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A Review of Marginalized in India: Pre & Post Constitution (In Special Reference to SC's & ST's)

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ABSTRACT

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. This is what the United Nations Declaration of Human Rights, 1948 exhorts in its opening article. The Founding Fathers of our Constitution echoed the same spirit by insisting upon Social Justice. They tried their best to inculcate this philosophy in every part of the Constitution right from Preamble. In the present paper, the word Marginalized is used mainly in terms of Scheduled Caste and Scheduled Tribes. The focus here is to reflect upon the Constitutional benefits and safeguards to the marginalized community as a whole. Also, the effect on migration from one State to another is also hereby discussed. The paper also suggests some measures for better implementation of Constitutional provisions in order to ameliorate the prevailing conditions of such communities.

Keywords: Marginalized, Constitutional Benefits, Constitutional Safeguards.

Introduction

Article 1 of the Declaration of Human Rights (1948), adopted by the United Nations, says:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

This aspect of human dignity is brought out more clearly in Art. 10 of the U.N. Covenant on Civil and Political Rights, 1966-

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

The dignity of the human person in all situations is also emphasized by Art. 1 of the Universal Declaration-

"Everyone has the right to recognition everywhere as a person before the law."

Guided by the long-drawn aspirations of the people of India and taking a cue from the above-mentioned provisions of the Universal Declaration of Human Rights, 1948, the Founding Fathers of Indian Constitution introduced the concept of the *"Dignity of the individual"* into the Preamble itself. The Preamble, therefore, says that the State, in India, will assure the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing equal fundamental rights to each individual so that he can enforce his minimal rights, if invaded by anybody, in a Court of Law. Seeing that these

justiciable rights may not be enough to maintain the dignity of an individual if he is not free from wants and misery, a number of Directives have been included in Part-IV of the Constitution, exhorting the State so to shape its social and economic policies.¹

During the course of the Constituent Assembly Debates, Dr. Ambedkar said, ".....a sense of common brotherhood of all Indians, if Indian being one people. It is this principle which gives unity and solidarity to social life. It is a difficult thing to achieve. In India there are castes. The castes are anti-national. In the first place, because they bring about separation in social life. They are anti-national also because they generate jealousy and antipathy between caste and caste. But, we must overcome all these difficulties if we wish to become a nation of unity. For, fraternity can be a fact only when there is a nation. Without fraternity, equality and liberty will be no deeper than coat of paint."²

In his book "Competing Equalities- Law and the Backward Classes in India," Marc Galanter aptly says: "The Constitution sets forth a general programme for the reconstruction of Indian society. In spite of its length, it is surprisingly undetailed in its treatment of the institution of caste and existing group structure of Indian society. But it clearly sets-out to secure to individuals equality of status and opportunity, to abolish invidious distinction among groups, to protect the integrity of a variety of groups- religious, linguistic and cultural, to give free play to voluntary association, to confer the widest freedom of association to the individual and generally the widest personal freedom consonant with public good."³

In *State of U.P. Vs. Ram Sajoivan*,⁴ The Supreme Court has expressed great displeasure about the Caste system that is prevalent in India. The Court observed: "In a civilised country like India, centuries old Indian caste system still takes its toll from time to time and it is absolutely imperative to abolish caste system as expeditiously as possible for smooth functioning of rule of law and democracy in India."

In a subsequent decision, *Arumugham Servai Vs. State of Tamil Nadu*,⁵ the Supreme Court held that "freedom from discrimination and right to live with dignity is a fundamental right under Arts. 15 (2), 17 and 21. Insulting or hurting anyone's feelings on account of his caste, religion, tribe, language cannot be allowed. The Court observed that one of the main causes holding up India's progress is linked to mental attitude of Indian society to regard a section of their own countrymen as inferior and this mental attitude is simply "unacceptable".

Historically, there is no denying the fact that the caste system crept into the Hindu way of life at some point of time and slowly turned into a social evil of great magnitude in due course. The worst sufferer of this pernicious caste system were those people who were at the lowest rung of the social ladder, and who belonged to socially and economically 'deprived' and 'depressed' class. In the post-Constitution era, such categories of people are grouped together which, in common parlance, is termed as Scheduled Castes and Scheduled Tribes.

Scheduled Castes and Scheduled Tribes: Scheduled caste and Scheduled Tribes are not a caste within the ordinary meaning of the term 'Caste'. The Word 'Caste' does not include 'Scheduled Caste'. The definition of Scheduled Caste has been provided in Article 366 (24) of the Indian Constitution which says that:

Art. 366 (24)-"Scheduled Caste' 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."

This shows that it is by virtue of notification of President that the Scheduled Caste comes into being. Though the members of Scheduled Castes are drawn from castes, races and tribes, they attain a

¹Durga Das Basu, Commentary on the Constitution of India, Vol.I, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 608.

² Constituent Assembly Debates, Vol. XI, pp. 979-80, Sixth Reprint, Lok Sabha Secretariat, New Delhi, 2014.

³Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. I, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 608.

⁴ Ibid.

⁵ AIR 2011 SC 1859, Ibid

new status by virtue of the notification.⁶ Article 341 makes it clear a Scheduled caste may not be a 'caste' in conventional sense and, therefore, may not be a caste within the meaning of Art. 15 (2) or 16 (2). Scheduled Caste become such only if the President specifies any castes or tribes or groups within caste, races or tribes for the purpose of Constitution. So, a group or section of a group which may not be a caste any way even be a hotch-potch of many castes or tribes or even races may still be Scheduled Castes under Article 341. Likewise races or tribal communities or parts thereof or parts or parts of groups within them may still be Scheduled Tribes (under Article 342) for the purpose of Constitution. Under this definition, one group in a caste may be Scheduled Caste and another from the same caste may not be. It is the socio-economic backwardness of a social bracket, not mere birth in a caste that is decisive. Conceptual errors creep in when traditional obsession obfuscate the vision.⁷

Article 366 (25) describes Scheduled Tribes as such:

"Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

'Scheduled Caste' is the most recent of a long line of official euphemisms for "untouchables". The scheduled category is intended to comprise those groups isolated and disadvantaged by their "untouchability" i.e. their low status in the traditional Hindu Caste hierarchy which exposed them in invidious treatment, severe disabilities and deprivation of economic, social, cultural and political opportunities. In the early years of century, they were called "depressed class."⁸

In *State of Kerala Vs. N.M. Thomas*, Justice Krishna Iyer identified Scheduled Tribes as "this mixed bag of tribes, races, groups, communities and non-caste outside the four fold Hindu division.". The general notion is that scheduled tribe should include all groups distinguished by "tribal characteristics and by their spatial and cultural isolation from the bulk of population."⁹

1. These two expressions are defined in clauses (24) and (25) of Art. 366, post. These clauses, however, merely refer to the lists of Castes and Tribes as specified in the Order of the President under Arts. 341 and 342, respectively.
2. The list of Scheduled Castes is contained in the Constitution (Scheduled Castes) Order, 1950, as made by the President in exercise of his power under Art 341.
3. Likewise, the list of Scheduled Tribes is to be found in the Constitution (Scheduled Tribes) Order, 1950, made by the President under Art. 342.
4. The Object of specifying the members of these Castes and Tribes separately is to remove the inequality and backwardness from which they have been suffering for ages under the caste system prevailing in Hindu Society.

Constitutional Benefits to Scheduled Castes and Scheduled Tribes can be enumerated as such:

1. **Under Art. 14, 15 & 16:** Articles 14, 15 and 16 of the Constitution confer several benefits of social and economic development and improvement and social equality status and dignity of person, by providing reservation in Government Services and in educational institutions for the scheduled Castes and Scheduled Tribes.¹⁰

Article 15 (4) provide for reservation in educational institutions and Article 16 (4) deals with reservations in appointment.

⁶ State of Kerala Vs. N.M. Thomas, A.I.R. 1976 SC 490, Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 2828.

⁷ Akhil Bhartiya Soshit Karmchari Sangh Vs. Union of India. AIR 1981 SC 298, cited in Durga Das Basu, Commentary on the Constitution of India, Vol3, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p.2828.

⁸ Marc Galantar, Competing Equalities, 1984 Edition, P. 122 cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 2014, p. 2828.

⁹ Marc Galantar, Competing Equalities, 1984 Edition, P. 147.

¹⁰ S. Nagarajan Vs. District Collector, Salem, AIR 1997 SC 935, cited in Durga Das Basu, Commentary on the Constitution of India, Vol . 3, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 2829.

Article 17: Scheduled Castes are not strictly speaking, a racial, linguistic or religious minority. They are part and parcel of Hindu Community. They are known as "Untouchables" or "Harijans" and constitute nearly 15% of Indian population. They usually engage themselves in menial jobs like scavenging, tanning and skinning of hides, manufacture of leather goods etc. Even among the Harijans, there are so many classes high and low. Article 17 of the Constitution abolished Untouchability and under Article 25 (2) all Hindu temples are now open to Harijans also.

Article 46: The Constitution makes a classification of SC/ST in numerous provisions and gives a mandate to the State to accord special or favoured treatment to them. Article 46 contains a Directive Principles of State Policy- fundamental to the governance of the country enjoining the State to promote with special care educational and economic interest of SC/ST and to protect them from any social injustice and exploitation.

Article 335: Article 335 enjoins- that the claim of members of SC/ST to the services and posts in the Union and the States shall be taken into consideration.

Article 338: Article 338 provides for appointment by the President of a special officer for the SC/ST to investigate all matters relating to the safeguards provided for them under the Constitution.

Article 341: Article 341 enables the President by public notification to specify castes, races or tribes which shall be deemed to be SC in the State and in Union Territories.

Article 342: Article 342 contains a provision for similar notification in respect of Scheduled Tribes.

