

CONSTITUTIONAL AND LEGAL SAFEGUARDS FOR PROTECTION OF DALITS: POLICY OF PROTECTIVE DISCRIMINATION

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The founding fathers of the Constitution were aware of the political, social and economic inequalities, which existed in the country due to historical reasons. They were aware of the prevailing miserable and appalling conditions of the Scheduled Castes and Scheduled Tribes who had remained far behind and segregated from national life. It became imperative, therefore, to adopt a policy of protective discrimination as an equalizer to those who were too weak to compete with the advanced section of the society in the race of life. The constitutional provisions set forth a program for the reconstruction and transformation of Indian society of a firm commitment to raise the sunken status of the pathetically neglected and disadvantaged sections of Indian society.

The position of Scheduled Castes, Scheduled Tribes and other weaker sections of the society had always been a question mark for the society as well as the government. India being a developing country had been trying to provide an equal status to them but in reality had not achieved much success. Even in modern times they were facing problems though the extent of their sufferings was less as compared to previous times. For improving their conditions the government had taken various steps like specific laws were enacted for them, commissions were constituted only for their betterment and by means of reservation in educational institutes and services also. Recognizing the inequality in the India social structure, the makers of the Constitution argued that weaker sections had 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 had provided for protective discrimination under various Articles to accelerate the process of building an egalitarian social order.

After recognizing prohibition of untouchability as a fundamental right, the Constitution had provided all sorts of safeguards by not leaving them at the mercy of the Government. In addition to this, several other constitutional and legal provisions were made from time to time so as to lift the downtrodden sections of the society into the mainstream of development on par with other developed

sections of the society. These safeguards were in the nature of protective from discrimination for their educational, economic, social, political and reservation benefits and for their overall development. The relevant Articles governing these underprivileged are given below.

Safeguards for Scheduled Castes

Article 366(24)"Scheduled Castes" meant such castes, races or tribes or parts of or groups within such castes, races or tribes as were deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution.

Article 341(1) By the Constitution (Seventh Amendment) Act, 1956, the President might, by public notification, specified the castes, races or tribes or parts of or groups within castes, races or tribes which should for the purpose of this Constitution be deemed to be Scheduled Castes.

Article 341(2) Parliament might by law include in or exclude from the list of Scheduled Castes, any caste, race or tribe or part of or group within any caste, race or tribe. In *Bhaiyalal vs. Harikishan A.* 1965 S.C. 1557 (1560), it was the notification issued by the President under the present Article which was to determine who was deemed to be a member of a Scheduled Caste for the purpose of the Constitution.

In order to belong to a Scheduled Caste under this Order, a person must profess to be either a Hindu or a Sikh. Where, therefore, a person had made a public declaration that he had adopted the Buddhist religion, he could not thereafter claim to be a Scheduled Caste on the ground that his conversion to Buddhism were not efficacious, as decided in *Punjab Rao vs. Meshram*, (1966) S.C.R. 816 (841). In case of *Ganpat v. Presiding Officer*, A. 1975 . C. 420, the court held that, if, however, there was no proof of conversion to a religion other than the Hindu religion but a mere acceptance of certain ideological tenets, the person did not lose his status as a member of a Scheduled Caste, see case *Chaturbhuj vs. Moreswar*, (1954) S.C.R. 816 (841).

Article 342(1) The President might, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which should for the purpose of this Constitution be deemed to be Scheduled Tribes.

The safeguards provided to Scheduled Castes were grouped in the following broad heads:

- Social Safeguards
- Economic Safeguards
- Educational and Cultural Safeguards
- Political Safeguards
- Service Safeguards

Social Safeguards

Article 17, 23, 24 and 25 (2) (b) of the Constitution enjoined upon the state to provide social safeguards to Scheduled Castes.

