



CONSTITUTIONAL PROVISIONS FOR THE WELFARE OF SCHEDULED CASTES

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ABSTRACT

Scheduled castes face multiple forms of social and economic exclusion and discrimination in Indian society. To discriminate socially is to make a distinction between people on the basis of class or category without any regard to the individual merit. Examples of categories on which social discrimination is seen include race, religion, gender, weight, disability, ethnicity, height, employment circumstances, and sexual orientation age and so on. . Even when they try to raise their voices against the prejudices and derogatory treatment meted out to them, their voices are pressed either through the mighty caste Hindus or by the state instrumentalities by their positive action against them or by inaction by colluding with the caste Hindus. Atrocities are day to day phenomena and Scheduled castes are facing indignities and discrimination due to various historical, social and economic reasons. The phenomena of increasing atrocities on the Scheduled castes which results in gross violation of their human rights and to identify the reasons for perpetuating atrocities despite the safeguards provided under the law. The Preamble of the constitution proclaimed to secure to the people of India “social, economic and political justice, equality of status and of opportunity and to promote fraternity assuring the dignity of the individual. The constitution of our India provided fundamental rights for Scheduled castes coupled with positive discrimination to eliminate all kinds of discrimination. The constitution provided for protective discrimination under various Articles (15, 16, 17, 23, 24, 29, 164, 243D, 243T, 244, 330, 332, 334, 335, 338, 339, 340, 341 and 342) with a view to accelerate the process of building an egalitarian social order. The Constitution recognizes that in our social order there is inequality and the weaker sections have to be dealt on a preferential footing by the state. Hence, for the uplift of scheduled castes and scheduled tribes, concrete action-oriented, programmes have been adopted. These programmes and essentially of three types: first,



reservation of seats in the legislatures. Second, reservation of posts in public services and third, reservation of seats in academic institutions.

India is the world's largest democracy the caste based discrimination has, for centuries, remained an unforgettable experience for a large population of the society, i.e. Scheduled Castes. The members of this large segment known as *Untouchables* were considered as less important human beings. They were believed to be the receiver of rigorous social disabilities, slavery and indignities¹.

The social and economic deprivation among Scheduled Castes had been most common during pre and post-Independence Period. The genesis of caste can be traced back to 'Rig Vedic' period. In the early *Rig Vedic* period the society was divided into four *varnas*, i.e., *Brahmin Kshatriya, Vaishya and Shudra*². The '*Sudras*' were classified as inferior and the last *varna* to other three *varnas*, in Ancient Indian Social system. This classified '*Sudras*' includes various caste groups, which have suffered social and economic inequality since ages. They had to stay outside the village³. The concept of pollution was attached to them and they were treated as *untouchable castes*⁴. These *untouchables* or castes were officially defined as depressed castes in 1932 and they were systematically listed in the 1931-Census of India. Gandhi named the untouchables as *Harijans*. *Hari* means *God* and *Jan* means *People*, i.e. *People of God*. The meaning of this word in *Hindi, Marathi* and other languages is, a *child* whose father's identity is unknown'. Therefore the name *Harijan* was opposed and hated by the *untouchables*⁴.

The framers of the Indian constitution were well aware of the discrimination meted out by the Dalits due to the institutionalized caste system in the society. The constitutional framers, in order to establish an egalitarian social order devoid of caste system, not only tried to reconstruct the hitherto caste-hidden hierarchical social order but also ensure the ex-untouchables, the unfortunate victims of the caste system, the right to equality and dignity.

The Preamble of the constitution proclaimed to secure to the people of India "*social, economic and political justice, equality of status and of opportunity and to promote fraternity assuring the dignity of the individual*" thus aiming at anti-caste-discrimination aspirations⁵.

The constitution of India contains a number of Articles which deal with compensatory



preference for the backward classes. The backward classes have been divided into three main groups as following:

- (i) Scheduled Caste,
- (ii) Scheduled Tribes, and
- (iii) Other Backward Classes

The constitution provided for protective discrimination under various Articles (15, 16, 17, 23, 24, 29, 243D, 243T, 244, 330, 332, 334, 335, 338, 339, 340, 341 and 342) with a view to step up the process of building a classless social order⁶. Equality of opportunity and secularism would prove to be meaningless if a very large section of the society continued to remain poor and deprived of opportunities to secure political and administrative positions.

ARTICLE 15 Under Indian Constitution: Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth:

Clause(1) The state shall not discriminate against any citizen on grounds only of religion, race caste, sex, and place of birth or any of them.

