create the condition of justice especially for the vulnerable and disadvantaged groups among Dalits as a whole. The impacts of the policy seem to be very weak in comparison of the rigid, traditional caste based discrimination and it continues in more subtle ways into the present. The social structure has legitimized the discrimination, which is the root cause of the problem, and this factor has been also neglected by reservation policy. It is very difficult to find any provisions in affirmative actions policy, which can be used to transform the concept of the people. The change of traditional concept through public awareness is supposed to be one of the important factors to eliminate any type of discrimination from the grassroots level. Awareness is required not only for those who make discrimination but also for those who tolerate or accept it.

So far, there are many pieces of researches illustrating the success or failure of the reservation policy but it is very difficult to find any research focused mainly on whether 'Reservation policy' succeeds or fails to eliminate caste-based injustice from the grassroots level or not. As far the acknowledgement, no research looks at the implementation of the policy through the lens of Rawls' perspective of **justice**. Because the reservation policy in India has been used as a main political agenda by a few urban elite among Dalit themselves for their political and economic benefits. There is a limited concern to criticize 'reservation policy' such as how it delivers justice or protect the rights of the vast majority of the rural Dalits; especially their rights to education and work. There are no new laws or policies, which can ensure equal enjoyment of basic rights and equal opportunity for the least advantaged Dalits. The Dalits themselves also never raise their voice against the policy rather all their efforts and struggles are targeted to gain certain reservations, as they are misled by their own elite.

It has been used as a main tool to combat caste based discrimination up to present situation which tremendously influencing to many policy makers, politicians, bureaucrats, judges, university lecturers and non-governmental organization activists in this country. Nobody likes to criticize 'reservation policy' due to the fear of

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stamping as an ‘anti-Dalits’. There is less concern to recognize the fact that the problem of caste based discrimination is deeply rooted in the structure and culture practices in the societies.

So, this research paper tries to look at the impacts of the implementation of the policy through Rawls’ perspective of **justice**. The main focus of this paper is to examine the impacts of the policy; especially in terms of rights to education and right to work. It is believed that employment and education are the key factors to gain equal status in Indian social structures. So, the paper has closely analyzed how the policy works ineffectively in responding to injustice, discrimination and exploitation at all level.

III. RESEARCH OBJECTIVES

1. To examine the impacts of reservation policy on Dalits in India through the lens of Rawls’ perspective of justice.
2. To analyze whether the policy creates equal opportunity for the least advantaged groups among Dalits to exercise their rights to work and education or not.
3. To examine whether or not the policy empowers them to fight against structural discrimination, injustice and exploitation.

IV. RESEARCH QUESTIONS

1. Does reservation policy deliver justice to the level of Rawls' perception to the poorest Dalits or does it perpetuate their rights?
2. Has the reservation any connection to break power-relations within the structure of the societies, which contribute to discrimination?
3. Has the policy empowered the poorest and marginalized Dalits to exercise their rights to work and education to enjoy the level of Rawls' justice?
4. Why do the vast majority of the Dalits face the same problem of injustice and discrimination in spite of the long implementation of the policy?

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V. HYPOTHESIS

According to Rawls' perspective of justice social structure of domination where the discrimination is deeply rooted can not be eliminated through the reservation policy.

VI. RESEARCH METHODS

This research has used qualitative paradigm to analyze the impacts on Dalits' rights to education and work. It has been carried out through documentary research. The research uses the available official as well as unofficial documents, field research documents conducted by many scholars and institutions. Apart from these documents, newspapers, books, magazines, articles, journals and others related to Dalits rights and reservation policy have been closely addressed. The research also uses written papers and the Internet resources to understand the nexus between the target groups and policy statements on education and work.

i. International human rights documents relevant to the Dalits' especially UDHR, ICESCR, ICERD, Discrimination (Employment and Occupation) Convention, and 1958 (No. 111), ILO and other treaties.
ii. Indian Government policy, papers and legal cases.
iii. Secondary research data available on the topic. Looking at the historical background of affirmative action policy, the socio-cultural context, looking especially at the reservation in government jobs.
iv. Human Rights Watch and Dalits' NGOs research documents
v. Newspaper, books, magazines, articles, journals, case studies available on Dalits rights.

VII. ETHICAL CONSIDERATION

The research on Dalits requires respect and sensitivity. So, it is necessary to ensure that this research doesn't have any direct and indirect impact on their lives. This research is not against the premise behind reservations, as it has been implemented with the intent of uplifting the people who were oppressed socially for a

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long time. The research is fully concentrated on the impact of the policy on Dalits' rights or the way their rights are perpetuated due to the policy. There is no doubt that the long-term socio-economic injustice needs specially appropriate measures for removal.

The research is not against any type of beneficial steps taken to uplift the condition of the Dalits rather it can be contributive in their struggle to fight against historic injustice. All these elements have been considered during the research period. Accountability and transparency in terms of collecting information are the two key elements of the ethical considerations that have been used in this research. It is the right of research subject; group or organization to determine and decide when, how and to what extent information such as their experience can be shared with or withheld from others.

It uses some of the important information and research documents of Human Rights Watch. As the research is the burning issue in South Asia, it requires great sensitivities especially in terms of analyzing the documents.

I have also given due recognition while making citation from the other sources of information. I have mentioned bibliography and acknowledged in the body of the text as well. I have become fully aware while taking an idea, phrase, or story that has been quoted from another person's work and they are given due credits.

VIII. RESEARCH SCOPE

Dalits' rights to education and work is the prime focus of the research as it is interlinked with basic needs for survival and the way to overcome the discrimination. This research has analyzed only the outcome of the implementation of the policy especially in terms of responding injustice. As the research has used Rawls' **justice** framework, it is not necessary to limit it in certain period of time.

Although the policy has been implemented throughout the country, the research has focused mainly on Bihar, India's second most populous state after Uttar

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Pradesh. Half the size of Germany, it has a larger population than Germany and Austria combined. Bihar, whose name is derived from the Sanskrit word Vihara (monastery), is studded with Buddhist monuments and historical sites, one of the most important being Bodh Gaya where Lord Buddha attained enlightenment 2,500 years ago. The state borders have been connected with Nepal, which have the same problem of the caste system. The border areas of Nepal connected with Bihar have the same language, culture and way of living. The practice of cross border marriage system and existence of open border create common identity.

The state has very poor economic condition and class armed struggle. Dalits constitute around 15 per cent of the state's population but they hold less than two per cent of the cultivated land. The social struggles are largely due to prevalent inequality, and often result in clashes between landowners of high castes and landless Dalit labourers. Active Dalit resistance in Bihar started in the 1960s, when landless labourers aligned themselves with Maoist revolutionary groups, which has its impact now not only in Bihar but also in Nepal.

IX. THESIS' STRUCTURE

The thesis is divided into six chapters. The first chapter deals with the research problem, framework and methods applied in this research. The second chapter looks at Rawls' perspective of justice. The twin principles of liberty and difference have been used as main guidelines for analyzing the Dalits reservation policy in India. Third chapter entitled reservation policy and Dalits' rights provides historical background of reservation policy in India; reservation and right to education and work; its condition in the State of Bihar. The issues of justice and reservation policies are being discussed respectively. Fourth chapter focuses on social structure and discrimination which highlights social structure and discrimination practices in India. Chapter five tries to analyze the impacts of reservation policies from Rawls'justice perspectives. The chapter attempts to make evaluation whether reservation policy has been able to deliver justice to the needy people. The final chapter recommends empowerment as means to reach justice. It emphasizes that empowerment for the Dalits can provide real justice than reservation policy in India.

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CHAPTER II
RAWLS' PERSPECTIVE OF JUSTICE

I. JUSTICE IN RAWLS' PERSPECTIVE

John Rawls is widely known as one of the most important political philosophers of the twentieth century. Rawls was a Professor of Harvard University since 1921-2002. He died at age 81 on November 24, 2002. He is well- known for his *Theory of Justice* in which, he wants to look at the different basic structures that exist in pluralistic societies and decide which is the most just, and how it is the most just. His primary concern of justice is the laws, institutions and the social system (Rawls, 1971: 2). The basic structure of a society is comprised of the institutions that make up that society. The social, economic, legal and political institutions influence individual's life from birth to death. Any change in these institutions will change the basic structure, and make it more or less just. If these institutions favour certain place over others or if it creates discrimination on the basis of sex, colour, race, religion or political ideology must be reformed or abolished (Rawls, 1971: 2).

His basic idea of justice is to explore the construction of a social institution that does not provide unfair advantage at the expense of others. He tries to justify his two principles of justice - from the notion of an "original position" by focusing on "basic liberties" as rights. In this concern, he provides some arguments to convince of why some liberties should be taken as basic or as rights. Through his arguments, he tries to prove that those liberties should have priority over other elements in the theory of justice. He furthers claims that they have priority over the common good (general welfare) which provides satisfactory position. He develops his two principles of justice from perspective of the moral theory or part of the moral theory in well-ordered society.

The fair distribution of certain primary goods (liberties, opportunities, social and economic positions, income and wealth and self-respect) - is the main objective of Rawls' conception of justice. However, the way of using *original position*, to some

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extent hides some logic behind the primary goods. His initial concern of justice is related to the relationship between individual with the society. For this relationship, Rawls says that "the fundamental political relationship of citizenship is a relation of citizens with the basic structure of society, a structure we enter only by birth and exists until death" (Rawls, 1971: 221). He has presented two principles a) equal basic liberties b) difference principle (Rawls, 1971: 60) as the key aspects of his idea of 'justice'.

Rawls' Principles of justice emphasizes on human rights. It holds the meaning that everybody has the right to be treated fairly and with equity and this can occur providing everyone works for the common good, rather than their own interests. (Piccard, 2005). Although, there is no separate section devoted to 'rights' or 'human rights' but his theory discusses 'rights' as main topic of *justice*. However, there are some critics of Rawls' theory of justice. Such as his each and every arguments like 'rights of basic liberties' 'fair equal opportunity' and others intended to highlight certain set of rights, however, his criteria of *just society* failed to endow individuals with a sufficiently strong set of basic rights (Miller, 2003: 14).

Many critics believe that Rawls' concept of 'original position' is very much conservative which can be unacceptable for the real and natural world. Although, it seems an odd way of presenting two principles of justice by imagining a situation of 'veil of ignorance', but the meaning that would be produced under such a condition is very much relevant and useful in many context. By giving example of imaginative situation, the criteria that Rawls develops for the *just state* is very much appropriate even for the modern state.

There are many scholars who do not see Rawls as an original philosopher, Fleischacker is among them. He has made an interesting observation about John Rawls' theory of justice. He considered Rawls as a philosopher who organized and systematically expressed ideas that had been widely used by social movements and political actors. Rawlsian ideas of justice are an attempt to come to terms

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philosophically with the dissemination of strong ethical claims about social justice into politics over the course of twentieth century (Fleischacker, 2004: 115-116).

Rawls' concept of justice invokes the view that all human beings need to be granted certain basic freedom and given certain basic resources in order to lead a minimum standard of life (Rawls-1971: 15). He strongly advocates an egalitarian approach of justice, which does not require that human beings everywhere should enjoy the same set of rights, opportunities and resources. He is in favour that it should be governed by *difference principle* (Rawls, 1971: 60). In the modern world, the benefit of *difference principle*, in practice, mostly are being enjoyed by the middle class in the name of improving the situation of the least well off (BBC, 19 April 2002). In this regard, it is very hard to say that positive discrimination has been applied in practice in the same form as proposed by Rawls.

Through the difference principle, Rawls allows inequalities and provides very few formal arguments on how inequalities should be maintained so as to benefit the least well off. He provides some arguments in determining how resources are to be distributed. It is the reason many leftists saw 'the difference principle' as a kind of apology for capitalism[5]. While describing *primary goods* he has highlighted about the equality of liberty principle as the fundamental elements of life. He wants every individual of having same level of liberty or he means to say that liberty should be based on the principle of equality. To be realistic, in the present world, it is very difficult to find that the same level of liberty has been enjoyed by all. However, Rawls claims that the equality of liberty must be maintained among different level of people and countries.

Overall, Rawls concept of justice provides framework to judge the actions of the state towards its citizen. Especially, state responsibility towards the poorest and least advantaged groups should be more transparent and result oriented. The two principles of justice give guideline to look at state's policy, implementation and

[4] *The political Philosophy of John Rawls*, published by BBC on 19th April 2002

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outcome, which has been made for the vulnerable or disadvantaged groups to realize justice.

II. GENERAL CONCEPTION

According to Rawls, all social primary goods - liberty and opportunity, income and wealth and the bases of self-respect - are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured (Rawls, 1972: 6).

He mentions social primary goods as an essential element of life. All of the primary goods are treated as the basic rights, but he does not specifically use the term 'rights' directly in terms of primary goods. He treats rights as primary good. Some of the rights like income, wealth, opportunity are economic, social and cultural rights, where as liberty and self-respect are civil & political rights. So, his concepts of primary goods reflect sense of the combination of both these rights. Rawls elaborates rights as primary goods. He gives insufficient arguments to show the difference between material goods and self-respect. He does not make clear difference between self-respect and materialistic things. If we take self-respect in a normal then may be Rawls' explanation of indifference between opportunity, income and wealth and self-respect are acceptable. But if we take it from dignity perspective, its position is higher than other primary goods. His concepts of primary goods are based on three notions:

1. The equal distribution of *primary goods* will make life better off for the people who are now worst off, for example, by raising the living standards of everyone in the community and empowering the least advantaged persons to the extent consistent with their well-being.
2. Access to the privileged positions is not blocked by discrimination on the basis of any irrelevant criteria.
3. These social primary goods: liberties, power, opportunity, income, wealth, self respect and anything any rational person wants and will want regardless of his plan of life or his place in the social scheme.

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III. THE VEIL OF IGNORANCE AND DILEMA

Rawls' ideas of "veil of ignorance" based on imagination and assumption, which without sufficient logic and evidence. He imagined a group of men and women formed a social contract under the "veil of ignorance." Under the 'veil of ignorance' everyone does not know their particular circumstances in their own society or about their individual race, sex, social position, wealth, talents, options, aspirations and (Rawls, 1971: 136). His imagination of 'veil of ignorance', provides sufficient arguments to strengthen his concept. He also emphasizes that the individual has accepted the 'social contract' voluntarily. In spite of lacking the concrete evidence, his arguments of *social contract* and *veil of ignorance* is very much contextual in terms of natural law.

The meaning, which Rawls tries to convey by giving example of 'social contract', is surely valuable even in the present time. Like, he claims that the individuals are free to disobey the rules, which are harmful for them (Rawls, 1971: 138). It is true that every individual has the right to defend him/her from any type of imposed rules. But before rejecting social rules, the individual should be able to give valid reasons. The valid reasons must be based on logical arguments, which have self-evidence in themselves. It should also based on Rawls' ideas of justice.

Rawls' concept of *social contract* is slightly different from other philosophers like Hobbes, Rousseau and Locke. Specifically, he develops what he claims are principles of justice through the use of an entirely artificial device he calls the *original position* in which everyone decides principles of justice behind a *veil of ignorance;* this "veil" is one that essentially blinds people to all facts about themselves that might cloud what notion of justice is developed (Beckman,1997).

"… no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance."

Here, Rawls highlights 'individual interest' (Rawls, 1971:137) and free will to break social rules due to *social contract* under *veil of ignorance.* He emphasizes that If

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an individual feels that his self-interests are ignored in the society, he has right to disagree with any one class of people, and has full authority to develop a scheme of justice that treats all fairly. This argument of Rawls some time can create conflict between individual and group (society). His argument of original position is hypothetical in the sense that the principles to be derived are what the parties would, under certain legitimating conditions, agree to, not what they have agreed to.

It is true that the 'veil of ignorance' reflects some kind of historic picture, which occurred in many societies, but still it can not be applied in all situations. Even in the Post-Modern era, there are many societies in which their members are suffering if they disobey the social rules. Societies still may impose restrictions on those of their members who hold different views or want to engage in practices that are not done by the majority. Except it, there are still many social rules and practices in many modern societies, which were constructed on the idea of prejudice and fundamentalism and manipulated by the few elite for their vested interested. In this regard, Rawls suggested looking from the idea of veil of ignorance at these types of social rules and practices.

Although, Rawls concept of original position under veil of ignorance is in the hypothetical situation, but the principles which he tries to establish have moral weight as a result of that.So, the meaning of his concept of original position is useful to show how the people accepted the social rules in the ancient time.

Rawls uses the original position not to justify any particular government, but to try to establish the principles, which should govern any just society. So, the meaning, which comes out from this concept, can not be undermined in absence of evidence and concrete definition of the original position.

While describing social contract, his explanation makes sense of the presence of rights elements in his theory of justice. It seems a natural development of right element as it centralizes at the protection of individual interest. Rawls enforces the requirements of the constructive model of arguments (Dworkin, 2001: 158). Because of this reason also, the deep theory behind the original position has some sort of right elements. But he explains it in the sense of natural rights rather then legal or conventional. To be realistic, the concept of natural rights has less important in this modern world until it gets legal validity.