Article 366 (24) and 366 (25) : Art. 366 (24) and 366 (25) defines a SC/ST.

Laws have been enacted prohibiting the entry of non-tribal into tribal areas without permits, living of non-tribals permanently in tribal areas and transfer of law by tribals to non-tribals and separate provisions are made to administer tribal areas. Scheduled Tribes are also entitled to reservation of seats in educational institutions under Art. 15 (4) and in getting appointments under Art.16 (4). Articles 41, 46 and 335 also deal with their protection.

Autonomous statutory bodies under Government control are also bound by the reservation policies of Government unless specifically excluded.¹¹

For this purpose, they are specifically mentioned in Arts. 15 (4) and 46; and 335 and they, come under the wider expression '*any backward class*' in Art. 16 (4).

Article 335 provides that claims of scheduled castes and scheduled tribes are also to be taken into consideration consistently with the maintenance of efficiency of administration in making appointment to services and posts in connection with the affairs of the Union and State. After the decision in *Indra Sawhney Vs. Union of India*,¹² a proviso has been added to Art. 335, which enables the Government to make provision for relaxation of qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class, classes of services or posts in connection with the affairs of the State or the Union. In *Indra Sawhney's* case, Court declared that appointment to certain posts can be based on merit only and reservation should not be applied and directed the Government to issue necessary notification in that regard. But it is held that the proviso is only an enabling provision and is not mandatory.¹³

In *Manchegowda Vs. State of Karnataka*,¹⁴ special provisions made only for Scheduled Castes and Scheduled Tribes regarding prohibition of transfer of certain lands under the Karnataka SCs and STs (Prohibition of Transfer of Certain Land) Act, 1978, was held valid. It was held that they

¹¹ Post Graduate Institute of Medical Education & Research Vs. K.L. Narasimhan, (1997) 6 SCC 283.

¹² AIR 1993 SC 477, cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3,9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 2830.

¹³ State of Bihar Vs. Bal Mukund Sah, AIR 2000 SC 1296. cited in Durga Das Basu, Commentary on the constitution of India, Vol. 1, 2014, p. 2830.

¹⁴ AIR 1984 SC 1151, Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. I, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 2830.

form a separate class and exclusion of other communities from the purview of provisions is not discriminatory and violative of Art. 14.

In *State of M.P. Vs. Mohan Singh*¹⁵, it was held by the Supreme Court that any 'special provision' under Art. 15 (4) should be for the advancement of Scheduled Castes and Scheduled Tribes. The grant of remission to prisoners belonging to Scheduled Castes and Scheduled Tribes can hardly be said as a measure of advancement and hence such a provision was struck down.

In the Case of *S.K. Dutta, I.T.O. Salary-cum-SIB circle-V Vs. Lawrence Singh Ingty*,¹⁶ it was held by the Supreme Court that there can be no distinction between the government servant and that earned by a person serving a company or under an individual. Income earned by the members of the Scheduled Tribes excepting in the case of government servants is exempted from income-tax be it salaried class, lawyers, doctors or persons in other walks of life. This was in reference to a provision under that income-tax whereby certain exemption was granted to members of Scheduled Tribes "except to those who are in Government service." It was further held that prima facie Government servants have been discriminated against and hence, violative of Art. 15 (4) and Art. 14. In *Babaji Kondaji Garad Vs. Nasik Merchants Cooperative Bank Ltd.*¹⁷ provision for reservation in the Board of Directors in the management of cooperative societies was held to be mandatory and a step towards raising the stature and status of such persons so as to bring them on the footing of the equality with other segments of society. It was held that but for reservation, such persons could not get elected to decision-making bodies.

Constitutional Safeguards and the Legislature:

- (a) **Lok Sabha:** Constitution provides for many safeguards to protect the interest of Scheduled Castes and Scheduled Tribes. Under Art. 330, seats are to be reserved for Scheduled Castes and Scheduled Tribes in Lok Sabha. This reservation was originally fixed for a period of ten years. But the same has been extended from time to time and as per amendment made in 2009 to the Constitution, this reservation is to last till January 25, 2020 [Art-334 (a)]
- (b) **Panchayat Raj Institution :** In the case of *Union of India Vs. Rakesh Kumar*¹⁸, the Supreme Court has held that principles of reservation which are applicable for public employment and admission to educational institutions cannot be applied in respect of reservation policy made by legislature to protect the interests of Scheduled Tribes by assuring them of majority of reservation as well as occupancy of chairperson position in Panchayat located in Scheduled Areas where even 100% reservation is permissible. Court held that as regards of reservation of seats for SC and ST in Panchayats, the limit of 50% maximum as determined in *Indra Sawhney Vs. Union of India*¹⁹, is not applicable. Court said that Art. 243-D envisages proportionate representation and is distinct and an independent Constitutional basis of reservation in Panchayati Raj institution. Reservation under Art. 243-D cannot be compared with affirmative action measures under Arts. 15(4) and 16 (4). The Court said that Scheduled Areas require exceptional treatment with regard to reservation. The rationale behind imposing the upper ceiling of 50% in reservation for higher education and public employment cannot be readily extended to the domain of public representation at Panchayat level and Scheduled Area. The historically disadvantaged groups must be given special protection and help, so that they can be uplifted from poverty and low social status. It is for this reason that special

¹⁵ AIR 1996 SC 2106, Ibid.