Clause (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:

(a) Access to shops, public restaurants, hotels and places of public entertainment, or

(b) The use of well, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

Clause (4) Enables the state to make special provisions for the backward classes in all the areas within its jurisdiction. The expression *class* in Article 15 (4) implies a homogeneous section of the people grouped together on account of certain likeness or common traits and by being identifiable by some common attributes such as status, rank, and occupation, residence in a locality, race, religion and the life⁷.



ARTICLE 16 Under Indian Constitution: Equality of opportunity in matters of public employment or appointment to any office under the State. Article 16 reads as under:

Clause (1): there shall be equality for opportunity for all citizens in matters relating to employment or appointment to any office under the state.

Clause (2): No citizen shall on grounds only of religion, race, caste, sex, descent place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment of office under the state.

Clause (3): This article shall prevent Parliament for making any law in regard to the class or classes of employment or appointment to an office under the Government of or any local or other authority within, a state or a union territory, any requirement as to residence within that state or union territory prior to such employment or appointment.

Clause (4): This Article shall prevent the state from making any provision for the reservation of appointments or posts in favour to any backward class of citizens which in the opinion of the state, is not adequately represented in the services under the state.

Clause (4-B): In this Article shall prevent the state from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause(4) or clause(4A) as a separate class of vacancies to be filled up in a succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the years in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year (constitution 81st Amendment Act, 2000).

ARTICLE 17 Under Indian Constitution: Abolition of Untouchability: *Untouchability* is abolished and its practice in any form is forbidden. The enforcement of any disability rising out of *untouchability* shall be an offence punishable in accordance with law⁸.

ARTICLE 23 Under Indian Constitution: The Constitution Prohibits Bonded Labour: The



constitution prohibits bonded labour so that the exploitation of Scheduled Castes by the upper caste people can be eliminated. The Article also prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. This Article also provides that no child below the age of 14 years shall be employed to work in any factory or mines or engaged in any hazardous employment. There are central and state laws to prevent child labour. It does not specifically mention SC's and ST's but since the majority of bonded labour belongs to SC's/ST's. ation, liberation and rehabilitation of bonded Labour⁹.

Article 243-D Under Indian Constitution: Reservation of seats in Panchayat Raj Institutions

(1) Seats shall be reserved for:

(a) The Scheduled Castes; and

(b) The Scheduled Tribes, in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of Reservation of seats. Seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat¹⁰.

Article 243T Under Indian Constitution: Reservation of seats in Municipality

243T(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the



Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide¹¹.

ARTICLE 330 Under Indian Constitution: Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People:

(1) Seats shall be reserved in the House of the People for —

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory] or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory³⁵.



(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State¹².

Article 332 Under Indian Constitution: Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States:

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam], in the Legislative Assembly of every State.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the scheduled tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(3A) Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the readjustment, on the basis of the first census after the year [2026], of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be:

(a) if all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;



(b) in any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly³⁷.

(3B) Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2[2026], of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly¹³.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district. Provided that for elections to the Legislative Assembly of the State of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Borderland Territorial Areas District, so notified, and existing prior to the constitution of Borderland Territorial Areas District, shall be maintained¹⁴.

ARTICLE 335 Under Indian Constitution: Claims of Scheduled Castes and Scheduled Tribes to services and posts:

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of



appointments to services and posts in connection with the affairs of the Union or of a State: Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in Connection with the affairs of the Union or of a State¹⁵.

Article 338 Under Indian Constitution: National Commission for Scheduled Castes:

Even after making specific provisions for safeguards for SC/ST, the founding fathers thought of providing for a Constitutional Authority to watch the working of these safeguards. Accordingly Article 338 made a provision for “Special Officer” for SC/ST to be appointed by the President to investigate all matters relating to the safeguards provided for the SCs/STs under the Constitution⁴⁴. However, various viewpoints were expressed about the efficacy of the system. It was felt that a high level five-member Commission under Article 338 will be more effective than a single Special Officer. Hence, through the Constitution 65th Amendment, Act, 1990. Article 338 was amended to provide for National Commission for Scheduled Castes and Scheduled Tribes (NCSCST), consisting of a Chairperson, Vice-Chairperson and five other members so appointed by the President under his hand and seal. Clause 5 of Article 338 which states the duties of the Commission is as under:

Duties of the Commission 338(5):

- (a) to investigate and monitor all matters relating to the safeguards provided for the SCs/ STs under this Constitutional or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of SCs/ STs;
- (c) to participate and advise on planning process of socio-economic development of the SCs/STs and to evaluate the progress of their development under the Union and any State;
- (d) to present the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs/STs and



(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the SCs/STs as the President may subject to the provisions of any law made by Parliament, by rule specify.