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Rawls also disagrees with the concept of utilitarianism, which emphasize that the individual may be sacrificed for the greater good, for he is only a part of a bigger entity-society (Bantham, 1978). Bentham argues that the individual interest can be sacrificed for the pursuit and maximization of pleasure and reduction of pain for the greatest number of people. For the Utilitarian, the desire of the majority in society takes precedence over the individual interest. A few authoritarian rulers in Asia have made the same argument on the name of "Asian Values". They claimed that the individual freedom and self-interest could be sacrificed for the economic growth of the country. They use this type of argument for mere extension of their tenure in the power on the name of **A**sian Values.

For him, individual interest keeps much importance than the social goal. For claming his points, he uses the context of social contract. The basic institution of a well-ordered society must also be structured in such a way that it can protect individual rights (Rawls, 1971: 3). It is true that individual rights are important, but the group rights can also be important in many contexts. His concept of individual interest seems weak to balance between individual and group rights. Both of them have equal importance. One can not be violated for the realization of others. Therefore, it is necessary to balance these two rights as both of them have equal importance.

IV. TWO PRINCIPLES AS THE ELEMENTS OF JUSTICE

Rawls provides several supportive arguments to prove that his two principles are the principle of justice. For this reason, he has used general idea of imaginary contract from original point of view. He argues that a self-interested rational person behind the veil of ignorance would choose two general principles to structure society in the real world (Rawls, 1971: 142). His two principles of justice are built up from hypothesis of a contract. But the contract itself can not be taken as the fundamental premise of theory (Dworkin, 2001: 159-160). Although Rawls uses social contract under veil of ignorance as a supportive arguments to establish his two principles of justice, but it has its own kind of importance. These two principles that compose his theory of justice give liberty an important and dominant place.

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In the first principle Rawls uses the term 'rights' but in second principle he does not use the term 'right' directly. He highlights **discrimination** especially in terms of social and economic inequalities. These two principles of *justice* has provided sufficient ground even in the modern world to to judge the state's policy towards the vulnerable and marginalized groups, especially in terms of how and under what circumstances citizens are obliged to obey the laws which the state creates.

A. FIRST PRINCIPLE: LIBERTY

The first principle of equal basic liberties deals with basic rights. Some critics have not accepted this idea. Martin (Martin, 1985: 28) describes it in terms of basic structure of a just society from original position, so it must be a moral right than the institutional rights. *Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.* (Rawls, 1971 : 24)

This is concerned with the equal distribution of individual liberty as form of primary goods. His explanation reflects the meaning that the liberties should be enjoyed equally by all citizens of a just society, since justice requires them to have the same basic rights in society. It is a legitimate expectation of each and every member in an well-ordered society. Rawls elaborates 'equal basic liberties' with some arguments. It gives the meaning that the basic liberties have been determined in the constitution, they are to be equal for all (Martin, 1985: 28). It provides some guidance as to what liberties are to be institutionalized. In this sense it is said that the first principle lacks essential content and stability (Bowie, 1974: 71).

Rawls uses the term 'basic liberties' which reflects the meaning of rights. His aim to use 'equal basic liberties' means to say equal basic rights for all which cover right to equality with positive discrimination, right to freedom and right to property. Actually, there are different types of arguments about *basic rights.* Some accepts economic, social and cultural rights as basic rights where as other argue that even civil and political rights like freedom of speech and right to life are also basic rights. But my point here is basic rights can be contextual. Like for the people of the developing countries, right to development including ESCR can be the basic right as these rights

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are inter-linked with the right to life. But for the people of Singapore and Brunei, right to development and ESCR may not as basic as freedom of speech. So, basic rights have different interpretation in different places. The other rights also can not be undermined totally, as all the rights are inter-dependent with each other.

Rawls in his revision version, which was made for the German, makes the concept of basic liberties more clear. According to him, the relevant liberties are: right of the citizenship and of the person: such things as the right to vote; freedom of speech and assembly; liberty of conscience; the right to own personal property; freedom from slavery, arbitrary arrest, and seizure and so on. (Martin, 1985: 44-45). All these rights, which Rawls mentions here, are not only civil and political rights but concerned with ESC rights as well. These rights have inter-relation with the economic, social and cultural rights. The sense of basic needs with the term of primary goods and liberty as the basic need reflects some sense of economic, social and cultural rights as well as civil and political rights.

He explains *basic liberties* from original point of view, which raises several questions. Like, was it possible to realize the right to vote and right to own property during the original position? If the individual in the original position was under the *veil of ignorance*, how could they exercise these institutional rights? The purpose of mentioning these rights is very much crucial, although we find it from imaginative position. In this concern, some critics said that the broad categories of rights are not attempted to adjust with the stage of original position (Martin: 1985: 46).

Liberty Principle provides for basic and universal respect for persons as a minimum standard for all just institutions. But while all persons may be morally equal, we also know that in the "real world" there are significant differences between individuals that under conditions of liberty will lead to social and economic inequalities. The right to liberty is based on the assumption of fundamental natural rights.

Liberty is an essential to achieve individual goal. We can summarize Rawls' liberties as the moral rights, which has constitutional guarantee (Martin, 1985: 150).

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He enlists some of rights as basic liberties like political liberty (the right to vote and to be eligible for public office), freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person along with the right to hold (personal) property, freedom from arbitrary arrest and seizure (Beckman, 1997). These basic liberties mentions by Rawls in his first principle must be protected, because they have universal recognition and important to live life as human beings.

The first principle is more or less absolute, and may not be violated, even for the sake of the second principle. He claims that the basic liberties of citizens can not be sacrificed even for economic development.

B. SECOND PRINCIPLE: DIFFERENCE

Rawls' second principle is concerned with equal and fair distribution of all primary goods in society including material wealth and social, economic and political opportunities (Rawls, 1971: 303). He explains it in two different ways. Through these two principles, Rawls means to say that the burden and benefits should be distributed according to the ability and needs (Rawls, 1971: 75). It also reflects that the special performance should be given according to the ability to enjoy them. This idea of Rawls is quite similar to Marxist theory like 'job as per capacity and facility as per needs'. However, this principle does not permit to give performance to those who are well off but does nothing for those who are already disadvantaged or makes their life worse.

Social and economic inequalities are to be arranged so that:

a) offices and positions must be open to everyone under conditions of *fair equality of opportunity*

b) they are to be of the greatest benefit to the least-advantaged members of society *(the difference principle).* (Rawls, 1971: 303)

The second principle is Fair Equality of Opportunity Principle. It means that everyone in a society has the opportunity to have any job or position they want. There is to be no discrimination against someone seeking a job or public office (Rawls, 1971: 83). This gives people right skills the ability to improve their economic or social position on an equal basis.

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His second principle is focused on different treatment among unequals. When Rawls says "social and economic inequalities," his idea reflects meaning of inequalities in power and wealth. He knows that it is practically impossible for everyone to have the same power and wealth, so he says in the principle that those inequalities are allowed. However, he says that those inequalities must "benefit the least advantaged" and that everyone has the opportunity to get the jobs that have more wealth and power attached to them. So, the Difference Principle is ensuring that the least-advantaged person has the maximum benefit. However, it may not implement as a kind of charity; the least-advantaged person has a right to develop his position.

The right to equality is fundamental. The individuals have a right to equal concern and respect of the institutions that govern them. However, human beings everywhere do not enjoy the same set of rights, opportunities and resources. Sometime, it is necessary to be governed by different principle especially in terms of least advantaged. Especially, the vulnerable and marginalized groups need positive discriminatory measures to come up in the equal position. Due to this reason, some critics say that Rawls' difference principle is more abstract (Dworkin, 2001:180). But I think the right to equal concern and respect is very much clear in his theory. He clearly explains that every individual must get equal treatment and respect from the institutions that govern them. The state should develop the policy to raise the living standards of everyone in the community and empowering the least advantaged persons to the extent that they can enjoy equal rights consistent with others.

This is the dilemma of the modern world that the powerful men and women get more concern and respect than others. Rawls' theory is against this kind of discrimination on the basis of certain identity like race, colour, class, gender and religion. In this sense, Rawls has defined original position to enforce the right to equal concern and respect though *difference principle.*

V. PRIORITY AND EFFICIENCY

Rawls' theory reflects the ideas that the liberties have some sort of priority over primary goods (Rawls, 1971: 43). His principles of justice are to be ranked in

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lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases: (a) a less extensive liberty must strengthen the total system of liberty shared by all; b) a less than equal liberty must be acceptable to those with the lesser liberty. This theory provides good and sufficient arguments in favour of the priority of liberty over material goods.

The 'lexical priority' means that it is only between possible situations that all satisfy rule that any choice is to be made in accordance with some other considerations or values. He also address the fact that there will be situations where these two primary principles will be in conflict with each other. Rather than compromising between them in such cases, he takes the position that there is a specific priority (Kilcullen, 1996). He also emphasizes that within the second principle, fair equality of opportunity is lexically prior to the difference principle (Rawls, 1971: 89, 303). The serial or lexical priority of the first principle to the second means that "we must satisfy the first principle in the ordering before we can move on to the second" (Rawls, 1971: 43).

The first priority rule states that Rawls' principles must be established in "lexical order," meaning that the first principle comes before, and therefore limits, the second principle. Rawls says this to prevent people from "trading away" some of their liberties for an economic advantage, however it does not limit to economic advantage only (Rawls, 1971: 40, 43). He believes that the liberties granted in the first principle are the liberties that you can't deliver in any condition, and the first priority rule is his way of preventing you from doing it (Rawls, 1971: 42). Liberty can only be restricted "for the sake of liberty," meaning that your rights are only limited by someone else's rights. The only way to restrict your liberty is if it violates someone else's liberty.

Rawls mentions two exceptions. The first is that a "less extensive liberty must strengthen the total system of liberty shared by all." This means that limiting someone's liberty must somehow make the rest of our liberties better protected. The other exception is that if there is unequal liberty, the people with the lesser liberty must be willing to accept it.

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The second priority rule outlines which other principles take priority. The first half says, “the second principle of justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages.” The second principle comes before, and therefore limits, both the principle of efficiency and the principle of maximizing the sum of advantages, which are very similar principles.

The other half of the second priority rule says that fair equality of opportunity comes before the *difference principle*. This means that only after people can try to get whatever job or position they want can the *difference principle* begin to have an effect on the least-advantaged. The second priority rule states that if there is an inequality of opportunity, the people with less opportunity must somehow get increased opportunities, which is similar to the difference principle.

The principle of efficiency states that you cannot make more of one product without making less of another, or in terms of distribution, you cannot give one person more of something without giving someone else less. It is a complicated way of saying, “All people are getting the most they can.” Maximizing the sum of advantages is a way of saying almost the same thing. It means that people are getting the most advantage out of the rights they have; the “sum” of their rights is as high as it can be. Rawls believes that these two principles must be in place to satisfy the Difference Principle.

Surely, it is necessary to observe that whether the inequality maximizes the benefits for the worst off or not. If the inequality lacks efficiency for the least advantage then it has to be reconsidered. All these arguments are acceptable as long as it benefits the vulnerable or disadvantaged groups. The Vienna Declaration on Human Rights 1993 has adopted the view that all rights are inter-dependent and have equal importance, so prioritizing one right over another may not be acceptable in contemporary world. One right can not function in absence of other. There is no value of right to life in absence of right to food.

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VI. GOOD VS. RIGHTS

Rawls' theory signals that his two principle of justice is based on the notion of rights elements rather than the general welfare program. The general well-fare program looks at the goal of improving the economic and social condition of the people in a community by using particular conception of *good*. To achieve this objective, well-fare program applies the same methodology for all. This is the single way to deal with different people and their different type of needs and ability. But according to Rawls, each individual has his own interest and ability. So, he disagrees with the general welfare project in absence of rights elements. Rawls also suggests that the elements of rights are essential to uplift the condition of the vulnerable and marginalized, where the individual is placed at the center and takes his decision as the fundamental importance (Martin, 1985: 69-72). The presence of rights elements and priority of vulnerability are two key elements (as he mentions in his first and second principles) to achieve the targeted objective of the policy. The reservation policy in India, this has been implemented with the goal to improve the life of Dalits as a whole since long time. But as the policy ignores these two elements at the implementation level, the result seems ineffective at the grassroots level. In this sense, Rawls theory of justice reflects some ideas of protection and promotion of rights to deal with social inequalities.

The just institutions are those who work in favor of everyone's self-interest. It is inappropriate to think that the parties to the contract have no duty at all. Every one has some duty while claiming the rights. Because some body duties are always inter-related with somebody rights. But it is useless to say that duty means to be silent at the humiliation or acceptance of degrading self-respect. His theory of justice provides the way to achieve resources and opportunities without loosing basic liberty or self - respect. The common *good* approach sometime can violate basic liberty or right of the individual. So, he emphasizes on the protection of rights as the central point of **justice** theory.

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VII. RAWLS AND RIGHTS

In terms of human rights, Rawls makes it clear that his criteria fall under numerous covenants on human rights adopted by United Nations since 1948. While describing human rights, he mentions about 'decent society' and its functions. He says that 'a decent society' people's system of law secures for all members of the people what have done to be called human rights (Rawls, 1999: 65).

Rawls lists (Rawls, 1999: 82) human rights as the right to life, right to freedom of conscience, freedom from slavery, serfdom and forced labor as well as the right to private property and formal equality. Rawls makes it clear that the decent society protect the basic rights of the individuals. He says that respect for human rights simply becomes one criterion for a society being decent.

Rawls also claims that there were many society, which already recognized human rights domestically but later agreed to respect internationally (Rawls, 1999: 28). For him, 'just society' requires to respect human rights. Rawls mentions some specific rights accepted internationally, specially, those rights necessary for living dignified life, which covers some economic, social and cultural rights including civil and political rights. Rawls believes that no society is called 'just society' unless it offers its members the full set of rights. Rights for Rawls are not free-floating claims, of the sort called morals (Rawls, 1999: 28)

VIII. JUSTICE AS RIGHTS

For Rawls, a right is an individual legitimate expectation as to what he would receive in a just institutional distribution of primary goods (Martin, 1985: 69). As his concept of *justice* is determined by two principles, the kind of things that could be rights is primary goods, liberties, income and wealth. The sets of right mentions in his two principles of **justice,** like right to basic liberties, right to equal opportunities, income and wealth mentioned have a place in Universal Declaration of human rights. Many countries now have incorporated some of the UDHR provisions as fundamental rights in their Constitutions.

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The *rights* and *justice* has the same objective of advocating equality, freedom and non-discrimination. Rawls also does not make any difference between rights and justice. In fact his first principle of justice is *the rights to equal basic liberties.* Similarly, he mentions several rights as justice (Martin, 1985:125):

- Rights to basic liberties and non-injuries under the first principle
- Rights to certain economic liberties (e.g., free choice of occupation) under the fair equality of opportunity part of the second principle
- Rights of certain other opportunities (e.g., income, wealth) under the same part
- Protection for the rights of least advantaged groups
- The rights to equal concern and respect under second principle

All these rights in his theory have been defined as justice. Rawls' principles of justice have been produced from certain sets of basic rights and therefore *rights* and *justice* have been overlapped by each other. The way Rawls has presented two principles of justice as rights through *original point* of view needs literal interpretation.

Rawls' concept of *justice as fairness* rests on the assumption of a natural right of all men and women to equality of concern and respect, a right they possess not by virtue of birth or characteristic or merit or excellence but simply as human beings with the capacity to make plan and give justice. (Dworkin, 2003: 182). It is true that 'justice' requires right to be exercised by all on the equal basis, which requires a liberal constitution to restructure social and economic institutions that can provide equal opportunities to all.

IX. MODERN STATE AND JUSTICE

Rawls' concept of 'justice' is not absolute universal theory of justice that will fit in all circumstances at all times and all places. His concerned is to find out some sorts of 'principle of justice' that would guide the state to be 'just' towards its citizen. He tries to answer, "what responsibilities does the state have towards individual and what rights the individual have in the state, how can the decisions of the state be

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justified, and on what are they based, what should the state do to create the environment of justice for its citizen?" (BBC, 19 April 2002).

He uses justice in a legal sense, like 'just state' for Rawls means a state with democratic traditions and the broad support of its citizens for its institutions (BBC, 19 April 2002). His concept of "preference" tries to address the issue of unequal distribution of resources viewing the vast gap between rich and poor in the capitalistic societies. The decision taken for the distribution of resources can have serious impacts on the life of the poorest. It is more unjust for the state to rule its own citizens by implementing the policies, which favours the few only. So, it is necessary for the just state to be more cautious while enacting the laws which should have positive effects to the life of the poorest or to redistribute resources in order to live minimum standard of life.

