

# An Analysis upon Various Developments and Provisions for Scheduled Castes and Scheduled Tribes under the Indian Constitution

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**Abstract –** *The position of schedule caste and schedule tribe is always a question mark for the society. being a developing country we are saying that we are giving equal statue to them as compared with other caste but in reality its not be like this . In modern time also they are facing problem but we can say that the extent of sufferingness is less as compared to previous time. For improving their conditions government are taking various steps like specific laws are being made for them , commissions were made only for their betterment and by means of reservation also ,government is trying to improve their condition .*

*Specifically Our Constitution guarantees justice and equality of opportunity to all its citizens. It also recognizes that equal opportunity implies competition between equals, and not 'un-equals'. Recognizing the inequality in our social structure, the makers of the Constitution argued that weaker sections have to be dealt with on a preferential footing by the state. A special responsibility was, thus, placed upon the state to provide protection to the weaker sections of society.*

*Accordingly, the Constitution provided for protective discrimination under various articles to accelerate the process of building an egalitarian social order. Thus, preferential treatment for the depressed classes (SCs and STs), should not be understood as an act of magnanimity on the part of the political elite at the national level but rather a strategy to give them a share in power in politics and administration and to uplift them socially and economically.*

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## INTRODUCTION

It is more surcharged on the topic of "protection of Dalit Rights under the Indian Constitution" to let us think dispassionately Dalits Rights several facts then ultimately, what is Dalit Rights? It could be nothing more than the recognition of the status of a person as a Human being, thus status itself is comprehensive of right with various facets. This status is mother which germinates the rights.

India is a nation of minorities, multi-cultural, multi-lingual, multi-religious and multi-party democrat federation with the world's most extensive human socio-economic disparities deprivation and illiteracy all of it violating the fundamentals of human rights given this very complex social reality<sup>7</sup> one expects the government objective to have in place a comprehensive strategy<sup>7</sup> for social affirmative action, which would be bring precipitate happiness followed by the quality of life improving with each passing but the government objective as is evident, is not even remotely linked to these common expectations the

special protection gives to the Scheduled Castes, Scheduled Tribes and other backward classes under the Constitution and some other statues has been the subject of intense debate since independence, politicians, purists ordinary men and women had never caused to discuss the unique privileges granted the depressed classes very few topic have been so passionately argued about as this one the conflicting viewpoints have often led violence reaching the peak during mandal agitation in north India in the early nineties the Supreme Court Judges who delivered the mandal judgment in 1992 have elaborately dealt with reasons for the protective discriminations in favour of the Depressed classes. Tire majority judgement stated "untouchability" is something which no other country in the world had the unfortune to have nor the blessed caste system.

Equal opportunity to all, particularly to those who are from disadvantage groups, is an essential component of any development intervention. The mandate of the Ministry of Rural Development is to alleviate poverty in the rural areas. The Ministry is implementing various

schemes/programmes with the objective to provide avenues of employment to most disadvantaged sections of the society, including SCs/STs. The Ministry has made specific provisions in the guidelines of the programmes to ensure adequate flow of resources to the Scheduled Castes and Scheduled Tribes. The details of assistance provided to the poor households from SC/ST communities under the major programmes is as under:

Ministry of Rural Development has been earmarking the funds for Scheduled Caste Special Plan (SCSP) and Tribal Sub Plan (TSP) under Indira Awas Yojana (IAY) and Swarn Jayanti Gram Swarojgar Yojana (SGSY)/NRLM from 2011-12 onwards. The details of the funds earmarked for SCSP and TSP under these schemes for 2011-12 and 2012-13 are given below:

(₹ in crore)

Schemes	Year	Total	SCSP	TSP
SGSY	2011-12	2681.29	845.06	611.94
	2012-13	3915.00	1033.76	723.74
IAY	2011-12	10000.00	3530.00	2470.00
	2012-13	11075.00	3908.37	2736.63

Mahatma Gandhi National Rural Guarantee Act (MGNREGA) is a demand driven programme which seeks to provide enhanced livelihood security to the households in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to any household whose adult members are willing to do unskilled manual work. The requirement of funds and employment generation will depend on demand for work. Hence, no specific earmarking of funds is made under SCSP and TSP under MGNREGA.