Clause (6) of Article 338 provides that the President shall cause reports of the Commission to be laid before each House of the parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non acceptance, if any of such recommendations.

Clause (8) provides that the Commission shall have all the powers of Civil Court trying a suit The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5 have all the powers of Civil Court trying a suit and in particular in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence of affidavits;
- (d) Requisitioning any public record or copy thereof from any Court or office;
- (e) Issuing commissions or the examination of witnesses and documents;
- (f) Any other matter, which the President may, by rule, determine¹⁶

Article 338 (9) Under Indian Constitution: lays down that the Union and every State Government shall consult the Commission of all major policy matters affecting SCs/STs. From the above provisions it is easy to understand the importance that the Commission enjoys so far as the safeguarding the interest of SC/ST employees. Besides the Constitutional provisions, various instructions have also been issued by the Government regarding. Lists of these instructions are as under:



A SC/ST employee can write directly to the Commission on matters relating to appointments, confirmation, promotion and grant of other concessions available to SCs/STs, without any prior permission from the concerned administration. The Ministries/Departments, etc should extend necessary assistance to the Commission in connection with the Special Studies of rosters maintained and implementation of other concessions to SCs/STs and also to report on follow-up action on such studies, within 6 months. If it is not possible to send a report within 6 months, an interim reply should be sent to the Commission explaining the reasons as to why a full reply cannot be sent¹⁷.

THE SCHEDULED CASTE AND SCHEDULED TRIBES (Prevention of Atrocities) Act, 1989:

The SC/ST (Prevention of Atrocities) Act, 1989 makes punishable a dozen acts of atrocities against a number of the scheduled caste and scheduled tribes. According to anti-atrocities law the following acts are "Atrocities" against scheduled caste and scheduled tribes:

Offence against human dignity like forcing the SC/ST members to eat inedible or obnoxious substances, with intent to cause injury, insult or annoyance, stripping, dishonouring or outraging modesty of a SC/ST women and her sexual exploitation, forced or bonded labour, intentional public humiliation, property related offences like wrongful cultivation or dispossession of land, wrongful eviction from land, premises, house or other place of residence or village, unauthorized interference with the enjoyment of rights over land and water, offences like intimidation or coercion of voters to either abstain from voting or to vote for a particular candidate, enforcing social disabilities like corrupting or fouling water used by members of SC/STs, denial of rights of passage or entry to public places, abusing legal process like insulting false, malicious or vexatious legal proceedings, furnishing false or frivolous information to a public servant are made punishable with an imprisonment for a term not less than six months but not more than five years with fine. Further, giving or fabricating false evidence against offenders guilty of atrocities, committing mischief by fire and other explosive substances with an intention to cause damage to the property of the SC/ST people are made punishable with death sentence, life imprisonment and imprisonment for a term between six months to seven years with fine¹⁸.



CONCLUSION

To conclude, preferential treatment for scheduled castes has come to stay in Indian society. The caste based exploitation are still persisting in the world's largest democracy despite the legal safeguards, and the human rights of this group are under a cloud of danger which quite often burst upon them making them vulnerable and denying them their right to be humans. The caste based discrimination is comfortably taking breath in hierarchal society ruled by the principle of graded inequality thus challenging the constitutional mandate of establishing an egalitarian social order. The ineffective implementation of the anti-atrocities law, under reporting of atrocities cases, along with the inherent vested interests in the caste discrimination are the reasons for the interests in maintaining the caste discrimination are the reasons for perpetuating atrocities¹⁹.

Endogamy is the peculiar feature of the caste system of India and also a hindrance in bringing out change in the mindsets of the upper caste people. Poverty and economic dependence of the scheduled caste on the upper caste are the major factors for growing exploitations. Though affirmative measures in the form of reservations have been taken by the government but these affirmatives measures have not reached to the needy. The special plans described as powerful mechanism for ensuring dalit economic empowerment has itself been thwarted in its application and implementation by administrative investment of public resources. non utilization of diversion of funds earmarked for dalit empowerment. So the economic empowerment of the scheduled caste is a tool to minimize the incidents of atrocities as the economic dependence makes the scheduled castes vulnerable to atrocities. So the need is to implement the economic measures in the true spirit for uplifting the scheduled castes²⁰.

The law must play a role in changing the status of the scheduled castes in the society and must prevent these atrocities as these atrocities struck at the very base of human rights that is the human dignity and thus denies to a large segment of the society the rights to be human. The international community also must recognize the caste based discrimination as a human rights issue and this problem must be tackled at the international level and the India must abandon its hard stands which does not have any rationale behind it²¹.