Article 17 related to abolition of untouchability being practiced in society in any form. Although the term untouchability had not been defined in the constitution or in any act but its meaning was 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 strived to remove this abhorring practice by not only making the provision a fundamental right but also allowed punishment to whoever practices or abets it in any form. Towards this end, Protection of Civil Rights, 1955 and the Scheduled Castes and Scheduled Castes Tribes (Prevention of Atrocities) Act, 1989 were enacted. It had implemented several measures to eradicate this evil from the society. It stipulated up to 6 months imprisonment or Rs. 500 fine or both. It impressed upon the public servant to investigate fully any complaint in this matter and failing to do so would amount to abetting the crime.

Article 23 prohibited traffic in human beings and 'begar' and other similar forms of forced labour and provided that any contravention of this provision should be an offence punishable in accordance with law. Although there was no specific mention about the Scheduled Castes in this Article but majority of the bonded labour came from Scheduled. Thus, this Article had a special significance for them. The parliament enacted Bonded Labour System (Abolition) Act, 1976 for identification, liberation and rehabilitation of bonded labourers.

Article 24 provided that no child below the age of 14 years should be employed to work in any factory or mine or engaged in any other hazardous employment. Even in this Article, there was no specific mention about the Scheduled Castes but substantial portion of child labour engaged in hazardous employments belonged to Scheduled Castes.

Article 25 (2) (b) provided that Hindu religious institutions of a public character should be opened to all classes and sections of Hindus. The right conferred by this clause was not of an absolute character. It was a right of every member of the Hindu public to enter into a public temple for worship. It did not, however, mean that such temple must be kept open at all hours or that any member of the Hindu public must be allowed to perform those services which were open only to those specially initiated, according to the ceremonial law governing the temple, for details, see *Yajnapurusdasji vs. Muldas*, 1966 S.C. 1119 (1127). In *Venkataramana vs. State of Mysore*, (1958) S.C.R. 895, it was held that Article 25 (2) (b) must be read along with Article 26 (b), without

rendering the latter nugatory. In *Punjabrao vs. Meshram*, 1965 S.C. 1179 (1184), it was held that for the purpose of Article 25 (2) (b) the connotation of the word Hindu included persons professing Sikhs, Jains and Buddhists but this expansion would not apply to any other provision of the Constitution.

Economic Safeguards

Article 23, 24 and 46 formed part of the economic safeguards for the Scheduled Castes and Scheduled Tribes.

Under **Article 46**, the State had a specific duty to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and should protect them from social injustice and all forms of exploitation. Article 46 supplemented Articles 15(2), 15(4), 16, 17 and 29(2)¹ The directive principles of the state policy were designed to usher in a social and economic democracy in the country.²” Articles in Part IV of the Constitution (i.e., Directive Principles of the State Policy) which indicated that it was the State’s obligation to create social atmosphere befitting human dignity for citizens to live in. “³

Educational and Cultural Safeguards

Article 15(2) was a particular Article guaranteed the right to equality in using shops, hotels, temples, wells, parks, owned by the government by all citizens irrespective of caste, colour, creed, race and sex. The pre-independent India had witnessed so many cases by not allowing to use the water belonging to the public tank. In a leading case from the Karnataka the Apex Court had convicted the offenders who had prohibited people of Scheduled Castes to use the water belonged to public usage which was violative of Article 17 of the Constitution of India and similar violation might be attracted to the sub-section (2) of Article 15 which was also a fundamental right. The object of Article 15(2) was to eradicate the abuse of the Hindu social system and to herald a united nation.

Article 15 (4) empowered the state to make special provisions for the advancement of any socially and educationally backward classes of citizens and for Scheduled Castes. This provision had enabled the state to reserve seats for Scheduled Castes in educational institutions in general and professional courses etc. Article-15(4)(1),⁴ which dealt with the provisions of backward classes, was only an enabling provision and did not impose any obligation on the State to take any special action under it.

