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REVIEW ARTICLE

CONSTITUTIONAL PROVISIONS FOR SCS AND STS IN INDIA: AN ANALYSIS

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ABSTRACT

India is the second largest country of the world after and it has got roughly constitute 25 per cent of its total population scheduled castes and scheduled tribes. The Constitution of India provides for a number of safeguards for the Scheduled Castes and Scheduled Tribes which are of its unique features. The main objective of these safeguards was to level up, socially and economically backward classes, particularly the Scheduled Castes and Scheduled Tribes in as short time as possible. All these safeguards have, apparently, been provided to facilitate the implementation of the Directive Principle contained in Article 46 of the Constitution. The scholars and advocates have strongly advocated the need for protective discrimination as well as affirmative action. The Central and State Governments have also launched several welfare and developmental programs to fulfill the constitutional obligations in free India in order to make SC/ST communities catch up other sections of Indian society in the race for social, economic, political and cultural progress. The dream of establishment of welfare society cannot be actualized if the constitutional provisions are not implemented by all the stakeholders of social justice and economic equity.

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INTRODUCTION

The builders of Indian Republic and founding fathers of our Constitutions had considered it necessary to provide specific safeguards in the constitution for the uplift of Scheduled Castes (SC) and Scheduled Tribes (ST) communities in India. The Central and State Governments have also launched several welfare and developmental programs to fulfill the constitutional obligations in free India in order to make SC/ST communities catch up other sections of Indian society in the race for social, economic, political and cultural progress. It is distressing to note that the gains of development have not yet reached the intended classes to the desired extent. Despite various measures to improve the socio-economic conditions of Scheduled Castes and Scheduled Tribes communities, they remain weak and vulnerable in all spheres of human life in India. The relevance and utility of constitutional provisions for SCs/STs in India is examined in this article which is based on an extensive review of literature.

Dalits in Indian Society

India is a pluralistic society which has all the major religions of the world. The hierarchical social order in other words caste system was created over the centuries with a view to preserve

the monopoly of social status, property and education by the high caste Hindus. Consequent upon the caste system, the property, education, freedom, social equality, economic opportunity and political power were denied to the weaker sections of Indian society. The caste system bestowed hierarchical graded privileges on some sections of the population and inflicted a series of disabilities on others which continued from generation to generation.

India is the second largest country of the world after and it has got roughly constitute 25 per cent of its total population scheduled castes and scheduled tribes. They are kept away from the mainstream of all social, cultural, religious, educational, economic etc. of existing practices of society for centuries together. They were denied the basic rights of human living. This was the vulnerable group who was living on the bottom line of society. India attained freedom in August, 1947 and adopted its own "Constitution of India" for its citizens. India was governed by this law of land. Constitution of India has protected the human rights of these sections of citizens by awarding certain privileges enshrined in the constitution. The various safeguards for scheduled castes and scheduled tribes in the constitution can be broadly classified under the four heads of (1) Social (2) Development and Economic (3) Political and (4) Other safeguards writes Srivastava (2000:03). Bharadwaj (1979:01) observes: "The Indian social system has for centuries perpetrated social and economic injustices by the so called

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higher castes on the lower castes that have been systematically denied equal rights, resources and opportunities. The weaker sections have always been set apart from the mainstream of the national life and remained socially oppressed, economically condemned to live life of penury and educationally coerced to teach the family - trade or occupation and to take education set out for each caste and class by society”.

Shankaran (2000:02) comments: “The Scheduled Castes, Scheduled Tribes, backwards and minorities have remained as the most disadvantaged sections of Indian society since times immemorial. The groups that suffer more deprivation in terms of education and economic resources than the rest of the society include the poor, the elderly, the uneducated, the unemployed, and those who are treated as racial outcasts. The country has also witnessed several social movements which have fought for the human rights of marginalized sections of Indian society”. When India attained independence, the new democratic state was made aware of its responsibility towards the welfare of the weaker sections of the society.

Constitutional Provisions for SCS/STs

The Constitution of India provides for a number of safeguards for the Scheduled Castes and Scheduled Tribes which are of its unique features. The safeguards have apparently helped these communities in protecting their legitimate interests and accelerated their socio-economic development. The credit for incorporating these safeguards in the Constitution of India goes to Dr. Bhimrao Ramji Ambedkar, Chairman of the Drafting Committee of the Constitution would not have had this distinctive dimension. To Baba Saheb Dr. B.R. Ambedkar, nothing was dearer than the welfare of the downtrodden.

Thorat (2006:04) writes: “The founding fathers of the Constitution decided to secure social, economic and political justice for all citizens. They analyzed that the inequitable forces embedded in the socio-economic system and also political organizations, had resulted in deprivation and disadvantages for the poor and weaker sections of the society. The Constituent Assembly passed some of the provisions, like Article 46, which embodied the new policy, its messages of hope for millions of our citizens hitherto neglected. Out of Article 46 flow all safeguards or weaker sections including Scheduled Castes and Scheduled Tribes”.