Similarly, the PMGSY provides rural connectivity to all the unconnected habitations in rural areas with a population of more than 500 persons through good all weather roads and 250 persons and above in the hill States, the Tribal (Schedule V) areas, the desert Areas (as identified in the Desert Development Programme) and Left Wing Extremism (LWE) affected districts. Since the programme is for overall benefit to the rural people, no earmarking of funds for SCSP and TSP is done under this programme also.

## HISTORICAL BACKGROUND

Since the 1850s these communities were loosely referred to as Depressed Classes, with the Scheduled Tribes also being known as *Adivasi* ("original inhabitants"). The early 20th century saw a flurry of activity in the Raj assessing the feasibility of responsible self-government for India. The Morley-Minto Reforms Report, Montagu-Chelmsford Reforms

Report and the Simon Commission were several initiatives in this context. A highly contested issue in the proposed reforms was the reservation of seats for representation of the Depressed Classes in provincial and central legislatures.

In 1935, British passed the Government of India Act 1935, designed to give Indian provinces greater self-rule and set up a national federal structure. The reservation of seats for the Depressed Classes was incorporated into the act, which came into force in 1937. The Act introduced the term "Scheduled Castes", defining the group as "such castes, races or tribes or parts of groups within castes, races or tribes, which appear to His Majesty in Council to correspond to the classes of persons formerly known as the 'Depressed Classes', as His Majesty in Council may prefer". This discretionary definition was clarified in *The Government of India (Scheduled Castes) Order, 1936*, which contained a list (or Schedule) of castes throughout the British-administered provinces.

After independence the Constituent Assembly continued the prevailing definition of Scheduled Castes and Tribes, giving (via articles 341 and 342) the president of India and governors of the states a mandate to compile a full listing of castes and tribes (with the power to edit it later, as required). The complete list of castes and tribes was made via two orders:

*The Constitution (Scheduled Castes) Order, 1950* and

*The Constitution (Scheduled Tribes) Order, 1950*, respectively.

## CONSTITUTIONAL PROVISIONS FOR SC & ST CONSTITUTIONAL HISTORY

In the original Constitution, Article 338 provided for a special officer (the Commissioner for SCs and STs) responsible for monitoring the implementation of constitutional and legislative safeguards for SCs and STs and reporting to the president. Seventeen regional offices of the Commissioner were established throughout the country.

There was an initiative to replace the Commissioner with a committee in the 48th Amendment to the Constitution, changing Article 338. While the amendment was being debated, the Ministry of Welfare established the first committee for SCs and STs (with the functions of the Commissioner) in August 1978. These functions were modified in September 1987 to include advising the government on broad policy issues and the development levels of SCs and STs. Now it is included in Article 342.

In 1990, Article 338 was amended for the National Commission for SCs and STs with the *Constitution (Sixty fifth Amendments) Bill, 1990*. The first commission under the 65th Amendment was constituted in March 1992, replacing the Commissioner for Scheduled Castes and Scheduled Tribes and the commission established by the Ministry of Welfare's Resolution of 1989. In 2003, the Constitution was again amended to divide the National Commission for Scheduled Castes and Scheduled Tribes into two commissions: the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes. Due to the spread of Christianity and Islam among schedule caste/Tribe community converted are not protected as castes under Indian Reservation policy. Hence, these societies usually forge their community certificate as Hindus and practice Christianity or Islam afraid for their loss of reservation

**The following are the measures prescribed in the Constitution for the welfare of the Scheduled Castes and Scheduled Tribes:**

**Art. 15(4) :** Clause 4 of article 15 is the fountain head of all provisions regarding compensatory discrimination for SCs/STs. This clause was added in the first amendment to the constitution in 1951 after the SC judgment in the case of *Champakam Dorairajan vs State of Madras*. 2 It says thus, "Nothing in this article or in article 29(2) shall prevent the state from making any provisions for the advancement of any socially and economically backward classes of citizens or for Scheduled Castes and Scheduled Tribes." This clause started the era of reservations in India.