The re-distribution is not only efficient but must be adaptive according to the needs and ability. The utility is also dependent on psychological features of the individuals. The state while implementing any policy for the least advantaged, it is necessary to observe social acceptance and psychological factors of the individuals. It is necessary to look at the condition whether a person is able to achieve it or not. A person substantive freedom can be measured by looking at his/her capability to achieve (Sen, 1999).

Rawls concept of 'justice' seems very radical (BBC, 2002). An equal basic liberty is relatively uncontroversial but fair equality of opportunity requires many changes to the way that most societies operate. His concept seems to challenge the whole system of capitalism and suggests the responsibility of the state to regulate it.

The whole economy system to be changed to improve the lot of the least advantaged groups. It is true that his arguments seem idealistic to implement in the modern states, where inequality is deeply rooted in all spheres of life. The large number of people in a modern state is under the line of poverty whereas the few is on the climax of richness. Some are dying due to the lack of food whereas some are living luxurious life. But 'justice' requires prohibitions of discrimination in realization of

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rights on the grounds of race, colour, sex, language, religion, caste or any other status. Discrimination may not be justified under any circumstances, such as low levels of development. Moreover, policies are considered discriminatory if their effects are discriminating in practice, even if those effects were not intended. Here Rawls is in favour of positive discrimination.

The lack of political will on the part of policy-makers and failure to use human rights in development process are some of the biggest obstacles in the modern states, which weaken the justice system of the most states. Besides it, error in the method of production and discrimination in distribution also prevents the vulnerable or disadvantages groups to realize justice. The basic rights of these groups are violated mainly when a government does not allocate sufficient resources to basic level, or when these services are undermined through corruption, or when the institutional structures necessary to deliver these services are deliberately neglected.

The failure to satisfy essential human needs by the poorest is the indicator of human rights violations and failures of state justice system as well. Many of the modern state fail to meet these criteria developed by Rawls to be *just or ideal state*. There are many societies in the contemporary world that allows the people to respond in a discriminating way, which do not live by principles of justice.

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CHAPTER III
RESERVATION POLICY AND DALITS RIGHTS

I. THE HISTORICAL BACKGROUND OF RESERVATION POLICY

The British ruler introduced European legal system in India under capitalist economic structure (Shah, 2001). This capitalistic legal system had tremendous impacts on the life of Dalits especially; it perpetuated their economic social and cultural rights. In 1930s, the British rulers defined Dalits, such as “depressed classes”, “exterior castes” and “Scheduled castes”; the term exterior castes appeared for the first time in the census of India (Yagati, 1999: 85). After that, the Dalits started uniting and they put forward some of their demands such as admission in school (right to education), appropriate wage (right to work), walking on public roads and entering in temple (freedom). But the colonial state did not agree with their demands. Even the Privy Council in London fined Rs 500 to Nadras for the necessary purification as they entered into temple (Hardgrave-1969). Therefore, during the colonial period Dalits were suppressed. On the other hand Dalit organizations continued to pressure the Anglo-Indian government to create space for them to exercise their rights. Dalits also felt that why should they depend on the colonial government for the protection of their rights.

Dalits also pressurized Indian National Congress to look over the issue of Dalits, but as most of its members are from high caste, they did not respond over their demands (Yagati, 1999: 93). But the British government felt that it was good chance for its government to get sympathy of the vast majority of Dalits. So, they announced separate representation from Dalit community as the protective measures (Shah, 2001). Their aim was to sustaining colonial rule by appeasing the so-called higher class people in India. The British implemented the Act of 1909 with the aim of strengthening their government. Divide and rule like policy could be useful for colonial rulers in India.

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One side the Congress ignored the voice of the Dalits and another side, Dalits themselves were limited themselves with the political representation. Their concern over rights and justice seemed weak from the historic struggle. They made their demands for the political representation in local bodies and legislative council. It was also supported by the report of the Simon Commission in the late 1920s.

The British implemented European model of reservation, which was popular during First World War as a peace treaty for the protection of minorities in Europe (Shah-2001). In this model, the minorities in Europe had been given some seats as protective measures. Dr. Ambedkar also supported these types of reservation for depressed class population. Among Dalits themselves some were demanding separate electorate where as some wanted more representation (Gupta, 1985). When there is no unity among the affected person it always hampers the achievement of the common goal. Lack of unity among the Dalits was one of the main reasons for unsuccessful struggle for Dalits rights.

In 1932, the British government announced the communal award, which offered separate electorate to Muslims, Sikhs and Christians and a double vote- one as Hindu and another as depressed for Dalits. Gandhi and other leaders opposed the award with the fear of destroying the unity of the Hindu society (Yagati, 1999: 86-87). Dr. Ambedkar, who supported this award, returned back from his position after pressure from Gandhi and other leaders. But Gandhi also accepted 148 separate seats for the depressed class for 10 years. This agreement is known as the Poona Act. The Act in 1931 guaranteed reservation of seats for Dalits, but it did not mention anything about protection of rights.

Even after the implementation of the Poona Act, Dalits felt themselves in the same position. There was no fundamental change in the level of discrimination. The attitude of the colonial rulers in India remained the same. The colonial British ruler used Poona Act as a strategy to make silent of the large number of people. It is a clear example of the law that does not guarantee **justice** until the people for whom it is made to feel. In many cases the good laws are limited in the paper and the real situation is quite different. The same things happened with the people of India. Even after getting independence in 1947, the policy of colonial period has not been changed substantially.

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II. AFFIRMATIVE ACTION POLICIES

Dr. Ambedkar was the chair at the time of framing Indian Constitution and as he himself was from Dalit community, he made certain arrangements so that the backward classes can enjoy certain basic rights and claim for justice. The reservations for the backward classes are of three broad categories: education, employment and legislation. For the first, the Constitution provides for reservation of seats in proportion to their numbers for the SCs and the STs in the Lok Sabha (the Lower House) in Article 330 and in the Vidhan Sabha (The Upper House) in Article 332. These provisions do not exist for the OBCs including other minorities, which indicate that the principal categories for the affirmative action are the SCs and STs according to the Constitution.

The affirmative action policy has been primarily based on the 'Reservation Policy'. It is very hard to find other welfare programs than the reservations that constitute the core of affirmative action for the uplift of these deprived groups. Nobody thinks that reservation policy is only one component of the strategy of Affirmative action policy. Everyone accepts reservation policy as affirmative policy, no difference has been made between these two components, so most of the time these two have been used as one or there is no fundamental difference made between the affirmative policy and reservation policy. So, all the efforts to eliminate discrimination limited to the 'reservation policy' in three sectors. 'The constitution has merely prescribed, but has not given any description of the ground reality. We can make a dent only if we recognise the fact that the caste system is a major source, indeed an obnoxious one, of human rights violations' (R. M. Pal-unpublished).

Apart from the reservation policy, the government has also tried to increase the self-sufficiency of the Scheduled-caste population through financial assistance for self-employment activities but it hardly reached in the hands of Dalits due to the prevalence of corruption at all level (Dholakia, 2005). The National Commission for Scheduled Castes and Scheduled Tribes monitors all the protective measures where as development measures for the educational, social, and economic uplifting of Scheduled castes are implemented by the Department of Welfare. But from these

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protective measures very few have benefited and welfare projects designed to improve economic conditions for Dalits have generally little effect (Radhakrishnan, 2002).

III. RESERVATION POLICY

Reservation Policy falls under anti-discrimination but pro-active measures of affirmative Action Policy. The pro-active measures have been used to ensure proportional participation of the SC, ST in various public domains. Anti-discrimination measures also include enactment of Protection of Civil Rights and it also provides legal protection to Dalit castes. The reservation policy addresses the problem associate with discrimination based on the caste but there are many minorities' communities, who do not fall under this category.

The pro-active provisions provide for "reservations" in favour of two disadvantaged groups the Scheduled castes (SCs) and the Scheduled tribes (STs). These reservations exist: (1) in the state legislatures and the union legislature or parliament, (2) in services under the states, and central government (3) in educational institutions. In addition, some states have reservations in services under the state and in educational institutions in favour of other backward classes (OBCs).

The administrative mechanisms of protective discrimination for the Scheduled Caste were developed chiefly in the 1930s and '40s under the British rule. It was formally adopted by Central Government for Centre and Individual States under the Poona Act in 1931, although attempts, formal and informal, were made by States, Providence prior to 1930. For instance a formal reservation policy was adopted in the small state of Kolhapur in 1902 which is now a district in Maharashtra State. The beginning of the Reservation Policy in government jobs was made in 1931in the Poona Pact. However, the reservation with specific quotas in government services was ordered in 1943 through the British government order, which later further was formalized in 1947 under the provision of Independent India's constitution. (Galanter, 1991: 86).

Through Article 16(4) of the Constitution of India has empowered to make "any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the

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services under the State." The claims of Scheduled castes and Scheduled tribes, as per Article 335, shall also be taken into consideration, consistent with maintaining efficiency of administration, in the making of appointment services and posts in connection with the union or of a state.

It is widely accepted that the core principle of reservation policy must be implemented for short time but in India this constitutional provision has been amended five times, extending the period by ten years on each occasion. The provision is now set to expire in January 2012. There is no discussion on the usefulness of the policy. All the special measures are limited to the reservation in few sectors. There are no steps for the empowerment of these depressed communities. The policy of correcting historic wrong becomes political agenda to win the election. It is very difficult to understand, why the political leaders want to drag the reservation, even it comes under a lot of fire in recent times.

IV. CURRENT SITUATION OF RESERVATION

The reservation policy as the major component of affirmative action policy is known as quota system in India. In many states, now the total reservation quota stands about 45% and this includes the SCs, STs, and the OBCs. The reservation is more popular than mere affirmative action. There are some elite from backward class, who are able to grab all political and economic power based on this reservation. However, a majority of the people who are economically backward is not living any differently than before. Their subsistence is meager and rural lifestyles do not provide them with any of the benefits (Dholakia, 2005). Thus, their social and economic condition remains the same as it was before 56 years at the time of independence. The hot debate is going on between Dalit activists and industrialists. On the one side, the Dalit activists are demanding reservation in private sectors, where as the industrialists are arguing that they can only give jobs on the basis of merit not on the basis of caste. They claim that they can not recruit the unqualified candidates on the basis of reservation.

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The occupational groups like doctors, engineers, lawyers including lecturers were on strike for 15 days in May-06 against the reservation seats in Medical Universities to the Dalits. The government is not in the position to decrease the percent of reservation, as it could be the cause of loosing the support from backward classes. Almost all the political parties are silent over this issue, as they know that it could be harmful for them in the next election. Dalits are also protesting all over the country to protect and for the continuity of the policy. Many times, it could be easily heard that a student from higher caste burnt himself in front of university when he fails to get admission due to reserved seats for the backward classes.

The Mandal Commission Report of 1991 was in favor of reservations in higher education and government services for the other backward classes of India. Angry students belonging to the upper castes and even the Supreme Court Bar Association challenged and opposed the implementation of the recommendations of this Commission (Dholakia, 2005). They started questioning on the report of the Commission by blaming Mandal, who is the chair of this Commission. They refused to accept the recommendation of the Commission. Still, the verbal war between the people of higher caste and lower caste is going on over this report.

In spite of all oppositions to the Mandal Commission Report, reservations in favor of OBCs were upheld to the extent of 27 % and it has been extended and implemented throughout the country since 1993 (Dholakia, 2005). Even the report of the Mandal Commission seems silent over the issue of rights and justice. Nobody raise the issue of human rights and justice including Dalits themselves.

Although, the rights of SCs and STs had nothing to do with the subject of OBCs in the Mandal Report, certain items affecting them were included as issues in a writ petition filed in the Supreme Court (Dholakia, 2005). It is very much interesting at this point that Christians, Muslims, other religious minorities and women are still not given a specific reservation quota at the national level, even though a lot of states offer incentives to these people. There is no discussion about how to protect rights of the Dalits; every effort is limited in giving slogan in favor of the policy or anti-slogan. Like the current slogan in India seems to be “abolish reservation because merit and efficiency are in danger.”

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V. CONSTITUTIONAL PROVISIONS

Indian Constitution restricts discrimination on the basis of religion, race, caste, sex or place of birth (Art. 15) and also has guaranteed right to equality (Art.14Ibid)" Untouchability" is abolished by Indian Constitution and managed punishable offence. It also abolished "untouchability" and forbidden its any forms of practice and enforcement of any disability (Art. 17 Ibid). It has been implemented by the Protection of Civil Rights Act-1955 which declared any kinds of practice on the basis of "untouchability" is crime and managed imprisonment not less than one month and not more than six months and also with fine one hundred rupees up to five hundred rupees. (Civil Rights Act, 1955). The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 mentioned different kinds of atrocities offences and managed imprisonment with fine (Prevention of Atrocities Act. 1989) and also has enchanted the abolition of Untouchability Act, 1955 to remove untouchability. Article 46 of Indian Constitution says that "the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation." But as the article falls under the category of Directive Principles and not Fundamental rights, which cannot be enforced by the state's courts.

When we look at the Indian Government policy of reservation, it has used two-fold strategy for the Scheduled Caste (SCs) and Scheduled Tribes (STs): (a) legal safeguards against discrimination, (b) pro-active measures in the form of 'Reservation Policy' for state sector and state supported sector. Likewise, (c) policy in the nature of informal actions for private sector (namely agriculture and private industry) as part of general development or empower measures. For the second, an implication exists in the constitutional provision - Article 15(4), which allows the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs.

The legal safeguards (protective) component of this strategy includes the enforcement of those legal provisions that make up the Protection of Civil Rights Act, 1955, and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,

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1989; of other state and central government laws; and of “positive discrimination” through reservations in the arenas of government employment and higher education.

Gradually, the constitutional provisions as modified and simplified from time to time are the Article 16(4), Article 16(4A), Article 16(4B), Article 335, and Article 320(4). These articles provide broad space for reservation in educational institutions for the backward classes and the authority of the state to make any required changes with time, as required. Although the state governments are not superior to the Constitutional provisions but they follow the constitutional mandate. They give more priority to their political influence than the constitutional mandate. So, the level of per cent is always up and down and it depends upon the Chief Minister (CM) of the state. Another important factor is that there is no similar provision in all states, in some states the per cent of reservation is high and in some state it is very low.

Although, the Indian Constitution declared abolition of untouchability and make punishable crime but they are not internalize in society in total. It can say that abolition of untouchability is in paper not in totally practice. The constitutional provisions fails to change the concept of the people and untouchability is still prevalent through out the country. The good laws are ineffective to protect the right of the people if they are not able to enforce to the grassroots level. If the enforcement mechanism is weak, the good laws are useless. Sometime, the law itself can violate the rights to maintain all its regulations and norms. So, every law must guarantee the protection of rights at the implementation level. In India there are lot of laws and regulation but they lack the concept of rights and justice at the implementation level.

The statistic below shows the percentage which has been developed on the basis of constitutional mandate:

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Present Percentage of Reservation for SCs, STs and OBCs, in government services

S. No	Mode of Appointment	Fixed Percentage of Reservation for		
		SC %	ST %	OBC %
A.	Direct recruitment on all India basis by open competition (i.e. Through the UPSC or by means of written competitive test held by SSC or any other authority	15	7.5	27
B.	Direct recruitment on all India basis otherwise than (a) above i.e. By SSC or any other authority by not conducting a written competitive test.	16.7	7.5	27
C.	Direct recruitment to class III & IV posts (Group C&D posts) which normally attract candidates from a locality or region	Generally in proportion to the population of CSs, STs, and OBCs in the respective States, Uts.		
	Posts filled by promotion in grades or services in which the elements of direct recruitment, if any, does not exceed 75 %	SC %	ST %	
	a) Through limited departmental competitive examination in Groups B, C & D	15 %	7.5	
	b) By selecting from Group B to the lower rung or category in Group A or B, C & D	15 %	7.5	
	c) On the basis of seniority subject to fitness in Groups A, B, C & D	15 %	7.5	

Source: Commission for Scheduled Caste and Scheduled Tribe-2005.

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VI. RESERVATION, RIGHT TO EDUCATION AND DISCRIMINATION

Education is a fundamental right of human beings and is important means to access to resources and empowerment. It is an essential tool for achieving the goals of equality and non-discrimination. Education has also been accepted as the major tool to achieve the objectivity of human rights. So, it is the first duty of the state to take measures to eliminate discrimination in education at all levels on the basis of caste, gender, race, language, religion, national origin, age or disability, or any other form of identity. Another important issue is that it should be designed in a way to meet their basic learning needs, be able to survive, develop their full capacities, live and work in dignity and improve the quality of their lives.

The Indian Constitution clearly mentions that the state should provide free and compulsory education for all children up to fourteen years. It has also said that the state must make special arrangement to promote the educational progress of Scheduled Castes. But the situation is quite different at state level. Especially in Bihar, according to Deshkal Society, the literacy among Dalits is the lowest in the country, standing at just 19 per cent, and the dropout rate for the community is 61.64 per cent only marginally better than that for Sikkim (61.76 per cent) and Rajasthan (63.20 per cent). The main reason is the lack of enforcement mechanism to implement the constitutional mandate at the state level.