¹⁶ AIR 1968 SC 658, Ibid

¹⁷ AIR 1984 SC 192, cited in Durga Das Basu, Commentary on the Constitution of India, Vol.1, 2014, p. 2830

¹⁸ AIR 2010 SC 3244, Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. I, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 2831.

¹⁹ AIR 1993 SC 477, Ibid, p. 2030.

provisions have been made in our Constitution under Arts 15 (4), 15(5), 16 (4), 16 (4-A), 46, etc., for the upliftment of these groups. Among these disadvantaged groups, the most disadvantaged and marginalised in India are the Adivasis (ST) who are the descendants of the original inhabitants in India. In *Kailash Vs. State of Maharashtra*²⁰ the Supreme Court said that it is the duty of all people who love our country to see that no harm is done to S.T. and that they are given all help to bring them up in their economic and social status since they are victimised for thousands of years by terrible oppression and atrocities. The mentality of our-countrymen towards tribals must change and they must be given the respect they deserve as original inhabitants of India.

- (c) **State Legislatures:** A similar provision is also made in regard to reservation to legislative assemblies, which will be operative till Jan. 25, 2020. Special provision have been made through Art 332 (4), (5) and (6) for the representation of Autonomous Tribal Districts in the Assam Legislature. Though Constituencies are reserved for Scheduled Caste and Scheduled Tribes they are not debarred from contesting a general non-reserved seat.²¹

Miscellaneous Provisions:

1. **Art. 339 (1):** Art. 339 (1) empowers the President to appoint a Commission at any time and appoint it after ten years of the commencement of Constitution to report on the welfare of Scheduled Tribes in the State and the administration of the Scheduled Areas. The Presidential Order may also define its composition, powers and procedure and may make such other incidental or ancillary provisions. But not such provision has been made so far as Scheduled Castes are concerned.

2. **Art 339 (2):** This Article empowers the Centre to issue directives to any State giving directions as to the drawing up and execution of schemes for the welfare of Scheduled Tribes. Necessary provisions are also made to meet the costs of the Scheme from the Consolidated Fund of India. [Art. 275 (1)].

3. Constitution also provides for the administration of the areas known as Scheduled Areas. [Fifth and Sixth Schedules of the Constitution]. The Fifth and Sixth Schedules of the Constitution constitute an integral scheme of Constitution with direction, philosophy and anxiety to protect tribals from exploitation and to preserve valuable endowment of their land for the economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity by their person in India. The provision in Fifth Schedule imposes total prohibition of transfer of immovable property to any person other than a tribal for peace and proven good management of a tribal area; to protect possession, right, title and interest of the members of ST held in the land at one time by the Tribals²². Clause (5) of Fifth Schedule provides for making regulation which includes the power of Governor to declare by public notification that any particular Act of Parliament or the Legislature of State shall not apply to a Scheduled Area or shall apply only with such modification for the purpose of peace and good Government in any area which is a Scheduled area.

4. **Various Safeguards under the Constitution:**²³

- a. Article 46, refers to developmental and protective safeguards;
- b. Article 17 abolished Untouchability;
- c. Articles 23,24 and 25 (2) (b) confers social safeguards;
- d. Article 16 (4), 16 (4A), 335 and 320 (4) provide for safeguards in Services;
- e. Articles 15 (4), 29 (1) and 350 A provide for educational and cultural safeguards;
- f. Article 275 (1), Fifth and Sixth Schedules confer economic safeguards;

²⁰ AIR 2011 SC 598, Cited in Durga Das Basu, Commentary on the Constitution of India, Vol.3, 9th Edition, Lexis Nexis, Gurgaon, Haryana, 2014, p. 2831.

²¹ V.V. Giri Vs. D.S. Dora, AIR 1959 SC 1318, Ibid.

²² Somatha Vs. State of U.P., AIR 1997 SC 3297, cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 9th Edition, p. 2832, Lexis Nexis, Gurgaon, Haryana, 2014.

²³ Durga Das Basu Commentary on the Constitution of India, Vol. I, 2014, p. 2832.

g. Articles 164 (1), 320, 332, 334, 371 A, 371 B, 371C and 371F provide political safeguards.

5. Articles 338 (5) and 338A (5) (C) of the Constitution refer to socio-economic development of SC/STs. The important function of the commission is to keep track of all the major policy decisions, legislative or executive action by the Government of India or State Government. The Commission is required to inquire into specific complaints with respect to the deprivation of the rights and safeguards of SCs/STs [Arts. 338 (5) (b) and 338A (5) (b)].