In the case of *Balaji vs State of Mysore* 3, the SC held that reservation cannot be more than 50%. Further, that art. 15(4) talks about backward classes and not backward castes thus caste is not the only criterion for backwardness and other criteria must also be considered. Finally, in the case of *Indra Sawhney vs Union of India AIR 19934*, SC upheld the decision given under *Balaji vs State of Mysore* that reservation should not exceed 50% except only in special circumstances. It further held that it is valid to sub-categorize the reservation between backward and more backward classes. However, total should still not exceed 50%. It also held that the carry forward rule is valid as long as reservation does not exceed 50%.

**Art. 15 (5) :** This clause was added in 93rd amendment in 2005 and allows the state to make special provisions for backward classes or SCs or STs for admissions in private educational institutions, aided or unaided.

**Art. 16(4):** This clause allows the state to reserve vacancies in public service for any backward classes of the state that are not adequately represented in the public services.

**Art. 16 (4A):** This allows the state to implement reservation in the matter of promotion for SCs and STs.

**Art. 16(4B):** This allows the state to consider unfilled vacancies reserved for backward classes as a separate class of vacancies not subject to a limit of 50% reservation.

**Art. 17:** This abolishes untouchability and its practice in any form. Although the term untouchability has not been defined in the constitution or in any act but its meaning is to be understood not in a literal sense but in the context of Indian society. Due to the varna system, some people were relegated to do menial jobs such as cleaning toilets. Such people were not to be touched and it was considered a sin to even touch their shadow. They were not even allowed to enter public places such as temples and shops. The constitution strives to remove this abhorring practice by not only making the provision a fundamental right but also allows punishment to whoever practices or abets it in any form. Towards this end, *Protection of Civil Rights*5 was enacted. It has implemented several measures to eradicate this evil from the society. It stipulates up to 6 months imprisonment or 500 Rs fine or both. It impresses upon the public servant to investigate fully any complaint in this matter and failing to do so will amount to abetting this crime.

**Art. 19(5):** It allows the state to impose restriction on freedom of movement or of residence in the benefit of Scheduled Tribes.

**Art. 40:** Provides reservation in 1/3 seats in Panchayats to SC/ST.

**Art. 46:** Enjoins the states to promote with care the educational and economic interests of the weaker sections, specially SC and STs.

**Art. 164:** Appoint special minister for tribal welfare in the states of MP, Bihar, and Orissa.

**Art. 275:** Allows special grant in aids to states for tribal welfare.

**Art. 330 & 332:** Allows reservation of seats for SC/ST in the parliament as well as in state legislatures.

**Art. 335:** Allows relaxation in qualifying marks for admission in educational institutes or promotions for SCs/STs.

In the case of *State of MP vs Nivedita Jain* 8, SC held that complete relaxation of qualifying marks for SCs/STs in Pre-Medical Examinations for admission to medical colleges is valid.

**Art. 338, 338A & 339:** Establishes a National Commission of SCs and STs.

**Art. 339** allow the central govt. to direct states to implement and execute plans for the betterment of SC/STs.

**Art. 340:** Allows the president to appoint a commission to investigate the condition of socially and economically classes and table the report in the parliament.

## WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES

India is a welfare State, committed to the welfare and development of its people and of vulnerable sections in particular. The preamble, Directive Principles of State Policy, Fundamental Rights and specific sections, viz., Articles 38, 39 and 46 in the Constitution of India, stand testimony to the commitment of the State to its people. Socially disadvantaged groups of Scheduled Castes/ Scheduled Tribes have received special focus over the years for their social and economic advancement. Government has taken several steps for framing appropriate policies needed to design and implement various welfare programmes for achieving the objective of creating favourable environment to ensure speedy socio economic development of SCs/ STs. For the well being of these communities, special target-oriented programmes are being implemented by earmarking funds, providing subsidies, offering reservations in employment and educational institutions etc.