Clause 4 of Article 15 was the fountain head of all provisions regarding compensatory discrimination for Scheduled Castes/Scheduled Tribes. This clause were added in the first amendment to the constitution in 1951 after the Scheduled Castes judgment in the case of *Champakam Dorairajan vs State of Madras* an order requisitioning land for the construction of a Harijan colony were held to be

void under Article 15(1). This was resulted in First Amendment to the Constitution 1951. After inserting this Article it made possible for the State to put up a Harijan colony in order to advance the interest of backward classes.

This clause started the era of reservations in India.

In the case of *Balaji vs State of Mysore AIR 1963 SCC 649*, the Supreme Court held that reservation could not be more than 50 percent. Further, that Article 15(4) talked about backward classes and not backward castes thus caste was 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 SCC477* upheld the decision given under *Balaji vs State of Mysore* that reservation should not exceed 50 percent except only in special circumstances. It further held that it was valid to sub-categorize the reservation between backward and more backward classes. However, total should still not exceed 50 percent. It also held that the carry forward rule was valid as long as reservation does not exceed 50 percent.

Art. 15 (5) : This clause was added by the Constitution (93rd Amendment) Act, 2005 and allowed the state to make special provisions for backward classes or Scheduled Castes or Scheduled Tribes for admissions in private educational institutions, aided or unaided.

Political Safeguards

Political democracy was ensured under the Constitution. Citizenship was recognized of all persons on same criteria under the Constitution, Articles 5-11. Citizenship was crucial to enjoy the rights to vote, contest elections and hold public posts.

Article 325 stipulated that there should be only one general electoral roll for every territorial constituency to either House of Parliament or to the either House of the Legislature of a State. No person should be ineligible for inclusion in the roll on grounds of religion, race, caste or sex. Under In order to secure adequate representation of Scheduled Castes and Scheduled Tribes in the legislative bodies of the country, Constitution provided reservation of seats as nearly as the proportion of the population of the Scheduled Castes and Scheduled Tribes in the total population.

Reservation of seats for Scheduled Castes /Scheduled Tribes in the local bodies of the states/ Union Territories, Legislative Assemblies of the state and in Parliament was provided in the Constitution of India as follows.

Article 243D Reservation of seats:

(1) Seats should be reserved for (a) the Scheduled Castes, and (b) the Scheduled Tribes in every Panchayat and the number of seats so reserved should be, as nearly as the population of the Scheduled Castes in the total Population of that area. Not less than one-third of the

total number of seats reserved under clause (1) should be reserved for women belonging to the Scheduled Castes or, the Scheduled Tribes.

Article 243T Reservation of seats

(1) Seats should be reserved for the Scheduled Castes and Scheduled Tribes in every Municipality and the number of seats so reserved should be, as nearly as might be, to the total population of that area and such seats might be allotted by rotation to different constituencies in a Municipality. But not less than one-third of the total number of seats should be reserved for women belonging to the Scheduled Castes or, as the case might be, the Scheduled Tribes.

Article 330: Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people:

(1) Seats should 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.

(2) The number of seats reserved in any State or Union Territory for the Scheduled Castes or the Scheduled Tribes should, be as nearly as might be, to the population of the State.

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

Seats should be reserved for the Scheduled Castes and the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam, by the Constitution (thirty-first Amendment) Act, 1973 added Nagaland and Meghalaya, in the Legislative Assembly of every State.

(3) The Number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State, should be as nearly as might be, to the total population of the State.

Article 334 Reservation of seats and special representation to cease to had effect on the expiration of a period of sixty years from the commencement of the Constitution. But under various Amendments of the Constitution from time to time, it still exists.

Service Safeguards

Service safeguards were contained in Articles 16(4), 16(4A), and 335.

Article 16 (4) enabled reservation for the backward classes including Scheduled Castes and Scheduled Tribes in public employment in the state if in the opinion of the state they were not adequately represented in the services under the state. Unlike in education the original constitution itself provided for affirmative action in this regard. Article-16 (4) envisaged 15 percent of jobs which

were reserved for the Scheduled Castes which was an important constitutional provision. Even though 15 percent reservation was being implemented number of people belonged to the Scheduled Caste and Scheduled Tribe remained unemployed.

