

CONSTITUTIONAL PROVISIONS AVAILABLE TO SCHEDULE CASTE AND SCHEDULE TRIBE

Written By *Neha Singh** & *Sujata Chauhan***

**Assistant professor, IMS Law College, Noida*

***Research Scholar, Sunrise University, Alwar*

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 status to them as compared with other caste but in reality it's not like this. In modern times also they are facing problems but we can say that the extent of suffering is less as compared to previous times. For improving their conditions, governments 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 'unequals'. 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.

In my research paper I just explained the condition of schedule caste and schedule tribe and what are the provisions available to them under the constitution of India. These provisions are just like a helping hand for them to improve their condition. When all the sections of people developed then only our country will become a developed country.

INTRODUCTION:

These two terms schedule caste and schedule tribe in British time are known as depressed class. “Dalits” were termed as Schedule caste and “adivasis” were termed as Schedule Tribe. According to 2011 census the Scheduled Castes comprise about 16.6 percent and schedule tribes comprise about 8.6 percent. They are the most neglected and exploited people India. Even though we are having Article 17 in our constitution regarding abolition of untouchability still problems persist.

If the law is not in favor of SC & ST, they will never achieve true equality of opportunity and freedom of choice. The nation's unity will be at risk. This is perhaps because of the mindset of certain sections of the society. SC & ST, together constitute the vast and not merely a section in the society

The *Constitution (Scheduled Castes) Order, 1950* lists 1,108 castes across 29 states in its First Schedule, and the *Constitution (Scheduled Tribes) Order, 1950* lists 744 tribes across 22 states in its First Schedule.

Since independence, the Scheduled Castes and Scheduled Tribes were given Reservation status, guaranteeing political representation. The Constitution lays down the general principles of affirmative action for SCs and STs.

If we are having right to equality then how we can differentiate between human being. Somehow we are decorating the very essence of our Indian constitution. The injustice to the Scheduled Castes and the Scheduled Tribes for no reason other than the pure accident of birth have few parallels in the history of civil society.

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 was 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.

PROBLEMS FACED BY SCHEDULE CASTE AND SCHEDULE TRIBE

1. Social Problem:

These problems pertained to the concept of purity and pollution. The untouchables were given a very low position in the society.

The high-caste Hindus maintained a social distance from them. They were denied many basic amenities of life which were accorded to the high-caste Hindus. They were dependent on the tradition of Hindus for items of food and drink.

In the Caste hierarchy the Scheduled Castes are ascribed the lowest status. They are considered to be 'unholy', 'inferior' and 'low' and are looked down upon by the other castes. They have been suffering from the stigma of 'untouchability'. Their very touch is considered to be polluting for the higher caste people.

Hence they have been treated as the servants of the other caste people. The Scheduled Castes have always served the other castes, but the attitude of other castes is of total indifference and contempt.

They were kept at a distance from other caste people. In some instances (in South India) even the exact distance which an upper caste man was expected to keep between himself and the Harijans was specified.

2. Religious Problems:

These pertained to the denial of the right of entering temples which were exclusively served by the high-caste Brahmins. The untouchables were neither allowed to enter the temples nor served by the Brahmins. They had no right to worship the Gods and Goddesses in the temple.

The Harijans also suffer from religious disabilities even today. They are not allowed to enter temples in many places. The Brahmins, who offer their priestly services to some lower castes, are not prepared to officiate in the ceremonies of the 'untouchable' castes. They do not even bow down to the duties of these 'untouchable' castes.

The Vedic mantras which are considered to be more pure could not be listened to and chanted by the Harijans because of the taboos. They were only permitted to make use of the upanishadic mantras which are considered to be less pure. Burial grounds were also denied for them in many place.

3. Economic Problems:

The Harijans are economically backward and have been suffering from various economic disabilities also. They are following :-

(A) No Right of Property Ownership:

For centuries the Harijans were not allowed to have land and business of their own. It is only recently their ownership to the property has become recognized. The propertied people are comparatively less in them. Majority of them depend upon agriculture but only a few of them own land.

(B) Selection of Occupations Limited:

The Caste system imposes restrictions on the occupational choice of the members. The occupational choice was very much limited for the Harijans. They were not allowed to take up to occupations which were reserved for the upper caste people.

They were forced to stick on to the traditional inferior occupations such as—curing hides, removing the human wastes, sweeping, scavenging, oil grinding, tanning, shoemaking, leather works, carrying the dead animals, etc. These occupations were regarded as ‘degraded’ and ‘inferior’.

(C) Landless Labourers:

Majority of the Harijans are today forking as landless labourers. More than 90.1 of the agricultural labourers in India belong to the depressed classes which include the Scheduled Castes and Scheduled Tribes. More than 77.1% of the Scheduled Caste workers in rural areas are agricultural labourers.

A large number of Harijan families are in debts. About 64.1% of the agricultural labour households of the Scheduled Castes were indebted during 1956-57 as against 45.1% in 1950-51.

The average accumulated debt per household increased from Rs. 47 in 1950-51 to Rs. 88 in 1956-57. Their indebtedness is increasing day by day. The Harijans are economically exploited by the upper caste people. Even today they are the lowest paid workers; some of them continue to suffer as bonded labourers at the hands of the higher caste people.

They suffered from many economic problems. They had to face many economic hardships and they were not given proper reward for their service. Traditionally, untouchables were deprived of landed property of their own. They were not allowed to carry on any business. They were not permitted to engage themselves in the professions which were being carried out by the people of other castes.

The untouchables were not free to choose any occupation according to their own ability they had to clean the streets, remove dead cattle and to undertake heavy agricultural work. Mostly they were landless labourers. They worked in the fields of high- caste Hindus as labourers.