According to the 1991 Census, the population of Scheduled Castes in Tamil Nadu was 107.12 lakhs, constituting 19.18% of the total population. The Scheduled Tribes numbering 5.74 lakhs constitute 1.03% of the total population. The major ameliorative activities for these communities are grouped as educational development, economic development, housing and other schemes, Special Component Plan and Tribal Sub Plan. The implementation of the Special Component Plan (SCP) for Scheduled Castes and the Tribal Sub Plan (TSP) for Scheduled Tribes has received special attention since their inception, as these programmes are effective instruments to ensure proportionate flow of funds for SCs and STs from other general development sectors.

**Review of Ninth Five Year Plan-** The main objective of the Ninth Plan was to intensify the efforts to bridge the gap between Scheduled Castes / Scheduled Tribes and the rest of the population. An outlay of Rs. 775 crores was provided for the Ninth Plan and the anticipated expenditure during the period is Rs. 621.39 crores.

**Tenth Five Year Plan-** The approach in the Tenth Plan will be towards educational, economic and social advancement of SCs and STs. The main aim will be to improve the standard of living, reducing the incidence

of poverty and improving employment and income earning opportunities of poor families, educated youth and increasing their entrepreneurial capacity.

**Tenth Plan Outlay** - An outlay of Rs. 1200 crores will be provided for the Tenth Plan for the Welfare of Scheduled Castes and Scheduled Tribes, out of which an amount of Rs. 1044.16 crores will be provided for SCs and Rs. 155.84 crores for STs both ongoing and new schemes.

## ECONOMIC DEVELOPMENT

Funds at least in proportion to the SC/ST population of the national, state district, block and village should be earmarked out of the total respective plan outlay at these levels. And it should have separate budget head, nondiversible and non-lapsable. These earmarked funds should be placed at the disposal of one nodal Department or the Planning Department as the case may be, for formulation of the SCP and TSP. There should be separate budget for SCP and TSP and it should be monitored and evaluated separately to fulfill the constitutional obligation towards SC/ST population.

It would be desirable that the districts having population more than 30% SC/ST population should be selected as the district initiative and in these districts the villages having more than 50 % of SC/ST population should be first saturated with all the developmental activities like the development of "Ambedkar Villages" in UP.

80% of the SC/ST population lives on agriculture; therefore, there is a need to distribute agricultural surplus land to SCs/STs on priority basis. Although the State Government has conferred the land rights in some cases the actual possession of surplus land has been marred by legal complications. The State Governments should create a 'Common Land Pool' acquired under ceiling and other public land, free from legal problems and place such pool of land under control of a specific authority. This land should be distributed to the landless SC/ST without bringing any other party into the picture.

Government should make a policy to increase the participation of SC/ST in the private capital. Like Malaysia, the government should set up a National Equity Corporation and Foundation to help SC/ST to participate in the share capital of various companies. Malaysia has also made it mandatory for foreign companies to reserve a percentage of the share capital for the minority community. This is the best way for redistribution of private capital ownership to SC/STs. Malaysia has achieved share of private capital in favor of native Malays from 2% to 20% in two decades.



The participation of SC/ST in the trade, commerce and industry is negligible due to lack of finance advances by the state and national financial institutions and the banks. Therefore, it is imperative to reserve 25% of total loan advanced for SC/ST community for their economic development and participation in all the above activities. All round efforts are needed to ensure to make SC/ST small entrepreneurs. The debt: equity ratio and collateral guarantee conditions should be relaxed for SC/ST.