Seventy-seventh amendment of the Constitution were passed in 1995 and added 16 (4) (a) to this article which provides that “nothing in this article should prevent the State from making any provision for reservation in matter of promotion to any class or classes of post in the services of the State in favour of the Scheduled Castes and Scheduled Tribes which was in the opinion of the State were not adequately represented in the services under the State” which meant that reservation in providing promotion in government jobs will be continued in favour of Scheduled Castes and Scheduled Tribes if the Government wanted to do so. ⁵

Article 16 (4A) In 1995, by Seventy-seventh Amendment, clause (4A) was inserted in the Article to enable reservations in promotions as well for Scheduled Castes and Scheduled Tribes. In 2001 Eighty-fifth Amendment Act amended (4A) to protect promotions with consequential seniority of the Scheduled Castes and Scheduled Tribes. The Supreme Court of India in *Indra Sawhney v. Union of India*, AIR 1993 SC 477 had laid down a ceiling of 50 percent in reservations. Unfilled vacancies reserved for Scheduled Castes and Scheduled Tribes when added to the current year reservations crossed the 50 percent ceiling.

Article 16 (4B) By Eighty-first Amendment Act, 2000 clause (4B) was added to the Article. The states were enabled to consider unfilled vacancies of a year which were reserved as a separate class without the 50 percent ceiling rule coming in the way.

Article 335 Claims of Scheduled Castes and Scheduled Tribes to services and posts- the claims of the members of the Scheduled Castes and Scheduled Tribes should 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.

It was to be noted that the preferential treatment under Article 335 was accorded to members of the Scheduled Castes and Scheduled Tribes only, and not to members of backward classes in general, as does Article 16 (4).⁶

By Eighty –second Amendment Act , 2000 a proviso was added to Article 335 which laid down that the claims of Scheduled Castes and Scheduled Tribes should be taken into consideration consistently with the maintenance of efficiency of administration. The amendment ensured that the rule in the Article should not prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the

standards of evaluation, for reservation in the matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

In the year 2001, the Parliament through Constitution (Eighty-fifth Amendment) Act, 2001 amended the provisions contained in Articles 16 (4A). In Article 16 (4A) for the words:- "In matters of promotion to any class" had been substituted. The effect of this amendment was that the Scheduled Castes/Scheduled Tribes promoted earlier than their counter-part in general category by virtue of reservation policy should be senior to general category in the promoted Scale /post. One of the most important mandated provisions at Article 338 of the Constitution was section (9) which stipulated that "The Union and every State Government should consult the National Commission for Scheduled Castes on all major policy matters affecting Scheduled Castes".

Commissioner for Scheduled Castes and Scheduled Tribes

Article 338 of the Constitution provided for the appointment of a special officer for Scheduled Castes and Scheduled Tribes to investigate all matters relating to the constitutional safeguards for the Scheduled Castes/Scheduled Tribes under the Constitution and to study the implementation of the Protection of Civil Rights Act, 1955, with particular reference to the objectives of removal of untouchability and individual discrimination arising therefrom, and to report to the President upon the working of these safeguards at prescribed intervals. He was also asked to ascertain the socio-economic and other relevant circumstances accounting for the commission of offences against persons belonging to Scheduled Castes and Scheduled Tribes with a view to ensuring the removal of impediments in the laws in force and to recommend appropriate remedial measures including measures to ensure prompt investigation of the offences. In 1978, the government (through a resolution) set up a non-statutory multi-member commission for Scheduled Castes and Scheduled Tribes; the office of Commissioner for Scheduled Castes and Scheduled Tribes also continued to exist. In 1987, the government (through another resolution) modified the function of the Commission for Scheduled Castes and Scheduled Tribes. Later, the 65th Constitutional Amendment Act of 1990 provided for the establishment of a high level multi-member National Commission for Scheduled Castes and Scheduled Tribes in the place of a single special officer for Scheduled Castes and Scheduled Tribes. This constitutional body replaced the Commissioner for Scheduled Castes and Scheduled Tribes as well as the Commission set up under the resolution of 1987. Again, the 89th Constitutional Amendment Act of 2003 bi-furcated the combined National Commission for Scheduled Castes and Scheduled Tribes into two separate bodies, namely, National

Commission for Scheduled Castes (under Article 338) and the National Commission for Scheduled Tribes (under Article 338A). The separate National Commission for Scheduled Castes came into existence in 2004.