Dalit children, who enter into the premise of school, face discrimination from non-Dalit students and teachers. Mostly, it has been found that they leave the school due to the discrimination and humiliation from others. According to the National Commission for Scheduled Castes and Scheduled Tribes' 1996-97 and 1997-98 Report, the national dropout rate for Dalit children was a staggering 49.35 per cent at the primary level, 67.77 per cent for middle school, and 77.65 per cent for secondary school.

This is clear picture of how Dalits are still far behind the general population in terms of literacy and education. The real situation of education is highlighted by the current literacy rate. Majorities of Dalits are still not able to read and write. According

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to census report 2003 only in Bihar about 70.4% Dalits remain illiterate. Many of them do not complete even their primary education.

A report of union human resources development ministry says, nearly a third of Dalit children at the age of 6 to 11 years fails to get an opportunity to enroll in primary school. Of those who enroll, 78.88% SCs and 86.76% STs drop out by the secondary stage. This is because these children worked as labourers, wageworkers or domestic workers. For example, in higher education, the number of students admitted among the general population is o.47 lakhs (100 thousands=1 lakh) while it is 0.042 million in SCs and 0.01 million in STs (Wankhade, 1999: 19).

There is lack of principle of non-discrimination in educational system, which violates right to education of the Dalits children. The discriminatory and abusive treatment, which Dalits children face at the hands of their teachers and fellow students in educational places, forced them to sit at the back of classrooms. After facing intolerable treatment, they drop out the school, which creates big gap of illiteracy rate between Dalits and non-Dalits. Almost two thirds of Dalits are illiterate as compared to about one half of the general population. Ninety-nine per cent of Dalit students are enrolled in government schools that lack basic infrastructure, classrooms, teachers and teaching aids (Narula& Macwan, 2001:4). Reservation system does not provide any safeguard from these types of errors and discriminatory practices in educational system at the grassroots level.

Right to education for Dalits children is directly interrelated with their parent's economic condition. In many cases, Dalit children need to work as supplementary for their family wages in order to maintain their daily needs. Another important factor is the loss of faith in education as an instrument for socio-economic change. They see several unemployed educated persons in their neighbourhood, so they think it is better to work than to study. Another major aspect on distraction on education is that the Dalits children have not found change in the behaviours of even educated upper caste people towards the Dalits. It has been one of the big causes of frustration with education among the Dalits.

There are also pre-convinced notions that Dalits students are academically less qualified than the other students. Now a day, in every news channel in India, it can be easily seen that the upper caste students are unwilling to be charged as the promoter of

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discriminatory practices. But they denied the allegation that it is not their cause at present and how they can be as their forefathers had discriminated and exploited Dalits. Therefore they say that it is not their fault. Why are they given the punishment through reservation in which an incompetent, undeserving and academically low in merit gets admission? Dalits students are seen as less qualified and below the average merit. In many colleges in Bihar including all over the India, they have been manipulated as “reserved quota” students. Admission and scholarship lists segregate them (Wankhade, 1999:20). In this critical position, it can be easily said that reservation system perpetuates the rights of the Dalits. The important factor is that how the Dalit students are treated by upper caste students and teachers, and also how they perceive themselves after getting chance due to the reserved quota.

There is always question on the merit of the students who passed from reserved quotas. Thus, in spite of academic competency, they have been asked many questions during the interview for employment. The low value of academic capacity some time results in disinterest and confusion. When Dalit students try to oppose these kinds of discrimination, they face more violent and oppressive behaviour from their fellow students. For example, 20 years old Praksh More, a Dalit student of Ayurveda Mahavidyalaya in Satara, was killed by unknown person as he was going to get a medal and a scholarship for his academic excellence. Nobody knows what happened to him, it had a deep cut behind the hand and ear and even a sharp cut on the hand indicated that a sharp weapon was used to hit hard on the head (The Hindu, Madras, 26th March 1994).

In educational sectors of India, the Dalit girls face triple burden of discrimination- class, caste and gender. Mostly, they face harassment from their fellows, teachers and society as a whole. They loose their self-confidence and self-esteem of study as they are victimized everywhere. They do not face restriction only from higher caste and others, even from their own family male members; they are restricted even from stepping out of the house. Even an educated Dalit girl can not take decision on her own and even if she does in the rarest possibilities her decisions are accepted (Wankhade, 1999:19). They are not victimized only from others but even the educated Dalit men who have not given any psychological space to Dalit women. So, there is no space to claim that the reservation policy has ensured the right to

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education for Dalit women. Until and unless, women's equal participation in educational sectors is ensured and the behaviour with the Dalit women is changed, it is impossible to assure the enjoyment of right to education of Dalit women.

A case study of discrimination and torture faced by Dalits children in educational places: in a school in Dhandhuka town, a thirteen-year-old Dalit boy was singled out among several students playing with his Brahmin teacher's scooter. The teacher told the boy's father, a manual scavenger, that he was going to expel the child from school. After much pleading on the father's part, the teacher allowed the boy to stay in school on the condition that the father signs an apology letter. As the boy re-entered the classroom, the teacher threatened the child saying he would not allow him to study or amount to anything in life. Later that evening the boy was found dead on the railroad track, his body cut into three pieces by an oncoming train. In his pocket was found the following suicide note: "*I would not have felt bad if the teacher had abused me. I would not have felt bad if the teacher had slapped me. But because he humiliated my father, I felt very bad and finally when he told me he wouldn't let me study or progress in life, I felt extremely hurt. If I am not going to be able to study and progress in life what is the meaning of living my life?*"[5]

Right to education means education must be accessible, available, affordable and acceptable to all the people. It is equally important for Dalits as well. Reservation policy does not pay proper attention to these points and doesn't guarantee all these elements, which are necessary to be considered. Right to education does not only mean to get academic degree, it must be based on skill building. Reservation in higher education does not guarantee all the elements of right to education. There is need to focus on non-discriminatory and skill building educational system (Thorat, 2006:3). It should also be designed according to the demands of time and market with practicality. Likewise, it should be considered that the reservation itself does not signify the equality among the students in schools and the society. If it can not change the mindset of the people, the major focus and thrust of the reservation policy can not be attained.

[5] http://www.ichrp.org/paper_files/113_w_07.pdf by HRW.

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As Dalits are educationally backward, they need modern skill at a lower expense. Still, many lower-caste people especially in rural areas are marginalized with little access to education, and unskilled or menial jobs as their only options (Murthy-1999:1). Until, the level of quality education is increased, the gap between Dalits and non-Dalits will remain the same in all spheres of life.

VII. RESERVATION AND RIGHT TO WORK

The right to work gives everyone the opportunity to earn a living wage in a safe work environment, and also provides for the freedom to organize and bargain collectively. The right to work does not guarantee that every person will have a job; rather, it means that governments are required to take effective steps to realize the right over time. States violate the right when they either fail to take those steps or when they make the situation worse. Freedom of association, non-discrimination, no arbitrary dismissal, equal pay for equal work, adequate minimum wage, equal opportunity and appropriate rest are some of the minimum conditions for the realization of right to work. This right prohibits the use of compulsory or forced labor. But it is very difficult to exercise the right to work in Bihar, as most of Dalits are ladles agricultural labourers (Kumar, 2001:6). Land is the primary source of livelihood in rural areas that determines an individual's standard of living and social condition. Lack of access to land makes Dalits economically vulnerable and forced them to work under middle-caste landlords who exploit their labours and human dignity. Ladles agricultural labourers throughout the state work for a few kilograms of rice of Rs.15 to Rs.35 (US$0.32 to $0.75) a day, under the minimum wage prescribed in their state (Narula&Macwan, 2001:5). Land reform and increase in daily wages for rural labourers are the main cause of conflict between high caste (Renvir Sena) and the leftist guerrilla's organizations in Bihar. The high caste landlord militias and state security forces have targeted Dalits by blaming as guerrilla sympathizers. In this critical condition, there is no other way for them than to support the guerrillas as they are at the condition of starvation. While demanding their rights and minimum wage, they face a lot of torture from both sides, which has blocked the way to exercise the right to work including other rights.

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Reservation policy is not efficient to make them free from traditional occupation. They are still forced to work in degrading conditions as the bonded labourers working in slave-like conditions in order to pay off a debt (HRW)6. Being Dalits, it is impossible to exercise right to work freely. Migration towards urban areas have in some cases resulted in improving the occupational condition, but the majority of the Dalits still continues to perform their traditional or 'polluting' functions (Narula& Macwan, 2001:13). The cleaning of the whole village, the digging of graves, the carrying of firewood and the disposal of dead animals are also tasks that Dalits are made to perform. A majority of the Dalit rural workforce subsists on the menial wages of ladles agricultural labourers, earning less than US$1 a day (HRW). Those Dalits, who are working in urban areas, work mostly in the private sectors but in the same traditional occupation. There is no way for them to go beyond their Caste occupation. In this way, the ritual barriers have blocked the principle of justice and human rights in Bihar.

Lack of awareness and discrimination in seeking other forms of employment has provided ground for the continuity of traditional occupation. The vast majority of the Dalits still continue to work as leather workers, disposes of dead animals, and manual scavengers. For maintaining village custom, Dalits are made to feel that they should provide free services in times of death, marriage, or any village function. The various protective measure of the central as well as state government seems weak ahead of religious and cultural rigidity. It is not appropriate to think that the social mobility for justice is possible through few reservations in public sectors. It is also true that the government jobs are regarded as a source of prestige and relief from oppressive administration (Glanter, 1984:80-85). But the present dilemma is that in the age of globalization, most of the government sectors have been privatized and private sectors have refused to give work on the basis of reservation.

The general attitude in any working organization regarding the employment of the Dalits is that they got the position due to their caste and reservation. No one recognized their merit and the way of looking at them has no connection with the position they occupy (Shah, 2001:3-5). The general people think that they got the

[6] *See*, Supra note 4.

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position due to the reservation policy. One side those who have selected on the basis of reservation face the humiliation at their work place another side those who work in private and agriculture sectors exploited physically and mentally. This table shows the different percentage of employment in government sectors reserved for Dalits.

Percentage Share in Government Employment (1956-2003)

As on Jan 1	SC	ST	Others
1990	16.97	5.33	78.56
1991	17.90	5.44	77.37
1992	17.18	4.27	78.55
1993	17.12	5.72	77.16
1994	16.90	5.49	77.62
1995	17.43	5.78	76.80
1996	17.00	5.64	77.62
1997	17.60	6.14	76.26
1998	17.64	6.13	76.23
1999	16.70	6.17	77.14
2000	16.36	6.23	77.41
2001	16.41	6.36	77.24
2002	16.98	6.11	76.91
2003	16.52	6.46	77.01

Source: Commission for Scheduled Castes and Scheduled Tribes-1990 to 2003.

VIII. RESERVATION POLICY AND INTERNATIONAL STANDARDS

Reservation policy has been implemented with the objective of ensuring rights of the depressed and exploited people. The core principle of United Nations (UN) has also the same objective of protecting the rights of the people. Especially, since the adoption in 1948 of the Universal Declaration of Human Rights, the international

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community has made some important advance instruments to fight against racism, racial discrimination, xenophobia and related intolerance. To eliminate all forms of discrimination at the national level reservation policy has been adopted and international human right instruments have supported it, due to the objective of ending discrimination.

There are three notions in international human rights treaties, which are supportive in terms of reservation policy under affirmative action policy. a) notion of non-discrimination, b) notion of positive discrimination in forms of special measures and c) provisions on affirmative action. Indian reservation policy is under the provision of affirmative action, which is also supported by special measures.

But there are some fundamental differences at the implementation and output level between national and international arena. Reservation policy in international level has been recognized as 'special measure' for the socially and economically backward class. Some of the traces of 'special measure' can be found in the general comments made by the Committee on the Elimination of Racial Discrimination and the Committee on the Economic, Social and Cultural Rights. Like the Committee on the Elimination of Racial Discrimination in its sixty-first session-2002 has recommended "the state parties to adopt special measures in favour of caste-based groups and communities in order to ensure their enjoyment of human rights and fundamental freedoms, in particular concerning access to public functions, employment and education (CERD Committee, 2002)."

This language recognizes the fact that the caste-based groups and communities are facing the discrimination, so the state can take special measure but it must ensure the enjoyment of human rights and fundamental freedoms. The protection of rights especially in terms of access to public functions, employment and education should be the main objective of the special measures. If the special measures fail to protect the rights, it loses it legitimacy, legality and credibility for the continuation. When we look at the impacts of the reservation policy in India through this benchmark of special measures recommended by CERD Committee, the policy is questionable. Except this benchmark, the state has four types of responsibilities to implement the provisions of national and international standards i.e. responsibility to respect, protect, promote and fulfill. But in many cases, it has not been materialized in practice.

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The Committee on the Elimination of Racial Discrimination (CERD) took a historic step in its 61st Session in August 2002. It openly condemned caste discrimination and similar forms of inherited status as human rights violations (NCDHR). The General Recommendation on Descent-based Discrimination had been unanimously accepted without a vote. This CERD General Recommendation clarifies and specifies for the first time that descent-based discrimination, including discrimination on the basis of caste, is a human rights violation, and provides a comprehensive framework for addressing it (CERD Committee, 2002). In a comprehensive framework, The Committee has also recommended the state parties " to educate the general public on the importance of affirmative action programs to address the situation of the victims of descent-based discrimination (CERD Committee-2002)." Here, the committee has provided the two aspects of 'affirmative action programs' first to educate the general public about the importance of the affirmative action. Second, the program should design to rehabilitate the victims or the groups of victims who are socially and economically oppressed.

These two aspects of affirmative action programs are very much important to achieve targeted objective. The international standard has recommended the 'special measures' as a means to empower the vulnerable and marginalized groups. But when we look at the national level, it has been highly politicized and very far from the benchmark of international standard, so, it brings more negative result than the positive.

Another important factor related to the core principle of reservation policy says that it must be for certain period and for certain people. It can not be implemented for long time and for the large number of the people, it must be implemented until it maintains equality for those who are in the unequal position. It can not be implemented for those who are already in the equal position. These universally accepted principle of reservation has not been maintained in most of the countries including India.

Even in the public interest litigation, the Supreme Court of India, "Enforcement of Minimum Wages" by judges P.N Bhagwati and A.N Sen in 1982, had provided the precedent that "the only solution for making civil and political rights meaningful to theses depressed sections of the society would be to remake the material

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conditions and restructure the social and economic orders so that they may be able to realize the economic, social and cultural rights." This decision is crucial in the sense that it order for the state authorities to ensure enjoyment of human rights in terms of minimum wages to the labourers. It also reflects the ideas of special measures for the protection of rights of the marginalized groups.

IX. RESERVATION IN BIHAR

Reservation is a highly controversial issue in Bihar. This policy remains mostly unimplemented in this state. It was highly controversial especially, when V P Singh introduced reservation for OBCs in 1990 before 16 years. In a sudden move, the chief minister of the state announced 26 per cent reservation for OBCs in state government jobs (Times of India, 1999). The issue had taken the worst form and still it has some impacts.

The upper-caste Brahmin, Thakur, Bhumi-har and others always opposed to the policy. The forward caste politician always tries to activate their supporters to revolt against it. They claim that the state government can not implement reservation for Dalits unless they carry the upper castes with them. They also demand for reservation for higher caste people like Brahmin. The higher Castes in Bihar, are not ready to accept that the reservation has not been made for upper castes; under the Constitution, quotas are permissible only for socially and educationally backward classes (Times of India)[6]. The higher castes also deny 3 per cent of reservation for women irrespective of their caste.

The upper caste Brahmin claims that there are many poor in Brahmin family and it is not possible for their children to get education and jobs. So, members of poor families belonging to upper castes must be regarded as socially and educationally backward and 3 per cent reservation should be earmarked on an income criterion (Times of India). It is also true that there is poverty among upper castes, which led to social and educational backwardness too.

The 26 % of reservation, which has been separated for OBCs, mostly enjoyed by the dominant caste in Bihar like Yadavs and Kurmis and it fails to percolate to the most

[6] http://www.timesofindia.indiatimes.com/articleshow/1651685.cms

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backward castes (Bihar Times, 7 April 2004). It is also difficult for a backward caste woman to compete against upper-caste women and reserved 3 per cent in reality benefit upper caste women.

There is always conflict between higher caste and lower caste over the issue of reservation and some time it can be violent. Due to the political compromise between backward and forward castes, the 3 per cent is available to all castes, it can be availed by needy upper-caste families. In this way, reservation for OBCs would effectively go down from 26 to 20 per cent and upper-caste leaders have the satisfaction that 6 per cent is reserved for them.