The MP government has taken a major initiative in making provisions of certain quotas in their purchase order to the SC/ST community. The government of India should extend it in all fields. It should also develop a policy for the purchase of agricultural products such as vegetables, flowers, fruits and other products including milk, poultry and others purchased by the government and the private parties as SC/ST farmers and retailers face discrimination in retail and wholesale markets in sale of several commodities.

### **EMPLOYMENT OPPORTUNITIES**

To provide quality self-employment to educated trained youth, group of 2-3 such educated unemployed youth should be provided interest free loan of Rs 5 –15 lakh. The interest subsidy should be borne by the state. There should be exhibition cum shopping complex constructed out of special component and tribal funds in each district headquarter to provide a shop to such groups, which will be an avenue for marketing their produce.

Urban upgraded skill trained persons of SC/ST should be provided house cum working shed for manufacturing of handicrafts with a multi-purpose hall which may also work as an handicrafts exhibition center.

Training may also be imparted in the existing Police Training Centres or Home Guards training centres to SC and ST youth (18-21 years) who have passed Matriculation for Constables and Home Guards. While the Home Guards will look after the security of the villages as Village Defence Committee, the later may be recruited as Constables in the State Government. Similarly training may also be given to at least 5000 SCs/STs for Conductor and Driver jobs through State Transport Corporation.

### **MONITORING & DELIVERY SYSTEM**

The State Government should improve the mechanism for sharing information with people representatives such as MPs, MLAs, PRIs and public in general to enhance the transparency and monitoring and implementation of schemes for SC/ST.

The State Government should place a strong incentive mechanism for officers and staff working in the districts so that right kind of motivation is created for them to

show commitment for effective implementation of the special component plan and other developmental activities for SC/ST welfare.

Detailed information with regard to beneficiary oriented programmes should be compiled and maintained by the district authorities so that it could be shared with all members of public. This would also fulfill the purpose of implementation of schemes and Right to Information Act.

The implementation of different schemes need to be verified by district level officers for which the concerned collectors should assign 20 villages to each district level officer and should designate him as Verification Officer / Nodal Officer.

There is a need felt for total transparency and accountability in the implementation of the beneficiary and construction oriented schemes. A board should be displayed at the sites indicating names of the schemes, name of the implementing agency, funds involved, and source of funding, specification and duration for completion of work to enable the local people to know about the schemes. A village, block and district level list of all the beneficiary oriented schemes and construction oriented schemes should be prepared and verified by a nodal officer/ verification officer for 10-20 villages from a task force under the chairmanship of the Collector consisting all the district level officers. A punishment and reward mechanism should be inbuilt in the system.

### **THE INDIAN GOVERNMENT TO PROTECT SC/ST's**

Article 17 of the Indian Constitution provides for the abolition of untouchability and forbids practicing it in any form. To ensure stricter law enforcement the Untouchability (Offences) Act 1955 was enacted by the Government of India. The Act was later amended in 1976 and is called "Protection of Civil Rights Act" 1955 (PCRA). The revision of PCRA provided for more severe punishment for those who abuse the law. It also made the practice of untouchability both non-comprehensible and cognizable. Another legislation related to Article 17 is the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act 1989, POA).

Despite repeated efforts, the condition of this section of the population remains bleak. In 1994, the minister of welfare submitted the twenty annual report on the Protection of Civil Rights Act, 1955. The report revealed the alarming statistics of cases registered in 1991 against violation of human rights of SC/ST. South Indian States reported majority of cases including Tamil Nadu (861), Karnataka (722) and Andhra Pradesh (365) which collectively accounted for 52% of the total cases reported in the country. Cases reported in other states include Madhya Pradesh (384), Maharashtra (340) and Uttar Pradesh (296).