6. Parliament has also enacted Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which recognises and vests forest rights and other rights over forest land in forest dwelling STs and other traditional forest dwellers who have been residing in such forest for generation and the Act protects rights of forest dwellers and Scheduled Tribes including customary right to use forest land as a community forest resource and is not restricted merely to property right or to areas of habitation.²⁴

The Court said that the legislation also guarantees the religion or spiritual right under Arts. 25 and 26 of Constitution and must be preserved and protected.

In *Kannaiyan Vs. State of Tamil Nadu*,²⁵ Government Order providing for grant of contract to Adi Dravidars or Dalits is a "Special provision and is protected under Art. 15 (4)."

7. Though Scheduled Castes and Tribes are not separately mentioned in Article 16(4), as in Art. 15 (4), it has been held that they are entitled to be treated as a 'backward class'²⁶ and that accordingly, any reservation²⁷ or relaxation of service conditions²⁸ for appointment or promotion²⁹ cannot be challenged as discriminatory even though it relates to 'selection posts' provided such reservation is not excessive.³⁰

8. Preferential treatment of backward classes and Scheduled Castes and Tribes is a rational classification and is indeed necessary to make effective the equality of opportunity for all citizens, which is provided by Art. 16 (1)³¹

9. The S.C. and S.T. constitute a protected class, apart from any condition of backwardness, as specified in Art. 15 (4)³². Various kinds of preferences are given-

(i) There are reservations which allot or facilitate access to valued position or resources. The most important instances of this type are reservation of seats in legislature, reservation of posts in Government service and reservation of places in academic institutions. To a lesser extent, reservation device is also used in the distribution of land allotment, housing and other scarce resources; (ii) There are programmes involving expenditure or provision of service-e.g., scholarships, grants, loans, land allotments, healthcare, legal aid-to a beneficial group beyond comparable expenditure for others; (3) There are special protections. These distributive schemes are accompanied by efforts to protect backward classes from being exploited and victimised. Forced labour is prohibited by the Constitution and in recent years there have been strenuous efforts to release the victims of debt bondage who are mostly SC/ST. Legislation regulating money lending providing debt relief and restricted land transfer attempt to SC/ST from economic oppression of their more sophisticated

²⁴ Orissa Mining Corporation Vs. Ministry of Environment and Forests, (2013) 6 SCC 476. Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 9th Edition, 2014, p. 2832.

²⁵ AIR 2005 NOC 212 (Mad), cited in Durga Das Basu, Commentary On the Constitution of India, Vol. 3, 9th Edition, 2014, p. 2832.

²⁶ Janki Prasad Vs. State of J&K, AIR 1973 SC 930, Ibid

²⁷ Chitrlekha Vs. State of Mysore, AIR 1964 SC 1823, Ibid

²⁸ State of Kerala Vs. Thomas, AIR 1976 SC 490, Ibid

²⁹ Sharma Vs. Union of India, AIR 1981 SC 588, Ibid

³⁰ A.B.S.K. Sangh Vs. Union of India, AIR 1981 SC 298, (Paras 37,64,77,83,84), Ibid.

³¹ State of M.P. Vs. Nivedita, AIR 1981 SC 2045, (Paras 37,64,77,83,84), Ibid.

³² State of Kerala Vs. Thomas, AIR 1976 SC 490, Ibid, p. 2833.

neighbours. Anti-untouchable propaganda and Protection of Civil Rights Act attempt to relieve untouchables from social disabilities under which they have suffered.

In the case of *Dr. Sudhakar Vs. Union of India*³³, it was held that reservation is anathema to merit in the matter of admission to course of studies in which there is still competition as that alone satisfies the requirement of Art. 14. But just as inequality among equals results in denial of equal opportunity and equal protection of law becomes a mere concept of philosophy with no practical significance. Reservation therefore has to be accepted as a necessary factor, be it on caste basis, or religious basis or regional basis or any other rational basis.

In *Lipika Das Vs. State of Meghalaya*,³⁴ Government of Meghalaya clubbed together two seats for scheduled and other backward classes and two candidates from OBC's were selected, though Scheduled Caste candidate was more meritorious. When the selection was challenged, it was held that separate reservation for Scheduled Caste was necessary and the selection is made in violation of Art. 46.