Some Legal Provisions

In order to improve their conditions Parliament had enacted some laws such as: Caste Disabilities Removal Act, 1950: The Act provided that when in a civil suit the parties belonged to different persuasions, the laws of the religions of the parties should not be permitted to operate to deprive such parties of any such parties of any property but for the operation of such laws, they would had been entitled.

Protection of Civil Rights Act, 1955:

By this Act, enforcement of any disability arising out of untouchability had been made an offence punishable in accordance with the relevant provisions.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

An Act to prevent the Commission of atrocities against members of the Scheduled Castes and the Scheduled Tribes for Constitution of special courts for trial of such offenses, and to provide relief and rehabilitation to the victims. The Act was amended in 2015 and came into force on 1 January 2016. New offences included more instances of atrocities recognized as crimes against Scheduled Castes/ST. These included forcible tonsuring of head, garlanding with footwear, using or permitting manual Scavenging dedicating Scheduled Castes/Scheduled Tribe women as devadasis, denying access to irrigation facilities, abusing in the name of caste, committing atrocities by dubbing someone a witch, social or economic boycott, preventing to filling nomination to contest elections, hurting by removing his or her clothes, forcing a member to leave his or her house, village or residence and the like. The amended Act introduced the establishment of special courts and special public prosecutors for trying offences under the Prevention of Atrocities Act, so that cases were disposed of expeditiously.

Implementation of Constitutional Provisions

Though the constitution intended to provide all facilities to avoid the disparities between upper castes and untouchables yet the position of Scheduled Castes and Scheduled Tribes did not change much even after seventy three years of independence. The number of Scheduled Castes and Scheduled Tribes below the poverty line was very high. The promotion of economic interest could not be achieved among the Dalits due to their poverty and indigence. The Constitution though provided social, economic and political justice to these people, their cause was still a matter of concern.

Reservations allotted for Dalit castes was a core point of the Constitution which was conferred by Article-15(4) had become weak now a days. The privilege provided under this Article to the Dalit community was restricted only to the public sector. In the era of globalization, liberation and privatization, private sector had enlarged which was affecting the masses. A large number of employed populace were in private sector and were not covered by job reservations in any way. Only about 5 percent of total employment was in the public sector and no reservation in any case applicable to the rest of 95 percent of the employment opportunities. Of course, the only substantial exception to reservation was the educational sector where even un-aided private educational institutions were required to provide for reservations. Virtually, the deplorable conditions of the Dalits re- pushing them to the poorer sections causing severe dropouts and increasing rate of private educational institutions forcing them to become bonded or contractual labour.

Since the beginning of the reservation policy it had been applied both at the stage of recruitment and at the stage of promotion. In the Mandal Commission Judgement,⁷ the Supreme Court observed that reservation in promotion should be done away with. Thus a large number of higher posts would had been inaccessible to the Dalits. Fortunately, the Indian Constitution was amended by incorporating Article-16(4)(a) which read nothing in this article should prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State or not adequately represented in the services under the State. The small benefits, which the Dalits were getting through reservations, were also constantly being eroded. In any event the reservation policy was not being implemented properly. Despite 73 years of reservation hardly 3 to 4 percent of class-II and I reserved category candidates were occupying posts. Moreover, there was a decline in the number of posts available for reservation.