When we look at the whole structure of reservation policy in Bihar, it can be easily felt that it is highly politicized. The policy has divided the unity of the society and they regularly fight each other by claiming of being of certain caste. Their academic degree and knowledge do not recognize their identity. It is general habit of the people that they ask caste before asking the education and name. As much of the policy has taken the wider form in the state, as much there is feeling of castecism. Especially, all the political parties including the ruling party RJD used the policy as a strategy to win the election. Almost all the development works in the state have been blocked as the leaders give the slogan of reservation than the development. It is the reason, the economic and social conditions of Dalits are the worst than the other states in India.

X. JUSTICE AND RESERVATION POLICY

Rawls' perspective of justice towards the institutions focuses on equal distribution of primary goods, which traces the primacy of caste-based inequalities. Rawls' two principles of **justice** also aim to end discrimination in the society. The first and main objective of the reservation policy is to eliminate discrimination for the realization of rights. Through *liberty principle* Rawls also tries to highlight the same notion. He also emphasizes that it is the social structure, which creates unequal distribution of liberty (Rawls, 1971). Most of the Dalits are either unaware of inequality or the environment is such in which they have made to realize to accept

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unequal distribution of primary goods. They accept the unequal distribution of liberty as it has been normalized by the concept of heredity.

The high caste control land, economy and political power. They have superior status then the untouchable Castes. According to Dr. Ambedkar, the Hindu social system involved a framework of resource and a scheme of distribution (Ambedkar-1987 A & B). Here, Rawls' concept of justice is very much fit in context of caste-based inequalities for which the reservation policy has been implemented.

The reservation policy is also very much close to Rawls' second principle of 'difference". The policy has maintained the view that it has been implemented to uplift the least advantaged members of the society, who suffers injustice since long time. Rawls' second principle is also based on the same notion, which holds the view that the unequal distribution of primary and material goods can be acceptable as long as it benefits those who suffered injustice and exploitation (Rawls, 1971: 80-83). The main intention behind the reservation policy is social justice, thereby the empowerment of the Dalits and tribal. It also tries to address the vast inequalities that pervade Indian society – inequalities which leave the low castes deprived in everything from education to simple nutrition, not to say the home atmosphere and socializing tradition that equip elite communities with the confidence and articulation to perform better (Shaoo, 17 Feb 2005). As Dalits are the least advantaged and exploited since long time, it is necessary to maintain 'difference' principle. They are the victims of social structures. They accept all the discrimination due to the religious concept and their ignorance, which Rawls also mentions social contract under 'veil of ignorance' and they are deprived of primary goods (Rawls, 1971:75-80) which are essential for life.

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CHAPTER IV
SOCIAL STRUCTURE AND DISCRIMINATION

I. CASTE SYSTEM IN GENERAL

With remarkable achievements in nuclear weapons and economic development, India has been recognized and emerged as one of the most successful countries in developing Asia. However, when it comes to the caste system from human rights perspectives, there are a lot of controversial phenomena not only in few states but all over the country. Of special concerns are human rights issues in terms of discrimination on the basis of caste and gender including untouchability and caste system as a whole. The caste system in India is totally different and new forms of inhuman practices, which are different from the rest of the world.

Since long time, caste system has been normalized and accepted as general phenomenon. The modernization and globalization seems ineffective to change the attitude of the people. The education also fails to change the traditional concept of rigidity. The lists of the classified matrimonial advertisements in the Indian newspapers are the burning examples of this naked truth. The following is one of the example of marriage advertisement published in Times of India.

BRAHAMIN Wanted: a beautiful, educated girl
For a handsome Brahmin boy… .

This type of advertisements can easily be found in countless numbers in almost all the newspapers. Caste is always mentioned in each and every personal advertisement. Doctors, engineers, and professors even those who have received Ph.D., mention caste for mates. The old caste system has survived in modernized form. Even in the 21st century, Hindu psyche exists as same as it was in the past.

The Scholars have different views on the origins of the caste system. They agreed that it is a very ancient institution. Some speculate that the Aryans who invaded India around 1500 BC contributed to the growth of the caste system (New World

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Outlook, 1999). Their complexion and occupation dominated those who were different. They dominated the darker-skinned original residents. Later the British gave continuity of the same domination. They made difference in treatment between the people of dark-skinned and fair-skinned. The British ruler did not try to intervene to stop caste discrimination.

The word "Caste" is derived from European Spanish and Portuguese word "Caste" meaning "descent" or "lineage". After the Portuguese rulers in the 16th century English languages writers used the term in their Indian colonies to the prevailing caste system of graded and hierarchical "Social arrangement" that was based on "descent" or " ancestry (Azariah-2001: 33). Now, the caste system in India is totally inter-related with the occupation and traditional work.

Caste means class, rank, social order specially any of the Hindu classes and hereditary social classification (Gilmour, 2001). Caste is coupled with class and refers to any group, the membership which is determined by heredity with social recognition (APF, 2001). The traditional views of such are explicitly stated in the treatises on Hindu law. The root cause of caste system has been easily found in many Hindu's religious books, for example Veda, Purnas, Upanishads and different smrities such as Manu, Yagyabalkya etc. Mainly on the basis of Manu smriti, which had done misinterpretation of Hindu Philosophy on certain issues, Caste discrimination system was developed. As a result this religious interpretation, discrimination and untouchability is still persistent in Hindu society.

II. DALITS

According to NCDHR, one of the Dalit NGOs in India, the term Dalit means 'broken' or 'crushed' people, it implies a condition of being underprivileged and deprived of basic rights and refers to those people who are suppressed on account of their low birth. In India, Dalit includes termed in administrative parlance as Scheduled Caste (SCs), Scheduled Tribes (STs) and other Backward Classes, the term is so far mainly confirmed to SCs. They are the castes identified by the Constitution of India under Article 341 and put under a Scheduled.

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The British in the Government of India Act, 1935, first used the term SC. Prior to this, some of these castes were included among the Depressed Classes- a category used for the first time at the beginning of the 20th century (Gupta 1985: 7-35). Dalits are commonly clustered together in segregated hamlets at the edge of a village. Dalits constitute over 16 percent of the total Indian population. The 1991 census estimates the total Dalit population in India at 138 million 16% of the total state population. Dalits are not only a socio-cultural group but often represent an economic class as well. They are relegated to the most menial of tasks, as manual scavengers, removers of human waste and dead animals, leather workers, street sweepers, and cobblers (HRW, 2001). They could not draw water from the wells and tanks used by the upper caste Hindus. They have to stay in the separate place, far from the main village. There are some high castes among Dalits who are also staying in the main village, where they face lot of abusive treatment. So, staying outside of village is a kind of freedom for them.

If a Brahman drinks water from a well touched by a Chandala, he should take barley water prepared in the urine of a cow for three days (Parashara Smriti, 1973: iv.26). Dalits are impure, and even their shadow can pollute. Dalits are discriminated against, denied access to land, and forced to work in degrading conditions. The 1971 census figures show that over 80 percent of Dalits are landless compared to 26 percent of the non-Dalit. Studies reveal that 90 percent of those who die of starvation and attendant diseases are Dalits.

By occupation, Dalit men, women, and children numbering in the tens of millions work as agricultural labourers for few pounds of rice or less than a dollar a day. They are being exploited politically, economically as well as in the name of religion (Omvedt, 1995: 72). Dalits dare not even walk in the part of the village occupied by higher-castes. They may not use the same wells, visit the same temples, drink from the same cups in tea stalls, or lay claim to land that is legally theirs. These are some of the discrimination, which are visible everywhere.

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Dalits themselves are made to think that they are inferior and easily accept the humiliation from higher caste by thinking that it will be sin for them if they break the traditional religious principle. According to India's National Crime Records Bureau, in 2000, the last year for which figures are available, 25,455 crimes were committed against Dalits (NCRB, 2000). Every hour, two Dalits were assaulted. Every day, three Dalits women were raped, two Dalits were murdered, and two Dalits homes were torched. Most experts believe that these numbers are grossly underreported, as Dalits are afraid to report crimes to police, because when they do, police often refuse to register or to investigate their complaints (NCRB, 2000).

Still, many Dalits follow the religious principles and give excessive respect to the people of higher castes. They never claim their rights and do not think that they have equal dignity as all human beings. From the very beginning of their life, since childhood they start working for others, which is their daily routine. The whole life is finished in the field with soil, always products huge amounts of grains and rice but die due to the lack of food. They are unaware about the value of education and even they do not encourage their children to study. According to UNICEF Report of 2003, fifteen million children are working in India, and the majorities are from the lowest castes.

Over the years, many Dalits and tribal groups have converted from Hinduism to other faiths to escape widespread discrimination and achieve higher social status. However, such converts often lose their benefits conferred by the government's affirmative action programs because according to the Constitution, reservation is only for those having caste background of Hinduism and those who have not changed the religion. It means if anyone wants to take benefit of reservation, he must be discriminated.

Indian government has developed criteria in determining which caste should or should not be included in BCs, but such criteria may be different throughout India. It was the British, who developed such criteria for the first time in India. J. H Hutton, the Census Commissioner determined the three criteria for ‘exterior caste’. According to

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his report, first, those who are barred from public utilities such as road and tanks; second, religious disparities, which stop them from using temples and other religious places and thirdly, they involved in the services of barbers, leather works and other low categories of works (Hutton, 1933:417).

Dalits and caste system has been largely limited to Hindu phenomenon. The religious criteria have no effect at all even upon the people who change their religion to get rid of discrimination. Even Dalit converts his religion, but he has perceived and behaved same as it was before. In fact, the same types of discriminatory practices exist in Muslim and Christian communities as well. The change of religion fails to change the traditional mentality of the people. The degree and way may be different but the elements are the same as in Hinduism. Many reports excelled the vast majority of depressed classes from other religion, who face the same injustice since long time. It is true that the elements of caste system begin from Hinduism, but it has been transformed to almost all the religion in India. So, it is injustice for the depressed classes in other religions, to limit the benefit only for Hindus.

III. THE FOURFOLD HIERARCHY

Traditionally, there is fourfold hierarchy, called Varna, and consists of Brahmins, Kshatriyas, Vaishyas and Shudras. Brahmins, the priestly caste, who were supposed to be born from the mouth of the God. Kshatriyas, the warrior caste, supposed to be born from the arms of the God. Vaishyas, the trading caste, supposed to be born from the thighs of the God and the fourth group, Shudras, the service caste, considered to be born from feet of the God) are so called "outcaste" or "untouchable" groups, whose very shadow was considered polluting to other castes of Hindus.

The basis of Varna division was based on the labor division of society. According to Linga Purna Varna system was no where and it was started from South Indian sub- continent in agricultural feudal era, which is called Treta Yuga (Parashara Smriti, 1973: 21, 22)

When agriculture system was developed, slavery system arose as consequence of great social labor division, increase in labor fertility and increase in production

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activity. This kind of labor division gradually gave two types of classes namely owner and slave (Friedrich, 1986:193). Then labour division globalizes also in civilization of Yunan, Misra, Mesopotamia, India, China etc (Tokareb, 1989:218).

Origin and practice of the Hindu caste system must have been facilitated by the intense interaction and conflict between the mobile Vedic Aryans, who entered into the Indian sub-continent from the north-west in about 1-2 million BC, and different communities of indigenous people living in the Indian sub-continent (UNDP, 1999:231). Indian sub- continent composed with ingredients of Arya, Mangol, Drabid, and Nigro (Supra note, classic note without year: 20, 17). Aryans were white and non-Aryans were black and other colours (Thapar, 1969: 43). When Aryans won upon the indigenous Indian people in war, they thought themselves superior and defeated people. Indian society compulsorily divided into two groups: Arya (owner) and slave. Between these two groups Arya were divided into three classes: priest, administrator and merchant and slaves who were indigenous Indian defeated groups into fourth class grouped into fourth class. Society was divided into Varna system on the basis of labor division.

The historic division is so deeply rooted that even on touching a Chandala (the lowest among untouchable caste) one should take a bath and look at the luminaries of the sky: a sun, the moon or the stars (Parashara Smriti, 1973: iv.22-24). The Dalits are described as Varna-sankara: they are “outside the system” —so, inferior to other castes but even as outcastes, they themselves are divided into further sub-castes. The Varna hierarchy and the sub-caste among Dalits themselves make a lot of discrimination on the basis of caste not only from upper caste but even from Dalit upper castes. There are different kinds of hierarchy and discrimination at various levels like at first, Varna, Caste, Sub-caste and finally gender.

The Grihay Sutras (the collection of Hindu religious principles which were composed around the 6th century B. C.) which described that the Sanskaras or sacraments begin before the birth of the child and this process of performing Sanskaras lasts for many generations even after the death of an individual. It is expected that each individual offer obligations to his father, grandfather and great-

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grandfather. It also fixed the criteria of ritual purity and pollution on the basis of caste. These types of religious doctrine, which were developed before many years, still, have tremendous impact on the concept and behaviour of the people. Education seems very weak in front of this religious rigidity. Changing the religious concepts are taking as sin and impact of western education. Those who are speaking against these types of dogmas blamed of showing the knowledge and education.

IV. JATIS

Jati is another aspect of caste. Within the four principal castes, there are thousands of sub-castes, also called Jatis; they are different from each other on the basis of occupational, regional and linguistic ground. Jatis are innumerable and ranked but the order of ranking may not as rigid as the order of ranking of the Varnas. A person is considered a member of the caste into which he or she is born and remains until death.

According to R. Balakrishnan, Chairman of Tamil Nadu Commission for Scheduled Castes and Scheduled Tribes, "the caste system is an economic order. It prevents someone from owning land or receiving an education. It is a vicious cycle and an exploitative economic arrangement. Landowning patterns and being a high-caste member are co-terminus. Also there is a nexus between lower-caste and landlessness. Caste is a tool to perpetuate exploitative economic arrangements." Actually, his definition covers most of the things related to the caste system. Surely, the division of Jati on the basis of birth in itself is inhuman act. But the most important factor is why Dalits have developed sub-caste hierarchy among themselves if they are against the caste system. They must break these types of hierarchies among themselves at first; otherwise it will be useless to claim if they are maintaining the same principle.

Jatis are not the same in all parts of the country. Jatis in the three highest Varnas in the hierarchy—Brahmins, Kshatriyas, and Vaisyas—are considered "twice-born" according to Hindu scripture, meaning they are allowed to participate in Hindu ceremonies and are considered more "pure" than the Sudras and "polluting" untouchables. This concept of pollution versus purity governs the activities between

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members of different castes. The touch of an untouchable is considered defiling to an upper-caste Hindu (Fuller, 1992:12*).*

The first question to a person asked all over the India including Nepal is to which *Jati*, he or she belongs. There are two to three hundred castes and sub-castes in every state of India. The last name is more important than the first name. This classification of caste and sub-caste at various levels deeply rooted in the mindset of the people.

These are some of Dalit Jatis found in Bihar		
1. Teli	11. Chamar/Harijan/Ram	21. Koiri
2. Musahar	12. Dusad/Paswan/Pasi	22.Sonar
3. Mallah	13. Kalwar	23.Hajam/Thakur
4. Kanu	14.Sudhi	24.Lohar
5. Tatma	15.Khatwe	25.Dhobi
6. Chidimar	16.Mali	26.Dom
7. Badhae	17.Bentar	27.Gaine
8. Halkhor	18.Kuswadiya	28.Yadav
9.Nuniya	19.Kumhar	29.Haluwai
10.Bin	20.Kamar	30.Dhunia

Source: Report of Dalit Voice-2003, Sitamadhai, Bihar, India.

V. FATE

Fate means ‘destiny’, the metaphysical doctrine of fate was systematically articulated for the first time in the Upanishads (the Upanishads were composed around the 8th century B.C as Hindu religious doctrines), which marked a challenge to the supremacy of the Brahmans and excessive ritualism.

In Hinduism, fate refers to the present state of life as the consequence of the past life. It is very popular term in Hinduism. The term has been used by almost all adults educated or uneducated to refer to fate, luck or destiny in Hinduism. It holds the view that since everything in this life is the consequence of the past life; therefore, it is not in one’s will that changes the fate (The Bhagawad Gita the main religious book of Hindus). It says that an external divine force works all the time to control the universe

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including the Sun and the Earth. It holds that any happenings in the life of an individual are pre-destined, so, it is sin to question the existing structure of domination. As it does not question the existing social order, mainly caste based and other types of 'structure of domination' which promotes discriminatory practices including exclusion.

If any body dares to question the existing structure, he is boycotted by the society as a whole. This is very pathetic experience, a beautiful and talent girl of a small village located at the border area named Bathanaha. Her name is Dally, aged 20 from Brahmin family get marries with a boy from lower caste. Later the whole village boycotted her family and her mother and father also did not allow her to enter into the house. Since 5 years, she has not been allowed to meet any relatives including the parents. Every people of the village including mother and father, says that 'it is written in her fate, so what can we do'. This is the example of the value of fate. Every human error has been given the name of fate. The people do not realize that it is their fault or ignorance or rigidity. When they fail to do any thing, they say that it is not written in their fate. So, the concept of fate is deeply rooted in all spheres of life in South Asia.