## LEGAL PROVISION FOR UPLIFTMENT OF SOCIO-ECONOMIC POWER OF DALITS RIGHTS

To being with, Dr. Ambedkar's concept of ideal society is most relevant and suited to the needs of modern Indian society. To him, society is an integrated whole and each individual is related to another with social ties. His view of society fully endures that an individual is mainly responsible for his own welfare, and at the same time he shares the collective responsibility for the good of society. His cherished goal of an ideal society is to guarantee to all its members justice. Political, social and economic, and accounting to him, the attainment of Iris human ideal should be by democratic process. His advocacy of non-violence along with a democratic yvay<sup>7</sup> of life is highly commendable in the existing conditions in India. Non violent or the Constitutional method is the main feature of his philosophy of social humanism which is of utmost necessity in India today for its national unity and integrity.

As a sociologist, Dr. Ambedkar was one of the very few Indians who struggled to res true hue the Indian society on the most egalitarian and humanitarian principles. He believed that the State has to play crucial role in restructuring the society under democratic polity and the foundation of democracy would be feeble and shall if there was no social and economic democracy constituent with political democracy. He proposed a strategy of development based on growth with justice. Various scholarly works of Dr. Ambedkar indicate his contribution to economic thought and explain his deep insight the socio-economic problems of Indian society and lus perspective of development.

Obviously, Dr. Ambedkar opined that the existing social and economic institution, particularly caste and land tenure sy<sup>7</sup>stem, were not conducive for accelerating economic development with social justice and there was a need for reforming them. He believed that the desired social and economic change could be brought about under democratic polity<sup>7</sup> through Constitutional measures. For him, democracy means not only political democracy but also social and economic democracy and emphasized the need for removing these inequalities as per condition per stable democracy and rapid economic development with justice. He strongly believed that the social over based on the caste system was mainly responsible for the existing social and economic in equalities and economic backwardness and hence the need for annihilating caste system.

Dr. Ambedkar argued that caste system as a social institution did not promote the unity and integrity of nation and economic organization did not result in efficiency. But event today the defendant the caste

system argue that it is another name for division of labour and if division of labour is necessary feature of every civilized society and that there is nothing wrong in the caste system. Dr. Ambedkar dismissed this kind of arguments and emphatically argued that caste system does not represent division of labour on certain urgent grounds.

Caste is not nearly division of labour. It is also a division of labourers. It is hierarchical. Tire division of labourers are graded one above the other. Civilized society undoubtedly needs division of labours. But in no civilized society division of labour is accompanied by this unnatural division of labourers into water tight compartments. In no other country, the division labour is accompanied by the gradation of labourers.

## CONCLUSION

In spite of this manifest, avowed and determined concern of the Constitution, the objectives have not been fully achieved and whatever has been done has been done hesitatingly, half-heartedly and as a measure of concession forgetting that in this area we are dealing with Constitutional rights and not concession to those classes.

It is instructive to examine how the socio-economic, legal and political factors inter-play to generate a particular matrix of social dynamics. The text of the Constitution created a lofty mix of Fundamental Rights and a set of Directives enjoining upon the State the obligation to promote and to secure to the citizens, the enjoyment of rights that provide the citizen an environment allowing his/her growth and development with social justice, equal opportunity, right to work and access to basic needs and opportunity without discrimination. While the text created a noble and a sanguine texture, the key players were the State, the legal system, the dynamics of social development and the social forces generated by the socio-political processes. The linkage between these players provides some explanations to the path that the nation has traversed in economic growth, social development and pursuit of equal justice. The processes of economic development do not necessarily lead to equitable income distribution. In fact, these often result in appropriation of national and social resources by a small percentage of the people.

The Indian Constitution, in its bills of rights guarantees all citizens basic civil and political rights and fundamental freedoms and the Constitution has special provisions prohibiting discrimination based on caste. These provisions are found under the right to equality (Articles, 15,16 and 17). Tire right against exploitative (Article 23) cultural and educational rights (Article 29-2) and Article 330 and 333 permit Union and State legislatives to reserve seats for members

of the Scheduled Castes and Scheduled Tribes and Article 338, mandates the creation of a national commission for Scheduled Castes and Scheduled Tribes to monitor safeguards provide to them. Tired Constitutional provision pertaining to Scheduled Castes, India has passed various laws to protect their rights.

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