Legal Rights of Dalits:

Special social enactments had come into force from time to time for Scheduled Castes in order to uphold the constitutional mandate and safeguard the interests of Dalits in India. The major legal enactments at the national level were: (i) Protection of Civil Rights Act, 1955; (ii) Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 The Protection of Civil Rights Act, 1955 were enacted in furtherance of Article 17 of the Constitution to abolish untouchability and its practice in any form.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 were brought into force from 30th January 1990 in order to check and deter crimes against Scheduled Castes/Scheduled Tribes by persons belonging to other communities.

These enactments had extended the positive discrimination in favour of Scheduled Castes and Scheduled Tribes to the field of criminal law in as much as they prescribed penalties that were more stringent than the corresponding offences under Indian Penal Code (IPC) and other laws. Special Courts had been established in major states for speedy trial of cases registered exclusively under these Acts.

Caste and the Human Rights:

The human rights treaty monitoring bodies had engaged with the issue of caste, especially since 1996, when CERD stated that caste-based discrimination was a form of descent-based discrimination in the context of India's state report. The following section looks at the response to the reports received from the South Asian countries that supported a caste system by four committees: the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights; and assessed their contribution to the identification of caste-based discrimination as a major source of human rights violations.

The Human Rights Committee:

India ratified the International Covenant on Civil and Political Rights (ICCPR) on 10 April 1979. The Covenant protected against discrimination of any kind in its Article 26, including discrimination based on 'social origin'. In 1997, the Human Rights Committee (HRC) found that India was violating its obligations under the ICCPR through its treatment of the Dalits. It noted with concern that despite measures taken by the government, members of the Scheduled Castes and Scheduled Tribes, as well as so-called backward classes and ethnic and national minorities continued to endure severe social discrimination and had suffered disproportionately from many violations of their rights under the Covenant, including inter-alia inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the caste system entrenches social differences and contributes to these violations.⁸

The HRC recommended India to adopt further measures including educational programmes at the national and state levels to combat all forms of discrimination against these vulnerable groups, in accordance with Article 2(1) and Article 26 of the Covenant.⁹

The HRC must continue to condemn caste-based discrimination under Article 26 of the Covenant through the state reporting procedure. Since 1997, the Committee had not had the occasion to review a report from India or Nepal, and at the time of its consideration of India's 1997 report, the international movement against caste-based discrimination was relatively young. When such an occasion did arise, the Committee must complement the work of the other treaty-monitoring bodies

and the UN Sub- Commission on the Promotion and Protection of Human Rights by identifying caste as a major source of the denial of civil and political rights, despite formal non-discrimination laws. The Committee ought to identify and condemn in particular the violation of the right to 'equal protection of the law' in India under Article 26 of the Covenant. Since the 1990s, violence against Dalits in India had escalated dramatically in response to growing Dalit rights movements. The UN Sub- Commission's Working Paper on Work and Descent-based Discrimination noted that: 'the atrocities committed – murder, rape, mutilation, arson etc. were not only isolated acts but could even be acts of mass savagery committed by militia groups employed by the higher castes.'¹⁰

India's National Commission for Scheduled Castes and Scheduled Tribes had reported that these cases normally fall into one of three categories; cases relating to the practice of 'untouchability' and attempts to defy the social order; cases relating to land disputes and demands for minimum wages; and cases of atrocities by police and forest officials. Caste Hindus and non-Dalits were able to wield a considerable amount of leverage over local police, district administrations and even state governments.¹¹This leverage significantly hindered the effective implementation of the statutory provisions of the *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989*.

The manipulation of the 1989 Act, and the failure to prosecute atrocities against Dalits under its terms, was illustrated in the Supreme Court case of *State of Kerala v. Appu Balu*, where the court found: 'More than 75 percent of the cases under the [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) 1989] Act were ending in acquittal at all levels.'¹²

In its August 2000 Resolution, the UN Sub-Commission on the Protection and Promotion of Human Rights urged governments to ensure: appropriate legal penalties and sanctions, including criminal sanctions, were prescribed for and applied to all persons or entities within the jurisdiction of the Governments concerned who might be found to have engaged in practices of discrimination on the basis of work and descent.¹³