The concept of fate is so deep that even while marrying a daughter if the parents fail to give appropriate dowry and due to this cause if the daughter has been killed by the husband and his family, the girl's family think that it is written in her fate. They get satisfaction over the death of their daughter on the name of fate. If the girl marry by choosing herself, it will never be acceptable for the society and if the parent chooses with unmatchable boy, the family blames the daughter of having bad fate. And in this way the girl also accept all the torture by thinking that it is written in her fate. So, she must accept it, as she can not change her fate.

The victims of the concept of fate are those who are in the weakest position in the society, like women, poor and Dalits. For man and rich person the concept of fate does not apply as he can do everything by himself. So, those who are dependents on others like women on men, poor on rich and Dalits on landlords/high caste, are the real victims of the fatalism.

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VI. UNTOUCHABILITY

The Hindu social order of the caste system and untouchability comes in direct conflict with the universal concept of human rights. 'Untouchability', is the most extreme form of discrimination, it was abolished under Article 17 of the Indian constitution. However, untouchability as a social institution was and is kept alive by the use of brutal force; the practice continues to determine the socio-economic and religious position of the Dalits (Thorat, 2004:EPW 25).

Dalits are denied of the most basic human dignity because of their caste position. Continued human rights abuses and violations led to their powerlessness. There is no other way than to accept the fate of their life characterized by exploitation, discrimination and other abuses on the ground of birth. Nothing seems to have changed, as there is a sense of fixity, due to the religious rigidity exists in Hinduism. The Chandala has been declared the lowest of all men. He has been assigned the work of removing unclaimed bodies. Chandalas are called Nirvasita, or exiled, and they have to live outside the village (Michael, 1999:32).

Even the people who are well educated do not sit and eat with the people from Dalit community. The people from higher castes do not drink water touched by the people from lower castes. Even at the time of festivals, when Dalits are invited, they are not given food on the plate and they are not allowed to sit in the same row. Their line is at the last and far from the line of others. This is the clear picture of untouchability, which can be easily seen every where in India including Nepal. My mother never gives food in our plate to the man who works in our field for 30 years. As he is from untouchable caste, he has been given food on the leaf of Banana at the corner of the house. I myself can not change the concept of my mother, as she can never tolerate my advice.

These types of traditional social practices are based on religious faith. They have been made to feel inferior and untouchable. When they try to improve their living standards they had to face a lot of social and economic hardships. Perhaps the most effective weapon that helped in the perpetuation of the untouchability was the institutionalized biasness and denial of access to educational and economic resources. Untouchability is based on hypocrisy in Hindu societies. Many of the high caste landlords in rural areas have illicit sexual relationship with the Dalits women and girls.

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Making sexual relationship by using different types of influences and powers including economic and coercive is taken as Purusartha (male powerfulness). There is no issue of untouchability to make sexual relations with Dalits women for the high castes males. But, when their daughters and sisters have even simple conversation with Dalit males, it is results in brutality. In most of the cases the Dalits males have to face brutal death. The untouchability for high castes people are limited in light and public places. The darkness and secret places give freedom from untouchability. They maintain it just to show the society and hold power position among them.

It is also true that there is some flexibility due to the effect of media and Indian movies nowadays, but it is limited in urban areas. Still, if a tea-stall is run by someone from Dalit caste, there will be no buyer, without his any fault. In the village areas, the situation remains the same as it was. Most of the time, there are some verbal wars between young generation and old generation. The young generations to some extent do not make these types of discrimination and do not practice untouchability at a large scale, basically in urban areas.

VII. THE SOCIAL AND ECONOMIC CONDITION OF DALITS IN BIHAR

Despite democracy in Bihar at the state level, the whole sphere of social, economy and political laws and practices are based on the power relations, hierarchy and domination, where the discrimination is deeply rooted at all level. The election here is free but not fair as a large amount of money, power and slogan of caste has been used to get the votes (Bihar Times, 5April 2005). The system of social, economic and political governance is not based on the principle of liberty, equality and justice but on the principle of inequality in every sphere of life. The only one political party called Rastriya Janata Dal wins the election since long time. Therefore, the power remains in the hands of same person with the lack of transparency and accountability. There are many traditional, religious and cultural practices, which promote discrimination and inequality, at all levels. The social practices remain feudal, hierarchical and authoritarian.

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The vast majority of the population of 86 million work on the land, producing only enough food for their immediate families (BBC-16 November 2004). The Rural Bihar has a feudal society, where caste barriers are rigidly enforced and where landowners live in big houses while those who work on their land live nearby in mud huts. The society has divided due to this big economic gape, which lade to political violence.

The huge social divide has led to political violence between extreme left-wing insurgents, who target the landlords, and private armies maintained by the landowners themselves. The huge financial gap between the ruling class and the poor has not only led to communal tensions but also to the growth of an extreme left-wing Naxalite insurgent group (Rawat, 2006)[8].

In agriculture field, most of the peasants are the Dalits. The landlords on the name of debt trap them, where they can not get wage for his and her daily labor, they just receive over one kilogram of wheat, rice and beans. But they have to work all day and everyday only for their landlords. They cannot work for others as they receive an acre of land from their masters. The agriculture workers, who are mostly from the Dalits community, have been reserved by the landlords who are from the high caste, as the bonded laborers, where they loose their freedom and appropriate wage (Bales, 2000)[9]. The peasants' family under the bound of landlords receives two things, the daily bag of grain and access to a small plot where the family can raise other food (Indian HR Report, 2005: under section of Bihar state). They are available for work at any time and don't have right to work for anyone else or to leave without master's permission. They have lost all the right to free movement and to sell their labor as they choose. They have to work for long hour and have to face discrimination like they have to eat a piece of bread with salt by sitting far from their master.

In this way, Dalits are denied access to land, forced to work in degrading conditions as the bonded laborers working in slave-like conditions in order to pay off a debt (The Hindu, 20 August 1998). The agriculture laborers are forced to work as bonded labor till they return the loan with exceptionally high interest rate mentioned

[8] Rawat, V.B. (visited on 08 May, 2006), *Land Reform and Reservation: Undoing Historic Wrongs*, available on www.rld/south_asia/285704.stm

[9] "*Disposable People, and New Slavery in the Global Economy*", under the sub-heading of India

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on registered or stamp papers. The failure of the state governments to implement land reform legislation has resulted in economic vulnerability. Extreme poverty and discrimination in the administration of justice perpetuates many rights of Dalits. Like all things in Bihar, even anti-poverty projects for the poorest Dalits only benefit the upper caste (Indian HR Report, 2005: under section of Bihar state).

The state government survives on the slogan of "social justice" in order to get support from Dalits communities. However, the demands of the peasants as a social class continue to be ignored, neglected and suppressed (Kumar and Rohtak-2004)[10]. In addition, Dalits are the victims of the increasing conflict between the landlords and the low caste ladles peasants (by the private Renvir Senas and the Maoist groups). The development of their social and economic condition has been plugged into conflict and violence. Though Dalits issues have always been the central question for all political forces, these parties failed to uplift their economic and social conditions (The Hindu, 20 August 1998).

The Indicator of Social & Economic condition based on Caste Inequality-2000-India (Figure in Percentage)

Indicators of Development		**SC**	**ST**	**OC**	**All**
Poverty					
1.	Poverty-percentage of poor(Rural) in %	36	46	21	27
2.	Poverty-percentage of poor(Urban) in %	38	35	21	24
3.	Poverty of Agriculture Labor (Rural) %	46	61	39	45
	Poverty of Agriculture Labor (Urban) %	58	64	45	49

[10] 2005 *Bihar elections: Laloo against Who*?" Economic and Political Weekly, December 18, 2004

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The Indicator of Social & Economic condition based on Caste Inequality-2000-India (Figure in Percentage) (cont.)

Indicators of Development		SC	ST	OC	All
Poverty					
Mal-nutrition and Under-nutrition					
1.	Infant Mortality	83	84	62	NA
2.	Child Mortality	39	46	22	NA
3.	Percent age of children with Anima	78	79	72	NA
4.	Under weight Children	21	26	14	NA
Access to agricultural Land and Capital Assets					
1.	Value of total Assets per household in Rs-1992	4918 9	52660	134500	107007
2.	Percentage of self employed cultivator	16	48	41	NA
3.	Percentage of wage Labor (Rural)	61	48.6	25	NA
4.	Percentage of Casual Labor (Urban)	26	26	7.0	NA
Unemployment Rate (Rural) Current Daily Status		5.5	3.0	3.4	NA
Non-Agriculture Wages of Rural Labor in Rupees		61.06	54.38	64.9	NA
Literacy					
1.	Literacy rate Rural for 2001	51.16	45.02	62.55	58.74
2.	Literacy rate Urban for 2001	68.12	69.09	81.80	79.92
Percentage of Non-Agriculture workers		27.07	15.80	32.2	NA
Discrimination and Atrocities					
1.	Number of registered case of discrimination (1999-2001)	14030	876	-	-

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The Indicator of Social & Economic condition based on Caste Inequality-2000-India (Figure in Percentage) (cont.)

Indicators of Development		SC	ST	OC	All
Discrimination and Atrocities					
2.	Number of registered cases of Atrocity (1999-2001)	81796	7645		
3.	Number of total cases of Discrimination and Atrocity (1992-2001)	285871	47225		

Source: Thorat (2005) "Persistence Poverty-why SC and ST stay chronically poor" DFID working Paper (2005)

VIII. EXPLOITATION OF LABOUR

The Dalits in Bihar face all forms of discrimination from denial of minimum wages to the denial of entry in schools. Any body who demands a higher wage can be branded as "Naxalites" (Maoists). Their protest for rights always suppressed by the landlords and security forces by branding as revolutionary.

The labourers even do not enjoy the freedom to migrate to other parts in search of better wages as most of them remain tied to individual landowners by what is called Daskathia system. It is a direct form of bonded labor, which also reflect some kind of slavery system. Under this system, a landowner grants 10 Katha (a little less than half acre) of land to a labourer who cultivates and keeps the harvest (HR Report-2005). In return, he has to be always ready like a machine for the landlord. If the labourer is unable or unavailable or refused to attain to his master call, the land granted to him is confiscated along with the standing crop and, if harvested, he is forced to pay the rent for the entire year (The Pionneer, 2004). This type of system is the direct violation of the universal concept of human rights as well as the sprit of the Indian Constitution, which proclaims of social justice.

In September 2004, poverty forced Dhiran Devi, a Dalit resident of Ambedkar Colony in Hajipur, to sell her two and a half month old son to some women in Patori

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village of Samastipur district because of hunger and debt (HR Report, 2005). There are several Dalits in many villages in Bihar, who are forced to do exploitative labor or the situation is that they can not avoid such work. They have to carry the excessive load some time more than hundred kg on their head every day at many times, which could be a cause of physical harm. But as they do not have any other option than to accept the physically harmful work. One side is death, due to starvation, another side is physically harmful work. According to Indian Human Right Report 2005, Ramavatar Bhuyian of Chhapel village of Nawada district died due to starvation. It can be easily heard time by time in Bihar that the people from Dalit community die due to the starvation.

As they were born in Dalit poor families, in spite of hard labor, they have to face hunger through out of their whole life. It is the tragedy of the distributive policy of the state that Dalits farmers are dying of famine in front of well-stocked landowner's house. There are surely some loopholes in developing the rules and standards that they are dying without access to food. This is the clear picture of the economic injustice deeply rooted in the society of the state. The laws and practices are negatively affecting them to exercise their rights. So, the exploitative labor and lack of resources for survival is the direct form of violation of right to work including other economic rights in Bihar. The unequal distribution of resources creates economic injustice for the Dalits. But the state as well as the central government seems silent over this issue of injustice and violation of rights.

IX. CLAIMS FOR RIGHTS RESULT IN VIOLENCE

While claming for rights, Dalits always face violence from state and non-state actors. While they demand their land rights, they have been blamed as Naxalites belonging to the guerrilla organizations, which are using violence as a means to achieve, land redistribution. Surely, these Naxalites have got some support from Dalit community but even those who are not their supporters face brutal violence from state security forces and private militias of high castes. The Naxalites groups have carried

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out attacks on higher-caste groups, killing landlords, village officials and their families and seizing property.

Dalit villagers believed to be sympathetic to Naxalites and have faced raids by the policy in search of the guerrillas and their weapons. During the raids, the police have routinely beaten villagers, sexually assaulted women, and wantonly destroyed property.

According to NCDHR report, “the higher-caste landlords in Bihar have organized private militias to counter the Naxalite threats. These militias, or Senas, also target Dalit villagers believed to be sympathetic to Naxalites. Senas are believed responsible for the murders of many hundreds of Dalits in Bihar since 1969. One of the most prominent militias, the Ranvir Sena, has been responsible for the massacre of more than 400 Dalit villagers in Bihar between 1995 and 1999. In one of the largest of such massacres, on the night of December 1, 1997, the Ranvir Sena shot dead sixteen children, twenty-seven women, and eighteen men in the village of Laxmanpur-Bathe, Jehanabad district Bihar. Five teenage girls were raped and mutilated before being shot in the chest. The villagers were reportedly sympathetic to a Naxalite group that had been demanding more equitable land redistribution in the area. When Ramchela Paswan returned home from the fields, he found seven of his family members shot: "I started beating my chest and screaming that no one is left...." When asked why the Sena killed children and women, one Sena member responded, "We kill children because they will grow up to become Naxalites. We kill women because they will give birth to Naxalites."[11]

This is only one example of violence except it, there are several cases in which the whole Dalit village face brutal violence including death and rape. Ironically, while the people have been fighting for their rights to minimum wage and land rights, they faced systematic violations from the State government. There is no significant support from civil society organizations for the Dalits to seek their rights and to get justice.

[11] Indian Human Rights Report-2005, under the state of Bihar.

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Law or legal system also was used to legitimize the violations, and judicial institution involved in criminalizing the people who try to claim their rights.

X. THE STATUS OF DALIT WOMEN

It is true that the Dalit community as a whole face various discrimination and they are fighting for justice since long time. But when it comes to gender perspective, Dalit men are making more discrimination with their wives, sisters, daughters and mothers than the people from higher caste. Dalit women are more vulnerable not only from outside but with in their family. They have no major problem with the higher castes, but within their Dalit community, they face more discriminatory and inhuman behaviour from the men (Vetschera, 1999:229).

Except their own household work, Dalit women work long hour in landlord house including field, but they do not get payment in money. They get prepared food of previous night, which was remaining. Dalit men spend much money on alcohol. Often, there is no money to buy vegetable, oil and medicine for the children. What they will eat tomorrow is the bigger question for women, because they are worried about the children, but men don't worry so much, as they take alcohol and often beat the wife (Vetschera, 1999:250).

The men from high caste think that the women should not live alone, in childhood with the father, then with husband and brother and finally in the old age with the son. In case of Dalit women, to some extent they enjoy more freedom than the rural high caste women, but they have been blamed as having no morals (Pawde, 1945:145.). Even in high caste in Bihar, when the women try to enjoy their freedom of movement they have been also blamed as having no morals. So, freedom for women is the symbol of loosing morality. When the women come out their home for any work, they have been perceived as characterless not only from high caste but men in general.

The Dalit men, who are educated and economically strong, most of them have married a girl from Brahmin caste. In a sub-caste hierarchy, if a high caste among

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Dalit marry a girl from Brahmin, his father does not protest, but if he wants to marry a girl from Dom (lowest among Dalit), his father will never allow. So the concept of caste hierarchy is not only limited to high caste, it can be easily found among Dalits also. Dalit family is male-centred. As the families are getting economically strong and educated, the freedom for women gradually restricted (Wankhade, 1999:19). They can not step out side with out the permission of male. So, on the one side, Dalit men claim that they do not in traditional principle of Hinduism, on the other side they apply the same principle to the women of their family. So, this is the big question, why they apply double standard?

In a society, Dalit has a low position and he is treated badly by the high caste, but when he comes in his home, he wants to be treated with respect from his wife. He tries to show his supremacy over the women in the house. This is the regular activities found in Dalit families. Those who are fighting or demanding for equality and justice do not follow its principle in their behaviours. The true concept of justice is that every human being must give to every other every right he claims for himself.

But it is not their mistake only; the social environment is such that they have been made to realize to do such things. These types of social norms are so widespread and rigid that the Dalit men also can not keep themselves far from it. The blame of making discrimination towards their women does not go directly to them. It is the society and social structure, which must be responsible for it. This shows that all the road of discrimination ends on the Dalit women.