The present reservation policy merely helps to co-opt a small minority of the scheduled castes, scheduled tribes and backward classes into the mainstream, the fate of the rest remaining where it has always been.. The existing arrangement of setting aside jobs based on preferences may lead to the showing of an elite, arrogant group among the target population which may then set out to cover all the benefits. This entails adverse effects²².

The recommendations of various commissions/committees for promoting the welfare of scheduled castes may not be much useful unless all round improvement in productivity, accountability, integrity, and transparency of the government services as a whole is not ensured.

Reservation policy alone is not the only or even a durable cure of the lot of the disadvantaged classes²⁴. The present preferential policies have perceptibly not entered the rural areas where the incidence of poverty is much large. India simultaneously needs land reform and other developmental and promotional measures to emancipate those who are still below the poverty line. Moreover, it is alleged that the reservation policy may prove to be beneficial only in the short-run. The long-term remedy truly lies in improving the competitiveness of the beneficiary groups. Education is an exceptionally powerful leveling weapon in this regard²⁵.

REFERENCES

1. A.R. Desai, "Social Background of Indian Nationalism", Popular Parkasan Bombay, (4th ed.), 1966, p.263.
2. Paras Diwan, "Indian Constitution Law", Allahabad, Allahabad Law Agency, 1994, p. 261.
3. Sachchidanand, "The Harijan Elite", Thompson Press, Faridabad, 1977. pp.162-164.
4. Vimal P. Shah, Binod C. Aggarwal (ed.), "Reservation: Policy, Programme and Issues", Jaipur, Rawat Publication, 1986, p.2.
5. Haroobhai Mehta and Hasmukh Patel, "Dynamics of Reservation Policy: Mandal commission and After", New Delhi, Patriot Publications. 1991, p.15.
6. Shyama Nand Singh, "Resrvation: Problems and Prospectives", Delhi, Uppal Publishing House, 1991, p.90.
7. Dhananjay Keer, "Dr. Ambedkar: Life and Mission", Bombay, Bombay Publications, 1954, pp.128-130.
8. Paras Diwan, "Indian Constitution Law", Allahabad. Allahabad Law Agency, 1994, p.261.
9. N.K.Dutta, "An X-Ray on Reservation Provision". Anmol Prakashan, New Delhi, 1991, pp. 247-252.
10. N.D.Kamble, "The Scheduled Castes", Ashish Publishing House, New Delhi, 1982, pp.30- 34.
11. H.S. Saxena. "Safeguards for Scheduled castes and Scheduled Tribes, Founding Father's view", An Exploration of the Constituent Debates", Delhi. Uppal Publishing House, 1981, p.315.
12. S.R.Kakade, "Schedules castes and National Integration", Radiant Publishers, New Felhi, 1990, pp.87-92.
13. B.Shiv Rao. "Framing of India's Constitution: A Study, Delhi, Indian Institute of Public Administration, 1968, pp.198-200.
14. Planning Commission, The First Five Year Plan: A Draft Outline, Delhi, Government of India Publication, 1951, p.634.



15. M.G. Jain and Kagzi, "The Constitutional of India" Vol.1 & 2, New Delhi, India Law House Publishing, 2001. pp. 220-234.
16. M.V. Pylee, "Constitutional Amendments in India", Delhi Universal Law Publishers, 2003, pp.123-124.
17. Arvind Paul Datar, "Constitution of India", Agra, Wadhwa & Co Publishing, 2001, pp.201- 204.
18. Zoya Hasan & E. Sridharan (eds.), "India's Living Constitution: Ideas, Practices, Controversies", Delhi, Permanent Black Publishers, 2002. pp.112-116.
19. H.M Seervi, "Constitutional Law of India" Vol. I & II, III, Bombay, Tripathi Publishers, 1991. nn.156-158.
20. P.D. Mathew, "Fundamental Rights in Action", New Delhi, Indian Social Institute Publishers, 1996, pp. 192-194.
21. Durga Das Basu, "Introduction to the constitution of India" New Delhi, prentice hall of India Pvt. Ltd. 1995, pp.128-130.
22. P.M Bakshi, "The Constitution of India", Delhi, Universal Law Publishing, 2002, PP.232- 234.
23. Biswaranjan Mohanthy, "Constitution, government and politics in India", New Delhi, New Century Publications, 2009, pp.98-99.
24. A.G.Noorani, "Indian Affairs: The Constitutional Dimension", Delhi, Konark Publishing, 1990. pp.162-164.
25. Arthur Berriedale Keith, "A Constitutional History of India 1600-1935", London, Methuen Publishing Co. Ltd, 1937, pp.224-225.