10. The State is entitled to do everything for the upliftment of members of these Castes and Tribes, to make reservation for their admission to educational institutions and to impose such conditions as would make the reservation effective.³⁵

11. It follows that the Government may make relaxation of the rules for admission to such institutions³⁶ or for selection to Government employment³⁷, say, by lowering the minimum qualifying marks or other conditions³⁸, or by offering them two avenues for promotion in place of one for the rest of the people: or reservation of selection posts for them.³⁹

A Scheduled Caste is not a 'Caste' within the meaning of that word in Arts. 15 (1) and 16 (2)⁴⁰. It has a special meaning, namely, a caste as notified by the President under Art. 366 (24)⁴¹ having regard to their abysmal backwardness.⁴²

12. While the rights of free movement and residence throughout the territory of India and of acquisition and disposition of property are guaranteed to every citizen, in the case of members of the Scheduled Castes and Tribes, special restrictions may be imposed by the State as may be required for the protection of their interests. For instance, to prevent the alienation or fragmentation of their property, the state may provide that they shall not be entitled to alienate their property except with the concurrence of a specified administrative authority or except under specified conditions. [Art. 19 (5)]. It is now settled law that transfer of immovable property between members of ST and a non-Scheduled Tribe member is null and void. The non-tribal transferee acquires no right, title or interest in that behalf in furtherance of such sale, and the seller who has alienated the land can seek restoration of the land from the alienee.⁴³ Clause 5 of Provision as to the Administration and Control of Scheduled Areas and Scheduled Tribes in Fifth Schedule of the Constitution can be referred in this connection.

³³ AIR 1995 AP 88 (FB), cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 2014, p. 2833,

³⁴ AIR 1994 Gau 1, Ibid.

³⁵ State of M.P. Vs. Nivedita, AIR 1981 SC 2045 (para 25); explained in PreetiSrivastava (Dr.) Vs. State of M.P., (1999) 7 SCC 120, Ibid.

³⁶ Ibid.

³⁷ State of Kerala Vs. N. M. Thomas, A.I.R. 1976 S.C. 490, Ibid.

³⁸ State of Kerala Vs. N.M.Thomas, A.I.R. 1976 S.C. 490.

³⁹ I Sharma Vs. Union of India, AIR 1901 SC 588 (Paras 9,11,12), Ibid.

⁴⁰ State of Kerala Vs. Thomas, AIR 1976 SC 490, Ibid.

⁴¹ Bhaiyalal Vs. Harikishan, AIR 1965 SC 1557, Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. I, 2014, p. 2834

⁴² A.B.S.K. Sangh Vs Union of India, AIR 1981 SC 298, Ibid.

⁴³ Manchegowda Vs. State of Maharashtra, AIR 1984 SC 1151, Ibid.

13. Art. 320 (4), provides that Public Service Commissions need not be consulted in respects the matter in which any provision referred to in Clause (4) of Art. 16 may be made or as respects the manner in which effect may be given to the provisions of Art. 335.

14. In *Indra Sawhney Vs. Union of India*,⁴⁴ it was stated that the provisions of the Constitution must be interpreted in such a manner that a sense of competition is cultivated among all service personnel, including service category. It was observed "Article 335 stipulates that the claims of the members of Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistent with the maintenance of efficiency of administration, in making the appointment to services and posts in connection with the affairs of the Union or the State. It is thus, apparent that even in the matter of reservation in favour of Scheduled Castes and Scheduled Tribes the founding fathers of the Constitution did make a provision relating to the maintenance of efficiency of administration. In this view of the matter, if any statutory provision provides for recruitment of a candidate without bearing in mind the maintenance of efficiency of administration, such a provision cannot be sustained, being against the constitutional mandate. Approving the view expressed in *M.R. Balaji Vs. State of Mysore*⁴⁵, it was held by the Supreme Court that reservation shall not exceed 50% of the appointments or posts barring certain extraordinary circumstances. It was held that the rights under Art. 16 (4) and 16 (1) have to be harmonized keeping in mind the fact both are, but the re-statement of the principle of equality enshrined in Art. 14. It was held that 50% shall be the rule, but taking into extra-ordinary circumstances, some relaxation could be made. In doing so, extreme caution and a special case is to be made out. The limit of 50% applies only to reservation in favour of backward classes under Art. 16 (4) and not to other kinds of reservation. Article 335 is to be read along with Art. 16. Art. 335 gives primacy to maintenance of efficiency in service over protection even to SC/ST. It means that the policy of preferential treatment to SC/ST has to operate within the framework work of the efficiency in the administration. There appears to be overlapping between the provisions of Arts. 15 (4), 16 (4) and this Article. In *T. Devadasan Vs. Union of India*⁴⁶, the Supreme Court has explained these provisions by pointing out that Article 335 operates as a limitation to the provisions contained in Arts. 15 (4) and 16 (4) and the limitation is the maintenance of efficiency of administration. Art 335 refers only to SC/ST. There is no specific provision insisting on the need of maintenance of "efficiency of administration" so far as backward classes are concerned. But in the case of *Indra Sawhney II Vs. Union of India*,⁴⁷ Supreme Court has held that the principle in Art. 335 equally applies to backward classes also.

After *Indra Sawhney's case (Supra)* Art. 335 was amended by adding a proviso which enables the Centre or the State in making necessary provision in favour of Scheduled Castes and Scheduled Tribes for relaxation of qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class, classes of services or posts in connection with the affairs of the Union or the State. (82nd Amendment Act, 2000). In view of the amendment, adequate representation of SC/ST in the services are given more priority over other considerations.