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and Other Weaker sections— 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 all forms of exploitation.

The Constitution came into effect from the 26th January, 1950. The Constitution of India is the basic and supreme law of our country. It, however, governs almost all the aspects of our social life. It constitutes India into a sovereign socialist secular Democratic Republic and pledges to secure for the entire citizens, including Scheduled Castes and Scheduled Tribes, justice, liberty and equality. It is, therefore, certain measures in

the form of Constitutional safeguards are enshrined in the Constitution of India for those who were deliberately deprived of justice, liberty and equality since time immemorial.

The main objective of these safeguards was to level up, socially and economically backward classes, particularly the Scheduled Castes and Scheduled Tribes in as short time as possible. The policy of reservation to improve the socio-economic conditions of SCs and STs over a period of five decades has been a failure. But we have to admit that the reservation has come to stay in our society. It was in the past, it is, and it will remain. But the question is how to make it effective in order to bring the SC and ST to the level of other sections of society.

The Preamble to the Constitution of India reveals the philosophy of the Constitution. It is as under:

“We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens—

Justice : social, economic and political;

Liberty of thoughts, expression, belief, faith and worship;
Equality of status and of opportunity and to promote among them all fraternity, assuring the dignity of the individual and integrity of the nation. In our Constituent Assembly this twenty sixth day of November, 1949, do adopt, enact and give to ourselves this Constitution.”

Several safeguards have been provided for the Scheduled Castes and Scheduled Tribes in India Constitution. However, above terms have not been defined anywhere in the Constitution. Scheduled Castes is defined in

Article 340:

Appointment of a Commission to investigate the conditions of Backward Classes—

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Article 341:**Scheduled Castes—**

- (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor. Thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

Article 342:**Scheduled Tribes—**

- (1) The President may with respect to any State or Union territory and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.
- (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 366:**Definitions:**

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say Schedule means a Schedule to this Constitution. Scheduled Castes means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution; Scheduled Tribes means such tribes or tribal communities or parts or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution. All these safeguards have, apparently, been provided to facilitate the implementation of the Directive Principle contained in Article 46 of the Constitution, which reads as follows:

The State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Social Safeguards**Equality before Law**

The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.

Article 15:

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth—

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them,
- (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 wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.
- (3) Nothing in this Article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes]

Article 16:

Equality of opportunity in matters of public employment—

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (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 or office under the State.
- (3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.
- (4) Nothing in this Article shall prevent the State from making 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 services under the State
- 4(A) Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which in the opinion of the States, are not adequately represented in the services under the State.
- (2) Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 17: Abolition of Untouchability

Abolition of Untouchability— Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

Rights against Exploitation

23(1) Traffic in human beings and beggary and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

25(2)(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Untouchability and Atrocities

There was no uniform Central Act for this purpose for the country as a whole. In pursuance of Article 17 of the Constitution, the Untouchability (Offences) Act, was passed by the Parliament in 1955 which came into force with effect from 1st June, 1955 repealing all the State enactments. The Central Act prescribed punishment for the practice of 'Untouchability', for the enforcement of any disability arising there from and the matters connected therewith. Ever since it came into force, it was felt that the Act was not serving its purpose and the punishment provided in it was few and inadequate. Therefore, the Protection of Civil Rights Act, 1955 was enacted in 1976 to re-name and amend the Untouchability (Offences) Act, 1955 with comprehensive amendments by making the punishments under this Act more stringent and offences non-compoundable. The machinery for the enforcement of this Act has been suitably strengthened by the setting up of special cells, special courts, mobile squads, provision of legal aid etc.

The law to punish the untouchability offences as proclaimed under Article 17 of the Constitution took more than five years to arrive showing disregard to the urgency attached to it by the founding fathers of the Constitution. Even the amendments of the Act after a period of 17 years, are not exhaustive. It is not possible to exhaustively catalogue all instances, of behavior which come within the ambit of 'untouchability'. One of the innovations of the Act is that every year the Central Government is required to place on the table of each house of the Parliament, a report on the measures taken by itself and by the State Governments in pursuance of the mandate contained in section 15(A)2 and (3)

The enforcement of PCR Act in terms of cases registered, disposed of at different stages and levels from the police to the courts and convictions, is not adequate. Very few States have taken seriously the establishment of special courts as per clause (iii) of Section 15(A)(2), preferably mobile special courts. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which was brought into from 30.1.1990, is not very effective in spite of implementation machinery and special courts etc. This Act requires serious implementation including establishment of exclusive special courts with

exclusive special judicial and investigative and prosecuting officers, all carefully selected for proven sensitivity to social justice and liberation from caste-based