The Dalit women are the most vulnerable and any attempt to access justice resulted brutality in the form of murder, killing and rape. For example:

In July 2004, Sumitra Devi, a Dalit widow and resident of Jhapa Udan village in Muzaffarpur district (Bihar), was held hostage for 24 hours by village headman Ambika Ram and his supporters. They cut her hair, beat her, stripped her and poured acid on her private parts. The victim was meted out such inhuman torture because of an alleged illicit relationship with a villager who disappeared mysteriously. Police rescued her on 27 July 2004 after receiving information that she was being held hostage and took her to the hospital. But she spent an entire night in pain outside SKM

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College hospital in Muzaffarpur before being admitted for treatment. A hospital doctor reportedly confirmed that she was tortured like an animal. Source (The Deccan Herald, 8 October 2004 “Dalit Woman’s horrible ordeal”)

XI. UNFAIR JUSTICE TO DALITS

Any type of discrimination is the symbol of the social injustice and the rule of law can not exist in the presence of discrimination. So, the principle of justice requires the elimination of all kind of discrimination from the grassroots level. The question can be raise on the whole process of justice if it limits to the paper. If we judge the level of justice from this benchmark in Bihar, the result can be very poor almost absence of justice. Indian Human rights report-2005 has clearly mentioned that Bihar remained the most lawless state in India.

The extreme poverty and excessive ritual formalities make the life burden for the poor and marginalized community. Lack of transparency and discrimination in the administration of justice scattered all the hopes of equal treatment and human dignity. The only way for the oppressed people is to knock the door of the court for justice. But excessive formalities, procedural complexity and expensive arrangement for reaching the court have blocked the last way of justice. Even if they reach the court by crossing all these obstacles, there is least chance of getting justice due to the existence of corruption at all level. For example:

In April 2004, the Supreme Court of India in its judgement upheld the conviction and life sentence given to 18 activist of the Maoists Communist center under the Terrorist and Disruptive Activities (Prevention) Act (TADA), for the attack on policy forces at Bhadasi village in Jehanabad in Bihar in November 1998 (The Statesman, 7April 2004). The media for defining terrorism congratulated the Supreme Court, while the petitions pending before the courts for prosecution of alleged culprit for the massacre of the Dalits family by Ranvir Sena (HR Report, 2005). It shows that all the state rules have been made for the weak and poor. The strong and rich are out of the grip of judicial system.

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The rule of law does not mean the protection of the rights of the few. The poor also has the same rights as the rich and the rule of law is meant for them also. Though, today it exists only in paper and not in reality. If the landlords have the fundamental right of property to keep large scale of lands by exploiting the labor of the poor, have the Dalit peasants no any right to earn through their sweat and toil for minimum living standard?

If the fundamental rights of the poor and helpless victims of injustice are not enforced through the court, than what is the way for them to go ahead? If the court can not help them to get justice, why the life sentences punishment? If the enjoyment of rights requires to go beyond the laws, then it must be accepted by the authority.

The vast majority of Dalits in Bihar have no access to justice, so now they loose their faith in the existing social and economic system. They are deprived from right to justice. There are lots of cases, which can prove that the poor Dalit get unfair justice from the court. If they are fighting to restructure the social and economic order and historic injustice, what are their faults? The Courts must be sensitized to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generation (Antony, 2000: case no 20).

Justice for Dalits means economic strengths and social equality, which requires new change in terms of social economic order. This new social change can be possible if the judicial system is to become effective to protect the rights of the victims. Looking at the legal procedure is not sufficient to deliver justice. It requires looking at the vulnerability and condition of the poor Dalits. Sometime, the protection of rights requires looking beyond the laws.

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CHAPTER V
ANALYZING THE IMPACTS FROM JUSTICE PERSPECTIVE

I. DOES RESERVATION DELIVER JUSTICE?

There is no doubt that the reservation succeeded in raising the representation of persons from the SCs and Tribes by in some sectors. However, the reservation policy has many flaws. First, it has a "discriminatory bias against other religious minorities like Muslims, Buddhist and Christians, who do not benefit from such policies". If we look at the situation, these religious communities are also vulnerable and discriminated since long time. Especially, the large number of the Muslims all over the India faces the same kind of discrimination and exploitation. Their economic and social statuses are not very much different than the Dalit community as a whole. Even in terms of liberty as Rawls mentions in his first principle as the essential element of justice, the religious minorities in India face different types of discrimination and exploitation. The recent example is Gujarat Violence on February 27, 2002, in which around 2000 Muslims was killed by the Hindu extremists (Khan, 2005:229-231).

The policy emphasizes caste or tribe rather then income or wealth. The reservation has been implemented with the objective to bring about an improvement in the living standard of those who are economically and socially depressed. But, while looking at the criteria, who should be eligible for reservation, it has been a person’s caste rather than his income or wealth. Consequently, the actual socially and educationally backward classes have not been benefited from reservation in practice, many of these groups could not be regarded as “backward” are the real beneficiaries of the policy. This has meant that well-off groups from the depressed classes have captured many of the benefits of reservation. For example, Chamars, Dom and Mushar from the SC are the real victims of the caste system but they have failed to take any benefit from the policy.

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There are a large number of `so called lower caste' families, who live in big and expensive homes, have their own cars, while they pay lower fees in government colleges due to the reservation seats of themselves in educational institutions. They are also obtaining greater representation in locally and nationally elected legislative bodies due to the caste vote bank. Every where they are moving to grab the opportunities, while majority in the crisis of food and basic needs.

If we look at the impacts through Rawls' difference principle in India, the reservation policy that was targeted for the least advantaged groups, really means further upliftment of rich and those who can manipulate the system. The rich and powerful persons are grabbing all the benefits of reservation on the name of social justice. There is minimum place for the poor, marginalized and oppressed backward class. In many cases, it has been found that the people from so called higher caste make the certificate of being Dalit and they change their last name. These types of people use power and money to get the certificate of Dalit. The reservation policy ignores social or economic condition, rather it requires certificate of certain caste. So, how can the policy protect the rights or deliver justice for those who faced historic injustice? This is the big question on the continuity of the policy but unfortunately, substantial change is unlikely to take place immediately.

There is no doubt that the so-called lower caste has been an oppressed lot in India for a long time. But the reservation is not going to solve problems in absence of quality education. If the government does not take any effective step to improve the level of education from primary to secondary and even in University level, then the outcome of the reservation could not bring social justice. Because of the lack of emphasis on quality and skill building education, the policy does not mention specifically to offer the same level of education to the children from depressed section of the society. If they get the same level of opportunity, there would be less demand for the reservation. Subsequently, they can be qualified for all examination through free competition.

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The caste discrimination is closely interrelated with the economic status. Those who are economically well off, need not face the level of discrimination as the poor Dalit. In such case, there is less possibility of discrimination against economically well off Dalits from the so-called higher caste people. Therefore, until and unless the economic status and discrimination are not linked up, the policy on reservation cold not brings the expected outcome, which can meet the elements of Rawls' justice.

Moreover, the reservation itself is a hidden form of discrimination based on caste. Those who are selected on the basis of caste always segregated and get stamp of different identity through out the entire life. Every one recognizes him/her of being Dalit and treats them in discriminatory way. The discriminatory behaviors are reflected in the work place as well as in the educational sectors.

Without looking at the impacts of caste based reservation policy in India, the state practice is continuously directed towards the same policy. They are more concerned about their vested political interest rather than opposing the policy. There is less concern about the economic support to the students from the weaker sections at the primary and secondary level. Many Dalits in rural areas lack the minimum nutritious food and medical support.

According to Indian Human Rights Report-2005, large number of the Dalits in rural areas of Bihar are the agriculture workers, where they work in an exploitative condition for a kilo of rice. But there is less seriousness over this issue, the reservation also fails to protect the right to work of the poor Dalits. Article 23 of the Universal Declaration provides "Everyone has the right to work, to free choice of employment to just and favorable conditions of work and to protection against unemployment". But the already disadvantaged majorities are very far from the access of benefits from the reservation. In addition, the over emphasis on the policy has hindered the adoption of other measures for the benefit of the oppressed class.

The lack of quality education and discriminatory treatment faced by the Dalit children at the educational places are in direct conflict with Article 26 of the Universal

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Declaration. This Article mentions that “Everyone has the right to education technical and professional education shall be made generally available and higher education shall be made equally accessible to all on the basis of merit”. The reservation policy seems silent over the major issues such as lack of basic infrastructure, classrooms, teachers and teaching aids (Narula& Macwan, 2001), that are the urgent requirement for the poorest backward classes. This policy unfairly denies access to education for the disadvantaged majority, which is the clear indication of the violation of right to education propounded in the international instrument of human rights. In such circumstance, these primary goods should be enjoyed equally by the least advantaged members of the society as Rawls suggests, other wise the existence of injustice will remain the same as it was before.

II. BEYOND THE REACH OF THE MARGINALIZED

The reservation policy has tried to compensate the group of so called lower caste, who suffered social discrimination, through the mechanism of justice. But the mechanism, which chose to uplift them, has proved more harmful to meet it goal. The victims of social discrimination are deprived in utilizing this mechanism of justice. Even after the 60 years of caste based reservation, they are not able to stand on their own feet to compete with others.

There is no doubt that the Dalits are in need of special kind of protection mechanism for their dignity, equality and justice in order to exercise their rights. The researches and statically indicators have revealed that the reservation policy is not the panacea to eliminate the social evils such as caste based discrimination.

The coin has also another side. For example the individual from upper caste, who is economically backward and is facing the same kind of labor exploitation from the owner is not getting due attention while framing policy on reservation. This has been the challenging question for the state policy and reservation. Similarly the following example reflects one problem related with such policy:

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> *"In Punjab's Irrigation Department, for instance, an engineer, who was a Scheduled Caste got accelerated benefits at all levels — admission to the engineering college, getting a Philip's job, and later out-of-turn promotions at the level of XEN, SE and Chief Engineer.*
>
> *His peon, however, was an upper caste and hence deprived of all the benefits that his boss was getting. The peon used to grumble that if his son had to apply for a job, he had to spend so much money on the application fee etc. But his boss, whose income was many times more than his pay, could apply "free of cost". Similarly, the peon had a long list of grievances".*[12]

This is the clear example of the impacts of the policy, which shows all the benefits are enjoyed by the few, where the majority of the marginalized and disadvantaged groups are beyond of the reach of the benefits. Besides this, the policy also creates vast gap between the rich and poor in absence of other protective measures.

The present opportunity structures have been monopolized by few elite of the marginalized sections of society and that the underprivileged Dalits, Adivasis and other Backward Classes (OBCs) do not get much benefit from the present reservation system (Richpal, 1998). It is also a known fact that there are many in the "forward" communities who are economically worse off and stand victimized for no fault of theirs, which is big dilemma of the policy. There is weaker mechanism to judge the impacts of the policy. The least advantaged groups are very far from the benefits, even they are ignorant about the policy, so the question of delivering justice to the least advantaged groups as Rawls suggest in his principle, remains a Herculean task.

More-over, the present reservation system divides the Indian society deeply and it also raised conflict among different sections of the society. On the one hand, the

[12] A.J. Philip's article, *Why some are so poor some so rich*, on www.tribuneindia.com.

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people from higher caste claim that their right to equality and non-discrimination has been violated by the policy. On the other hand, the people from Dalit communities have been making demand for more reservation. Therefore, the caste system is not only the main reason for the discrimination in the present day but the way of remedy given them are itself creates the condition of being discriminated (The Hindu, July 4, 1998).

Some of them who have been benefited from this policy clearly know that it fails to bring justice for the victims of the caste discrimination. But they do not express against the policy in order to reach on the height by using the same ladder. Interestingly, they also feel uncomfortable when they see a lot of "lower" caste ascending through the same ladder. There are also some schools of thought, which argue that such preferential treatment could threaten to the national unity, equal treatment and the abolition of castes as set out in the Indian Constitution.

There are rarely debates and controversies about the protection of rights for the marginalized and oppressed section of the society. There is still less attention on the principle that the primary goods and basic liberty could be delivered through non-discriminatory treatment from the people of higher caste. The discriminatory treatment still exists at different levels of the society. In this context, the reservation policy fails to meet the target point.

It may be wrong to argue that the Government is unaware about the adverse impacts of the policy. In many states government of India have taken some positive actions over this issue, however the results is not encouraging. For example, a few years back, the Government of Tamil Nadu decided to reserve 15 per cent of the seats in professional courses for rural students (The Hindu, 20 August 1998)[13]. This new step, of course, provides chance to the few students from villages to get admission in medical colleges. However, the actual beneficiaries were not the selected from the group of marginalized rural students unlike the government preferences. Rawls' concept of justice requires that the inequality is justifiable as long as it benefits the poorest among poor. But those who were benefited from the golden opportunities were the students from urban areas from the rich Dalit family who were selected merely on

[13] Pramod Kumar *Many beneficiaries of rural quota from upmarket schools* in *The Hindu*, 20 August 1998.

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the basis of their ancestral land located in the rural areas. Therefore, the initiatives and efforts taken by the government to implement the policy seem to be ineffective, where the exploited groups are always lagging behind.

III. SOCIAL JUSTICE IN DILEMMA

Reservation policy has been implemented with the objective to deliver social justice to the people of oppressed class who faced injustice since long time. Whether the success or failure of the policy in achieving the overall objective could be scrutinized through the development indicators on the oppressed class people. However, some academicians, politicians and people in the high ranking are in favour of continuation of such policy.

The key decision-makers should consider and evaluate the overall impacts of such policy before urging for the continuation of reservation. More specifically, they should understand the situation of grassroots level people while framing such policy with aim to achieve social justice.

Due to the weak mechanism of protection for the Dalits, the Indian society is still ridden with caste divisions with many forms of atrocities, oppression and discrimination. Therefore, the children of the so-called lower castes are being deprived from education and job opportunities.

The previous experience of 58 years and more after formal independence shows that social justice cannot be achieved merely through caste based reservation. The issue of social justice emerges frequently which indicates that the policy of caste based reservation has not effectively addressed the root of the problem. It has failed to empower the vast majority of the depressed classes to exercise their rights to meet the level of Rawls' justice.

The issue of social justice should be considered in the broader perspective. At the operation level, especially in context of the victims of the caste hierarchy, requires many interventions such as ensuring the access to all public facilities on the principle

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of equality and non-discrimination including access to quality education, health care, access to water. It requires that the perpetrators of caste based oppression should be brought into justice. For the achievement of social justice, the state requires a well-planned, funded campaign to systematically educate and mobilize the entire population against the evils of the caste system and the urgent need to root it out (Statement of CP, 2006:1).

Moreover, Rawls' two principles of justice require social awareness to end the practice of the caste based discrimination system. The notion of superiority and inferiority of human beings based on the religious ideology can be positively transformed through education.

But the caste-based reservation has been a tool to win the sympathy from the vast majority of the people. They failed to understand the intention of the British colonialists, who introduced the policy of caste based reservation by diverting the anti-colonial mass protest through the divisive policy. That's why they reduced the slogan of 'social justice' to mean nothing but the reservation of quotas for the disadvantaged castes (Statement of CP-2006:1).

The policy of caste based reservation has many negative impacts in the Indian society. It perpetuates caste identity and caste consciousness among the people. It also fails to address the demand for education and jobs as basic rights. The policy also divides the ranks among Dalits but does not decrease the oppression and exploitation. The crime and atrocities against Dalits are increasing each year. Therefore, the measures to achieve the objective of gaining social justice are in crossroad at the present movement.

Beyond the reservation policy, the Government has not implemented any effective plan for the realization of rights, especially the basic rights to education and work. The child from the depressed sections of the society fails to get quality education, which is the only means of empowerment. The discussions made in the pervious sections have already shown that most of the Dalits in Bihar at the state level

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still continue the manual work at low wages. Their labor is exploited by the landowner in the rural areas. They are deprived from the access of the primary goods necessary for dignified life as human beings. Therefore, it is necessary to guarantee the basic right of everyone irrespective of caste, gender or any other consideration for the realization of social justice in practice. Moreover, the people who are vulnerable need special protection and support not on the basis of identity but on the condition of vulnerability in order to achieve the objective of the difference principle of justice.

IV. DALIT WOMEN-VICTIMS OR BENEFICIARIES?

The Dalit women in India and particularly in Bihar are the most vulnerable among all. They face triple burden of discrimination at caste, class and gender level. They are deeply influenced by the economic hardships and gender oppression at all levels. The women in Hindu society are not only being victimized by the so called upper caste groups but they are also facing same kind of discrimination from their husbands and male relatives.

Many girls are still being discriminated on the basis of gender even in Dalit family. They have limited access to education as compared to their brothers. Social evils such as dowry and child marriage are a common practice among Dalits in Bihar. Due to the dowry system, the daughters are supposed to be the economic burden for the family and after marriage they have to face domestic violence. In spite of all these violence and discrimination, the policy of the State fails to address all these issues. The only program of affirmative action centralized in urban area has limited to the scope of reservation policy. Due to the lack of education and awareness, women are bound to accept all the discriminations and violence.