In *Dr. Brij Mohan Prasad Vs. State of U.P.*⁴⁸ Allahabad High Court held that the proviso is only an enabling provision and is not mandatory in character. But if the Medical Council of India prescribes a lower percentage after taking into consideration all relevant factors of qualifying marks for the reserved category, the same cannot be termed as unreasonable or arbitrary. But in *State of*

⁴⁴ Cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 9th Edition, 2014.

⁴⁵ AIR 1963 SC 649

⁴⁶ AIR 1964 SC 179, cited in Durga Das Basu, Commentary on the constitutions of India, Vol.3, 9th Edition, 2014, p. 2835

⁴⁷ AIR 2000 SC498, Ibid

⁴⁸ AIR 2002 All 174, cited in Durga Das Basu, Commentary on the Constitution of India, Vol. I, 9 th Edition, 2014, p. 2835.

Bihar Vs. Bal Mukund Sah,⁴⁹ the proviso was held inapplicable to relax marks in higher education courses and applies only to services. Before the addition of the proviso to Art. 335, it was held "that even if Art. 16 (4) the State proposes to provide reservation on the ground of inadequate representation of certain backward classes of services, if it is considered by the appropriate authority that reservation will adversely affect the efficiency of administration, the exercise under Art. 16 (4) is not permissible. This is the constitutional limitation as the exercise of enabling power of reservation under Art. 16 (4)."

In *A.P. Public Service Commission Vs. Badhavath*⁵⁰, the Supreme Court held that lowering of marks for candidates belonging to the reserved category is not a constitutional mandate. In that case, the court also observed that the proviso is applicable only for the purpose of promotion.

Effect of Migration of member of Scheduled Caste and Scheduled Tribe from One State to Another:

President of India has power to notifying the SC/ST with respect to a "particular State" He cannot notify All India Scheduled Castes or All India Scheduled Tribes. Hence a person notified as SC/ST in State 'A' cannot claim the same status in another state on the basis that he has been declared as SC/ST in State 'A'.⁵¹ A person certified as SC/ST in relation to one state, if migrates to another State, would not be entitled to the benefits available to SC/ST in the State to which he migrates unless he belongs to SC/ST in the migrated State also.⁵²

But a notification of a caste in a State as Scheduled Caste is to be treated as SC for the purpose of getting benefit of reservation in Central Government Service anywhere in India.⁵³

15. Effect on Conversion: The Hon'ble Supreme Court has reiterated that Scheduled Caste is not a 'Caste' in terms of the definition as contained in Art. 366 (24) of the Constitution. It was held that a person does not cease to be a scheduled caste automatically even as his conversion to another religion.⁵⁴ Person born to Scheduled Caste parents after conversion to Christianity can after conversion to Hinduism be considered a member of Scheduled Caste.⁵⁵ It was held therein that it is for the members of the caste to decide whether or not to admit a person within the caste.

16. Abolition of Untouchability:

Art. 17 of the Constitution says that:

"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."

This article enacts two declarations. Firstly, it announces that "untouchability" is abolished and its practice in any form is forbidden, and secondly, it declares that the enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law.⁵⁶

It may be noticed that the word "untouchability" is enclosed in inverted commas. This clearly indicates that the subject matter of the article is not untouchability in its literal or grammatical sense but the practice it has developed historically in this country. The word, it is reasonable to suppose, refers to those who are regarded as untouchables in the course of historical development.⁵⁷

17. Protection of Civil Rights Act, 1955 is not a legislation of the nature of compensatory discrimination in the formal sense of departing from equal treatment to favour these groups, it

⁴⁹ AIR 2002 SC 1296.

⁵⁰ (2009) 5SCC1, Ibid, p. 2836.

⁵¹ Tapan Kumar Roy Vs. A.P. University, AIR 1989 AP 132, cited in Durga Das Basu, Commentary on the Constitution of India, Vol. 3, 9th Edition, 2014, p. 2836.

⁵² U.P. Public Service Commission Vs. Sanjay Kumar Singh, AIR 2003 SC 3626, Ibid

⁵³ Union of India Vs. Shantiranjan Sarkar, (2009) 3SCC 90, Ibid

⁵⁴ E.V. Chinnai Vs. State of A.P., AIR 2005 SC162, Ibid, p. 2837

⁵⁵ Principal, Medical College Vs. Y. Mohan Rao, AIR 1976 SC 1904, Ibid

⁵⁶ V.N. Shukla, Constitution of India, twelfth Edition, 2013, Eastern Book Company, Lucknow, p. 121.

⁵⁷ Ibid.

enjoins equal treatment rather than confers preferential treatment. But in substance, it is a special undertaking to remedy the disadvantaged position of the untouchables. The provisions in the Act are regulative rather than distributive; they are implemented by different sets of officials, e.g., by police and magistrate rather than by administrators⁵⁸

Parliament has also enacted "The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to prevent the commission of offences of atrocities against Scheduled Castes and Scheduled Tribes, to establish Special Courts for trial of such offences and also provide for the relief and rehabilitation of the victim of such atrocities. The above enactments is in addition to an earlier enactment Protection of Civil Rights Act, 1955 [originally known as Untouchability (offences) Act], which is also intended to protect the interest of Harijans.