Bonded Labour

Article 23, prohibits traffic in human beings and beggar and other similar forms of forced labour. In pursuance of this provision the Bonded Labour System (Abolition) Act, 1976 was enacted after a lapse of 26 years in 1976, with a view to abolishing this evil practice and making the offences under this Act punishable. Majority of the bonded labour belong to scheduled caste and scheduled tribe communities. Under Centrally Sponsored Programme launched in 1978-79 grants-in-aid is provided to the State Governments/U.T. Administration on matching (50:50) basis, for identification, liberation and rehabilitation of the bonded laborers. The scheme envisages provision of rehabilitation grant up to ceiling limit of Rs. 10,000 per freed bonded laborer, half of which is given as Central share. The State Governments have been advised to suitably dovetail, the Centrally Sponsored Scheme with other anti-poverty and employment generation programmes so as to pool the resources available under different schemes in order to ensure effective rehabilitation of released bonded laborers. This Act is not adequate enough to identify and liberate all bonded laborers in the country particularly in the tribal areas. The Act requires amendments so as to provide more stringent punishment for the offences.

Educational and Economic Safeguards for SCs/STs

The various safeguards under this head as contained in, Article 15(4), 16(1)(4)(4A), 29(2), 46 and 335 are discussed below: 15(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

16(4) Nothing in this Article shall prevent the State from making 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 services under the State.

29(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Special Grants under Article 275

Article 275(1) provides that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of State such capital and recurring sum as may be necessary to enable that state to meet the cost of such schemes of development as may be undertaken by the state with the approval of the Government of India for the purpose of promoting the welfare of scheduled tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of

that state. During the Eighth Five Year Plan Rs.54,000 lakh was released to the State Governments under this provision. The amount released during 1997-98, 1998-99 and 1999-2000 (upto Jan., 2000) was Rs. 25,000 lakh. A similar provision exists in the Article for paying such special grants to the States covered under the Sixth Schedule of the Consolidated Fund of India'

Other Safeguards

Article 330

Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People—

(1) Seats will 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 6, 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 the States 6 or by the Constitution (Eighty-first Amendment) Act, 2000 Subs. by the Constitution (Fifty-first Amendment) Act, 1984, s. 2, for sub-clause (b) (w. e. f. 16-6-1986.

(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 Scheduled Tribes in the said autonomous districts bears to the total population of the State].

Article 332

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 10 (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.

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. The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area

outside that district¹³. 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.

Article 334:

Reservation of seats and special representation to cease after 14[sixty years]— Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and (b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of 14[sixty years] from the commencement of this Constitution:

Provided that nothing in this Article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Article 335:

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 Scheduled Tribes for relaxation in qualifying

Special Officer/Commission

Article 338

National Commission for Scheduled Castes and Scheduled Tribes— See the Constitution (Sixty-fifth Amendment) Act, 1990 under the heading Central Acts constituting National Commissions for Welfare of Scheduled Castes and Scheduled Tribes and Other Backward Classes. Originally Article 338 of the Constitution (amended in 1990) provided for a Special Officer known as the Commissioner for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President on their working. It was felt that a high level five-member Commission under Article 338 will be a more effective arrangement in respect of the Constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single Special Officer.

It was also felt that it was necessary to elaborate the functions of the said commission so as to cover 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 socioeconomic development of the Scheduled Castes and Scheduled Tribes and to entrust to the Commission such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may decide, subject to any law made by Parliament and the Legislature of the States

Conclusion

The builders of Indian Republic and founding fathers of our Constitutions had considered it necessary to provide specific safeguards in the constitution for the uplift of Scheduled Castes (SC) and Scheduled Tribes (ST) communities in India. The Constitution of India provides for a number of safeguards for the Scheduled Castes and Scheduled Tribes which are of its unique features. Reservation is indeed the process of setting aside a certain percentage of seats vacancies in educational institutions, government institutions and legislative institutions for the members of weaker sections in modern times. The scholars and advocates have strongly advocated the need for protective discrimination as well as affirmative action. The Central and State Governments have also launched several welfare and developmental programs to fulfill the constitutional obligations in free India in order to make SC/ST communities catch up other sections of Indian society in the race for social, economic, political and cultural progress.

There are a number of Centrally Sponsored Schemes which have been undertaken for the benefit of Scheduled Castes and Scheduled Tribes in the post-independence era. The constitutional provisions are not translated into realities in the post-independence era mainly due to lack of organized struggle by Dalits and absence of political will on the part of the dominant powers which rule the country. A case for Bhim Rajya is emphasized by progressive Dalit thinkers and activists in India. The dream of establishment of welfare society cannot be actualized if the constitutional provisions are not implemented by all the stakeholders of social justice and economic equity.

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