4. Public Problems:

Prevention from the use of Public Places . For a long time the untouchable castes were not allowed to use public places and avail of civic facilities such as—village wells, ponds, temples, hostels, hotels, schools, hospitals, lecture halls, dharamashalas, choultries, etc.

They were forced to live on the outskirts of the towns and villages during the early days. Even today they are segregated from others spatially. In South India, restrictions were imposed on the mode of construction of their houses, types of dresses and patterns of their ornamentation.

Some lower caste people were not allowed to carry umbrellas, to wear shoes or golden ornaments and to milk cows. They were prohibited from covering the upper part of their body. The services of barbers, washermen and tailors were refused to them.

Harijans had to face many public indignities because they were denied the right to use the services of public utilities like wells, public transport as well as educational institutions.

5. Educational Problems:

Traditionally the untouchables were deprived of getting education. They were not allowed to use public educational institutions. Even today most of the illiterates are untouchables.

The Harijans were forbidden from taking up to education during the early days. Sanskrit education was denied for them. Public schools and other educational institutions were closed for them. Even today majority of them are illiterate and ignorant.

Describing the conditions of Harijans, K.M. Pannikar has remarked, their position, when the system functioned in its pristine glory, was in many ways worse than that of slavery. The slave at least was

a chattel of the master and therefore, he stood in an individual relation to his owner. Considerations of economic self-interest and even human feeling modified the barbarism of personal slavery.¹

6. Political Problems:

The untouchables hardly participated in the political matters. They were not given any place in the politics, administration and the general governance of India; they were not allowed to hold any public post.

Political rights and representation were denied for them. Under the British rule, they were given the right to vote for the first time. After independence equal political opportunities and rights have been provided for the Harijans also. Politically, the Harijans are yet to become an organized force.

Steps Taken By The Government for the Improvement of SC and ST

The Constitution provides a **three-pronged** strategy to improve the situation of SCs and STs:

1. **Protective arrangements:** Such measures as are required to enforce equality, to provide punitive measures for transgressions, to eliminate established practices that perpetuate inequities, etc. A number of laws were enacted to implement the provisions in the Constitution. Examples of such laws include The Untouchability Practices Act, 1955, Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, etc.
2. **Affirmative action:** Provide positive treatment in allotment of jobs and access to higher education as a means to accelerate the integration of the SCs and STs with mainstream society. Affirmative action is *popularly known as reservation*.
3. **Development:** Provide resources and benefits to bridge the socioeconomic gap between the SCs and STs and other communities. Major part played by the Hidayatullah National Law University.

National commissions

¹ <http://www.yourarticlelibrary.com>

To effectively implement the various safeguards built into the Constitution and other legislation, the Constitution under Articles 338 and 338A provides for two statutory commissions: the National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes. The chairpersons of both commissions sit *ex officio* on the National Human Rights Commission.

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 1993*⁴, 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.

² AIR 1951 SC 226

³ AIR 1963SC 649

⁴ AIR 1993 SC 477

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.

In the case of *State of Karala. vs Appa Balu Ingle*⁶, SC upheld the conviction for preventing a lower caste person from filling water from a bore well.

In *Asiad Projects Workers Case 1982*⁷, SC has held that right under Art 17 is available against private individuals as well and it is the duty of the state to ensure that this right is not violated.

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 Orrisa.

⁵ 1955

⁶ AIR 1993 SC 1126

⁷ AIR 1982 SC 1473

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.

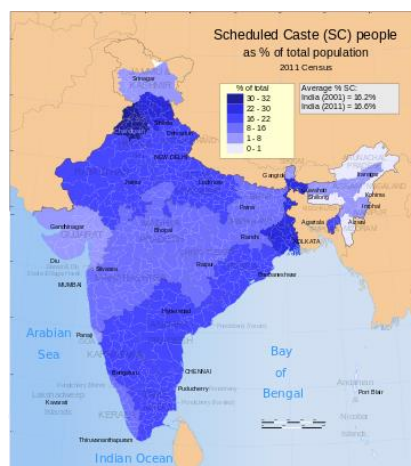
In the case of *State of MP vs Nivedita Jain*⁸, SC held that complete relaxation of qualifying marks for SCs/STs in Pre-Medical Examinations for admission to medical colleges is valid.

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.

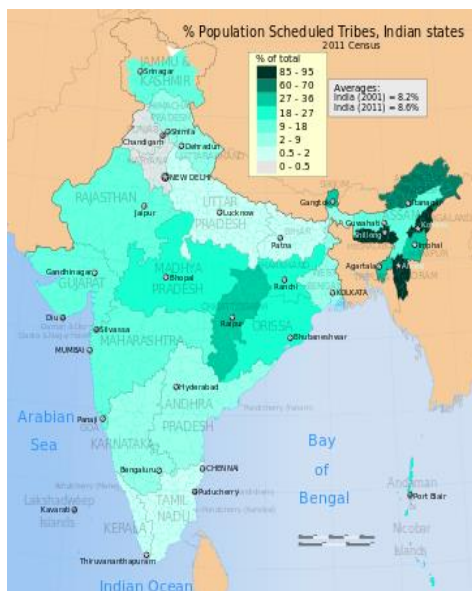
Scheduled castes distribution map in India by state and union territory .According to 2011 Census. Punjab had the highest % of its population as SC (32%), while India's island territories and two



northeastern states had 0%

8. 1982(1) SCR 759

Scheduled Tribes distribution map in India by state and union territory according to 2011 Census. Mizoram and Lakshadweep had the highest % of its population as ST (95%), while Punjab and Haryana had 0%.



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. While over the years, the social services in the field of education, health, transportation and tertiary sectors have increased, there has been an inherent distortion in their universal access. Typically in this paradigm, the center has continuously appropriated access to every aspect of development of services and resources at the cost of vast periphery.