The constitutional and statutory bodies in India, such as the National Commission for Scheduled Castes and Scheduled Tribes, and the National Human Rights Commission, had repeatedly confirmed the failure of her constitutional and statutory laws designed to protect the Dalits. The UN Sub- Commission's Working Paper on Work and Descent Caste-based Discrimination highlighted this, and stated: 'The laws were there, but there was a clear lack of will on the part of law enforcement officers to take action owing to caste prejudice on their part or deference shown to higher-caste perpetrators.'¹⁴

It was expected of the Committee that it would recognize the prevalence of caste, particularly in India and Nepal, to a much greater extent than it did in 1994 and 1997, given the growing documentary evidence pointing to caste as a permanent source of discrimination and denial of civil and political rights. Article 26 was being systematically violated in those states parties to the Covenant.

Traditionally, the different Scheduled Castes were employed in the various types of occupations and with their varying social and economic positions, were assigned different ranks in the overall ritual and social hierarchy of the caste system. One might think of these castes, not as part of the organization of a village society contrary that the Scheduled Castes were associated in certain ways with social organization but their touch either with a person or a commodity belonging to a Caste Hindu were avoided as far as possible. Thus, there existed strata of castes on the basis of their farness from the clean castes. What governed the daily life of a Scheduled Caste was discrimination on the basis of caste manifests itself through visible practices such as a separate drinking water wells, segregated housing colonies, separate burial grounds, segregated places of worship, separate seating of children during mid-day meals at Schools, denial of taking food from Scheduled caste cooks in mid-day meals at Schools, prohibition of dressing like others do, prohibition of inter-caste dining and marriages, or mounting a horse during a wedding, amongst Scores of other forms. Discrimination also manifested itself through non-visible forms in the shape of caste prejudices that could be heard in the spoken language through idioms and phrases. The failure of the Indian state and its instruments to cope with the problems arising in the process of socio-economic change in a society with adult suffrage and equality of opportunity and status, among other similar objectives provided in our constitution, had led to rising expectations on the one hand, and growing consciousness of the exploitation and indignity in social relations, on the other. Such a combination had inevitably led to strong resentment expressing itself in violence. Unless these infirmities were removed and progress made towards the creation of a truly just society and non-exploitative social order, violence was not only likely to continue but might get aggravated. The Indian constitution had guaranteed to all citizens the fundamental rights and equal protection before the law. It provides a number of safeguards to Scheduled Castes to ensure their all-round development and protection against all kinds of the discriminations in India. But most of the provisions of the constitution had remained only on paper because their implementation had been faulty, half-hearted and inadequate and inequality, discrimination, exclusion, and stigmatization could jointly contribute to the utter marginalization in India.

End Notes

1. M.P. Jain, *Indian Constitutional Law*, 5th edn. p1389
2. C. A. D., Vol. VII, p. 493
3. *P. Sivaswamy v. State of Andhra Pradesh*, AIR 1988 SC1863
4. AIR 1951 S.C.226.
5. Ram Samujh and Komonduri S. Murthy Reservation Policy and Affirmative Action Programme; a comparative analysis; Fest Scheduled Casteshrft-editor D.S. Prakasa Rao Page 467.
6. *State of Kerala vs. Thomas, A.* 1976 S.C. 490 (para, 26, 41, 42, 216).
7. D.K. Singh “The Constitution of India” 7th Edition 1982, Estern Book Company, p.66.
8. Concluding Observations – India (1997), CCPR/C/79/Add.81, para. 15.
9. *Ibid.*, para. 13.
10. UN Doc. E/CN.4/Sub.2/2001/16, para. 26.
11. Human Rights Watch (1999), *Broken People: Caste Violence against India’s Untouchables*,
12. *State of Kerala v. Appu Balu*, 1993 Cr. L.J. 1029.
13. UN Doc. E/CN.4/SUB.2/RES/2000/4, para. 3.
14. UN Doc. E/CN.4/Sub.2/2001/16, para. 26.