Some Points for Special Consideration:

1. As the Nation celebrates the 125th birth anniversary of B.R. Ambedkar and political parties jostle for his political legacy, there has been very little reflection on the fate of reservation in independent India. Reservation in representative bodies, education and public employment is a very important part of Ambedkar's Constitutional legacy, but it also perhaps counts amongst the most divisive of his legacies. But it is a legacy that has transcended the law and contributed in no small measure to the political mobilisation of groups that were political untouchables. While there does exist a very serious debate on whether Ambedkar viewed reservation as for too limiting to achieve the kind of social revolution and transformation that he envisaged, the fact remains that within the contours of the Constitution of India it remains one of the most important vehicles for achieving some measure of political justice.⁵⁹
2. The design of special measures and reservations in India has demonstrated a lack of vision, rigour and ambition. Particularly in the sphere of education, it is extremely unfortunate that our policy makers have thought it fit only to worry about the entry of students through reservation. Hardly any thought has been given to the support structures that need to be build inside educational institutions and it is rather short-sighted on our part to think that equality of opportunity has been achieved the moment a student steps into an educational institution. Further, as education at all levels gets increasingly privatised, we will need robust policies that ensure social inclusion. And a similar story will play out in public employment as the pie gets smaller and the focus will inevitably shift to the private sector, where we can no longer ignore the skewed composition of the workforce at the top end.⁶⁰

In answering the above questions, we need to think beyond reservation as well. By equating reservation and social justice, the political discourse has prevented a deeper debate on the meaning of equality of opportunity and ideas for effective economic redistribution, where reservation is just one tool. Perhaps the most crucial limitation to the over-reliance on reservation in India lies in its inability to achieve any sort of meaningful economic structural change⁶¹

- (3) (i) Despite central laws and resistance movements, social equality remains a distant dream for Dalits. Oppression and exclusion mark their lives, be they the manual scavengers of Uttar Pradesh or the "Untouchables of the Untouchables" in Karnataka.
- (ii) While Dalits suffer social discrimination, PuthiraiVannans, a Dalit subsect in Tamil Nadu, face discrimination from Dalits⁶².

⁵⁸ Marc Galantar, *Competing Equalities*, 1984 Edition, pp. 43-44 cited in Durga Das Basu, *Commentary on the Constitution of India*, Vol. I, 2014, p. 2833.

⁵⁹ Anup Surendranath, Assistant Professor of Law, National Law University, Delhi, *Frontline*, May 15, 2015, pp. 13-17.

⁶⁰ Ibid

⁶¹ Anup Surendranth, Assistant Professor of Law, National Law University, Delhi from " *Frontline*", May-15, 2015 pp.-13-17

⁶² "Unequal Citizens, still, " *Cover Story*, *Frontline*, May 2015, pp. 20 & 30"

4. An investigation into the trends in economic disparities within the Scheduled Castes and Scheduled Tribes for the past three decades shows that the Economic Disparity Ratio has increased substantially for both SCs and STs. The increase is much more in the case of SCs. In the post-economic reforms period (1993-2012), there is an unambiguous increase in inequality among both SCs and STs, and in the interstate inequality within the SCs and STs, for both rural and urban Areas⁶³.

Conclusion

Dalits represents that segment of Indian society which has long history of deprivation, social exclusion and inhuman approach of the society in general. Before Independence, the various Acts passed by the British Parliament regarding India did not pay heed to their deep-rooted malaise. Their representation, politically as well socially, was almost negligible. In reality, for the first time in history, our Founding Fathers during the making of our Constitution debated the various issues confronting the Dalits in their daily life and they were able to put down in writing various ameliorating measures in the form of legal provisions, either in the shape of Fundamental Rights or Directive Principles of State Policy or some other specific provisions to provide social, economic and political justice for the Dalits as a whole. Not only that, after Independence, successive Governments at Centre level have brought about several Constitutional Amendments in order to reach-out the Dalit problems in more specific manner. Reservations in Educational and Government services sector is one such example. Not only that, both at the Central and State level, the Governments of any hue and colour have implemented the various socio-developmental schemes for the betterment of their lives. This process is still going on. A visible change in the lives of Dalits can be observed easily. However, we as civilized nation have yet to travel a long journey and cross numerous barriers to fully achieve the desired goal of Social, Economic and Political Justice for all, and especially for the Dalits who are inheritors of dark phases of our otherwise brilliant historical and cultural traditions. But at this juncture, an exhaustive review needs to be done regarding the success of the measurements undertaken to better the conditions of the Dalits. Without doing it, our efforts will not be so fruitful as desired. The direction of the Reforms will be rudderless, and our approach will be generalistic in nature.

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