In many rural areas of Bihar, 90 to 99 percent of Dalit females are still illiterate. But the reservation policy fails to address the gender issues in the field of education and employment, which is deeply interconnected with the caste discrimination. It does not provide any performance to the poor rural Dalit females, who are the most vulnerable and victimized in comparison of other poor rural groups,

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and Dalit males. Due to the lack of gender sensitivity, the vast majority of reservation action policies and programs which are targeted towards the rural areas, the poor, women or Dalits do not necessarily reach perhaps the most disadvantaged group - i.e., poor, rural Dalit females (Seenarine, 1996).

The reservation in education in higher study does not address the problem of physical abuse, or violence against women, in school, which is the main reason for dropout by the girls at the primary level and secondary level. Another important factor is the distance to school for girls, in absence of transportation and male support, they can not reach the school. In many families, the father admits the son in private boarding school where as the daughter is admitted in government school. The development in education among Dalit males at all levels could be linked to the increase in dowry related incidents of deaths among Dalit women. Educated Dalit women find it hard to find a marriage partner as educated females are considered a threat by the in-law family (Seenarine, 1996:12-13). It does not only found in rural areas even in urban and educated family, it generally happens.

As the policy has been implemented since long time without looking at the specific nature of the cross cutting issues of gender, caste and class oppressions, it has further victimized the Dalit women by keeping them away from the benefits. They have been victimized, as their socio-economic status remains the same even after the 50 years of the implementation of the policy. There is still wider practice of discriminations on the basis of castes, gender, class, urban and age bias in policies and programs (Seenarine, 1996:1-2). Only the few urban Dalit male, who are already in the equal position, were benefited from the policy, where as the Dalit girls from rural and even from urban areas are seldom benefit.

The rape, public humiliation, sexual abuses and violence are used to control over the women, the case of barbaric treatment against Sumitra Devi (mention in chap-iv) is only the tip of the iceberg on the violence against women. It is clear that the policy of delivering social justice would be meaningless in the absence of effective mechanisms of the protection of the rights of women. Therefore, the social justice must cover both male and female.

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Liberty is the most essential element for human beings to live dignified life as Rawls mentioned as the essential element of **justice**. However, the women in Indian society always face lack of freedom. Many girls and women have limited mobility to travel outside of their home with out accompanied by male. They have been made to realize to be dependent upon the male. So, their participation in any sectors is very low especially in absence of education, which is the only means to empower them. But the policy lack of emphasis to create opportunities for the Dalit women to participate in various sectors. So, their representation is considerably very low or almost none in many organized sectors.

The affirmative action policy has been limited to reservation in educational institutions and in jobs. There are limited concerns about other program, which can be more effective to address the serious concern of the oppressed classes. The affirmative action is a broad policy, which covers many program and protective measures. Actually, the reservation policy is only one component of the affirmative action. But in India, it has been perceived as the one. This perception of reservation policy as the affirmative action has resulted in the negligence or lack of emphasis on the problems that affect the poorest of poor in these groups. The enforcement of the minimum wages in agriculture sectors and women's education at all level is left behind.

Moreover, the policy also lacks the program for social awareness, which can be the sharpest weapon to reduce the caste and gender discrimination from the grassroots level. To change the traditional and religious attitudes, it is necessary to educate the society at large. Except it, the policy also fails to empower the women to challenges all kinds of violence and discrimination. From this aspect, it can be concluded that the women are not the beneficiaries of the policy rather they are victims in many senses. So, the dream for achieving equal liberty as an element of justice remains unfulfilled.

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V. CREATING ELITISM AND HIERARCHIES

The reservation policy that has been implemented with the good objective, paradoxically, has resulted in strengthening hierarchies among Dalits by creating a new elite, which is against the spirit of Rawls' perspective of justice. If some one from Dalit communities reaches on a high position due to the reserved seats, he starts thinking himself different from other Dalits. They also continue the same kind of discrimination and the feeling of superiority after education and jobs are generally resulted in elitism.

The concept of elitism and hierarchical values are central and dominant through out the Indian Society. These are also known as "elite's structure", which are influential and shaping various socio-economic and political process in the country. These types of elite's structures are not always enforcing through coercive power, but by various ideological, economic and educational supremacy, which have a capacity to influence people towards a specific view. They dominate the large number of the people by using power position through the influence of false hope. There is a sense of fixity of in the elite's structures, the reservation policy does not have any impact to abolish them rather it increases by limiting the opportunity among few. So, the internal structural colonialism is still continuing and also modified by the policy. Only a few people are enjoying all the benefits of the policy by dictating over the vast majority of the people from the depressed section of the society, which against the norms of *difference* principle of justice. The *difference principle* has been maintained for the benefit of the least advantaged groups, if it results in creating hierarchy, there is less possibility that Rawls' perspective of justice can be realized by the marginalized groups.

Three are various folds of hierarchies. First, Dalit and non-Dalits, the people from upper caste perceived Dalits as inferior than them. They think themselves superior and try to dominate the people from Dalit communities. Second the hierarchy among Dalit themselves, like SCs, STs and OBCs. Each of them considers superior than others. For example, the people from OBCs always try to dominate the people from SCs. The so called higher among Dalits like "Yadav and Mandal" never drinks

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water touched by Dom, Chamar and Musher, the lowest among Dalits. Dalit men consider themselves superior in comparison of Dalit women. In many rural areas, the male supremacy resulted in violence over the women. These are some of visible hierarchical relationships, except them there are lots of invisible hierarchies, which often led to domination and humiliation.

These types of traditional elite's structure are present at all level. Those who get the opportunity from the reservation forget their past and start behaving like the people from higher castes. There are several people from Dalit community, who are now at the power position like judges, politicians, high-ranking governmental officials and renowned doctors. But these power holders groups believe in hierarchical relationship. They always move from one opportunity to another on the name of Dalits. But their behaviours towards the poorest Dalits reflect the sense of elitism. They never try to educate and empower the people from their own community because of the fear of loosing opportunity and high recognition.

VI. CASTE BASED RESERVATION- STRONGR OR WEAKER?

Whether the reservation makes the caste stronger or weaker this is the crucial question of Indian society. The policy clearly mentions that only SCs, STs and OBCs are eligible for the benefits. It has also listed the name of the sub-castes under these three categories as the beneficiaries. These types of provisions in the policy reinforce the separate identity between members of different castes.

The division of the population into castes and sub-castes of many different kinds through the policy inflames the already burning society. Among Dalits also, it gives separate identity of being SCs, STs and OBCs, of which they are ignorant before. The division of Dalits and non-Dalits, division of SCs, STs and OBCs has weakened the unity of the society. Many times, the class and caste struggles easily result in violence including murder and rape. The increasing rates of crime against Dalits are the result of the caste division or the separate identity.

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There is no doubt that it has given some places for Dalits to progress economically, but it could not eradicate the very problem of 'discrimination' and segregation. Those who had opportunities to access higher education, employment and service, they have been branded as Dalit, since they have got opportunities merely being so called "Dalits". This institutional distinction of different identity has had psychological impact on the Dalits, which made them feel inferior. It is the reason, they think themselves less qualified than the general students.

Moreover, the policy increases the antagonistic attitudes among the different section of the society. The members of lower classes still feel that they do not have sufficient representation and the members of upper classes feel that in spite of their merits, they do not have the same opportunities. They think that the policy is discriminatory, which is unfair for them. The people among Dalit communities also have the same kind of feeling towards the discriminatory policy, which ultimately strengthens the institution of caste system.

The categorizing of the people as brands by creating barriers in inter group relation and interaction thus inculcating an identity crisis (Wankhade, 1999:20). Due to this division of caste and benefits, the other religious minorities are also demanding reserved representation. One side, the government can not ignore their voice, as they're also the victims. But if the government accepts their demands, it would ultimately lead to a situation where the seats left for the majority would not be proportional. This therefore, becomes a conflicting issue, rather than an equal opportunity issue.

There is constant reinforcement of caste identity in Indian scenario, so the Constitutional guarantee of justice through the reservation policy and legal abolition of untouchability is vanishing day be day (Wankhade, 1999:19). It is a kind of illusion that the policies can eradicate the traditional rigidity. There is no any change in the mentality of the people of the so-called higher caste, so the Dalits are still under a stigmatic enslavement. There dream for change through policy is full of hindrance and restriction. The policy itself provides sufficient ground for legitimizing separate

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identity of caste. So, in this condition, the concept of just state or decent society as Rawls explained in his theory can not be achieved.

The policy has very weak provision of breaking vicious cycle of caste system. It is very difficult to change ritual concept of the entire society through providing jobs and reservation in higher studied to the few people. But there is limited concern to discuss the negative impacts of the “reservation policy”, especially in terms of responding the issue of human rights and justice. The prevailing laws are inadequate to respond the problem of discrimination as it is limited to the few sectors and the beneficiaries are the few people. In this limitation, the realization of Rawls’ justice seems impossible.

It also does not recognize the fact that the caste based discrimination is based on unequal distribution of land, lack of sources of livelihood, exploitation of minimum wage and lack of education in rural areas, where the vast majority of the Dalits are dragging their lives. Around 85 percent of Indiana are ladles, where they work in other land as the agriculture laborers, majority of them are Dalits. Nearly 77 percent of Dalits are primary or agriculture laborers (ibid.). This unequal distribution of resources helps to maintain power relation between rich so called higher caste and poor Dalits.

Moreover, the policy does not take any step to eradicate forced labor. The so-called higher caste-elite with the help of administrators able to maintain domination and labor exploitation in large number. In spite of exploitation and suppression, the Dalit peasants can not complain against higher caste local elites. All these things have been already institutionalized to govern social behavior, so, it is very difficult to enforce the appropriate mechanism to protect these basic rights of the people at the grass roots level.

The analysis on the impact of reservation to the Dalits has demonstrated that the reservation policy fails to attain its main objective to eliminate discrimination and to deliver equal liberty for all members of the society. Until and unless, all primary goods are achieved as Rawls suggests, the measures of social justice for them becomes meaningless. Therefore, every measures taken by the government in the form of

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affirmative action seems very weak in the context of the social structure followed under the domination, which creates unequal distribution of liberty. So, the concept of Rawls' justice has been narrow down in terms of Dalits and their rights.

VII. PERPETUATION OF DALITS' HUMAN RIGHTS

The caste system and untouchability comes in direct conflict with the universal concept of human rights. The practice of caste system and untouchability directly leads to violations of basic human rights of the Dalits. In spite of the good legal provisions, the human rights of the Dalits are systematically violated. The legislation have in force for more than forty years now, and yet their aims are far from being fulfilled (Thorat, 2000).

This shows that the enforcement and practice of universal human rights in society is not sufficient through the legal framework (such as the Constitution and other laws) alone. The cultural, social, religious and economics notions always influence the enforcement and practice of human rights. Some time, these notions become obstacles in the realization of human rights in practice. The social, religious as well as economic, involvement of a framework may not be in consonance with the principles enunciated by the United Nations, or the Constitution (Thorat, 2000). So, until these traditional structures of the society are addressed, the legal measures will not be effective in the realization of human rights at the grassroots level.

The condition of Dalits' human rights in India is measurable and the government has made legislation against the discrimination and has announced untouchability as "crime", but the human rights violations are still continue at the grassroots level of Indian society. Although, the state is not directly involved in the violation of Dalits' rights but it is the state responsibility to protect and fulfill their rights. The protection and fulfillment of human rights in India are less progressive and the situations of Dalits are being worsened from year to year. This situation clearly demonstrates the negligence of state obligation to respect, protect and fulfill.

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Especially in Bihar, the state government has deprived many human rights and failed the protection and fulfillment of human rights progressively. The implementation of the policies has biased to the interest of the few castes and people, and also involved repressive institution such as military and police to violate the people. Violations are the product of the failure of state machinery. Like, while the agriculture labourers in Bihar fighting for their land rights and minimum wage, the face systematic violations from the state government and from the landowners. The cited example in previous case study is the clear indication of the failure of the state responsibility to protect and fulfillment.

The state as well as central government does not pay adequate attention to investigate cases to punish perpetrators. They also failed to provide justice to the victims and their families. In this context, it can be clearly concluded that the protection and fulfillment of human rights in Bihar are less progressive, worsening from year to year, which fails to meet the criteria of Rawls' justice.

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CHAPTER VI
EMPOWERMENT AS JUSTICE

I. CONCLUSION

While examining through Rawls' 'difference' principle of unequal distribution of primary goods for the least advantaged groups, the condition of the poorest among Dalits is still vulnerable. From the perspective of the principle of liberty, they still feel most inferior at the community level. Their liberty and economic status influence the attitude towards the Dalit communities. Until and unless the deep-rooted notion of fourfold hierarchy system of the Hindu culture is substantially changed, it is almost difficult to ensure liberty for the Dalit castes according to the main principle of Rawls' justice.

The analysis on the impacts of the policy conducted in the previous chapter reveals that Dalits are not getting equal opportunity in education as well as they are getting lower level of protection of the right to work. The current policy seems ineffective to achieve its objective of delivering social justice to the depressed groups. Furthermore, the marginalized groups in the rural as well as in urban areas are being oppressed and discriminated.

The study also indicates that large numbers of Dalits are living under the economically weaker and educationally inferior condition. The low levels of wage in the occupation and in the agricultural sectors are indicators of their economic exploitation. Therefore, it is necessary to uplift them through effective protective measures and empowerment programs for accountable and transparent governance. And the state should ensure the mainstreaming of Dalits in nation building process.

The affirmative action at the implementation level fails to address institutional and structural violation such as: exploitation by landlords; Dalit women's exploitation

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by the male and repressive measures to counter militant and to improve the livelihood of the majority peasants. Until and unless, these primary goods are achieved by the Dalits through the protection of their rights to work, the deliverance of justice will be ineffective.

The laws related to affirmative also does not seem to be guided by the twin principle of Rawls' justice "equal distribution of liberty", and "the maximum benefits of the unequal distribution for the least advantaged groups". The research also finds that there is less concerned on the issue of re-distribution of land, arrangement of minimum wage to the level of basic needs and dignity for the labours at the work place for the large number of the Dalits. Without considering these elements, the enjoyment of justice to the level of twin principles as envisioned by Rawls is challenging.

There is lack of programs on awareness and sensitivity, which are necessary for the understanding of various issues that affect economic inequality and social oppression against Dalits. The state is less concerned on the implementation of the empowerment program such as public hearing and interactions. For the empowerment of disadvantaged and marginalized groups, there is no specific laws, which can consider gender status, marginalization and economic hardships. These factors are necessary to be considered as the criteria to provide special care.

The central government and the state governments do not seem to be much serious to respect and protect the rights to education as per the Article 13 of International Covenant of Economic, Social and Cultural Rights, 1966(ICESCR) and right to work prescribed in Article 6 of the ICESCR in order to fulfill the international obligation of human rights which can ensure the level of Rawls' justice. The rights of Dalits are essential to be ensured through different laws, rules and regulations.

The Constitution, promulgated after 1950, has the provision of 'right to equality' and 'directive principles of state policies' where there are provisions of positive discrimination regarding marginalized groups of society. In practice there is

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lack of political willingness in the government to implement these provisions seriously into practice.

The notion of equality should be viewed on the contextual basis rather than formal equality. Equality among equals is only equality but equality among unequal is itself inequality and inequality among unequal is finally equality. In this regard, the state must ensure substantial equality in order to ensure justice as envisioned by Rawls. For the implementation of this principle of equality, any hard and fast rule is unlikely to be effective.

Poverty has not been addressed as the root cause of the discrimination. So, it would be over ambitious to assume that the policy can work effectively without due considerations of economic empowerment programs for Dalits. For example, the mere commitment for compulsory primary education for all is unlikely to achieve the target with in the set time frame of 2015 as stipulated by the MDG. The mainstreaming of the Dalits would be almost difficult if not impossible without providing the basic requirements like food, shelter, health facilities and education.

The pervious chapters of the research has also shown that the Dalits women are the most vulnerable and exploited from all sides and levels, so it is necessary to include gender mainstreaming process as Dalit mainstreaming process to establish fair path towards justice

The state must address the root causes of the discrimination, oppression and exploitation against the Dalits. The state's policy must be directed to uplift the marginalized groups. Without considering inter-connection between the grassroots level situation and the policy implementation, the objective of delivering Rawls' justice can be ineffective.

The civic education is essential to change the attitude of the large numbers of the population towards Dalits. Especially, to educate those who are at the power position like judges, politicians, high-ranking governmental officials, community

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leaders and policy makers about equality, justice and non-discrimination in order to break the cycle of discrimination of all level.

It is necessary to maintain the accepted core principle of the affirmative actions to adopt the reservation policy effectively. For example, in USA, where there is an affirmative action program for the minorities and especially for the African-Americans, who were treated inhumanly in the past, as the lower castes in India. But there is no reservation policy in few sectors such as public service. Due to the lack of effective policy to enhance the capacity of Dalits, the caste-based discrimination is increasing by each year. Therefore, it is now time for serious reconsideration to examine the impacts of the reservation policy, especially in terms of protecting rights to education and works, which can meet the level of Rawls' concept of justice.

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