



# CONSTITUTIONAL SAFEGUARDS FOR THE PROTECTION OF SCHEDULE CASTE AND SCHEDULE TRIBE – A CRITICAL ANALYSIS

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**Abstract:** Social stratification in India is unique and has its own peculiarities. Caste system is the basis and the determining factor of social structure in India. It is the regressive social system based on unequal social, economic, political and cultural status of the each strata in the social hierarchy. The caste system provided the organizational basis of traditional Hindu society, and in spite of many recent changes, it continues play an important role in contemporary India. The Scheduled Castes and Scheduled Tribes were classified as inferior and last varna to the other three varans, in ancient social system in India. The Scheduled Castes and Scheduled Tribes include various caste groups, which have suffered social and economic inequality since age. They had to stay outside the village. Their discrimination is based, first, on their descent or birth into specific “untouchable caste” and secondly, on their traditional ‘polluting work’. The concept of pollution was attached to them and they were treated as untouchable’s castes. Today, these untouchable castes are officially known as “Scheduled Castes and Scheduled Tribes”. In this paper we critically discussed about constitutional safeguards for the protection of Schedule Caste and Schedule Tribe in India.

**Key Words:** Constitution, Safeguards, Scheduled Castes, Tribes, Caste System, Reservations, India

## 1. Introduction:

After independence, the Indian Constitution has bestowed some privileges and concession upon these castes and they have been allotted quoted in education, training and services, which is known as reservation. A lot has been done for their empowerment and emancipation, since independence, yet the majority of these cases, still lags behind in many an area in life. Hence, more and much has to be done. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1898 was passed by parliament when it became clear that existing laws had not made a dent against the oppression of Scheduled Castes and Scheduled Tribes by upper castes. This legislation designed to provide a measure of protection to Scheduled Castes and Scheduled Tribes and to enforce their rights.

Customary Hindu society has permanent background gave hierarchical principle and regardless of numerous ongoing changes, it proceeds a substantial function in contemporary India. The customary Indian society was separated into four classifications. As per strict hypothesis, these four classes were the Brahmin, the Kshatriya, the Vaishya also, the Shudra. These divisions of society should have been made out of the mouth, the arms, the thighs, and feet of Lord Brahma, i.e., the Creator. In orthodox Hindu society there were reasonable legitimate and cultural reason which restrict lower stations from copying the styles of life of the upper castes. Around then the situation of Shudras were extremely low. They were treated as "Untouchables". Differences in styles of life have been most practiced among Brahmins and Harijans<sup>1</sup> (who speak to the top and base separately of the order). The social character of Harijans was featured by the way that they were commonly needed to live a good ways off from the principle town settlement.<sup>2</sup>

Scheduled castes are those people which have different castes, races, tribes, they are deemed to be lowest castes and Tribes under the Constitution. In Constitution, ‘untouchability’ has not defined but it provides the various provisions for it. Constitution ensures justice, equality, economic equality, social and political freedom, its aim is to abolish the roots of lowest class system from the Hindu society. The makers of draft of the Indian Constitution has added various provisions for the abolition of ‘untouchability’ from it.

## **2. General Framework of Rights, Duties and Freedom for protecting the Reserved castes and Tribals:**

Making of the Indian Constitution was a significant throughout the entire existence of basic freedoms. State governments and central government has make various actions and implement various provisions for rights, opportunities, and obligations of the residents. The Constitution continuously change of India's extremely old progressive and position based society inequality and separations into a libertarian, mainstream, majority rule republic .The rule of balance saturates the Constitution of India. All residents are qualified for be treated by the state and society similarly, independent of their castes, race, religion, sex, plunge, spot of birth and habitation. No resident will be oppressed by the state just on any of these grounds. The exemptions for this guideline are made uniquely for women and kids. The Constitution begins with a new preface as people entered. In 26th November 1949, it sets out the more extensive way of thinking and vision of an India as a guarantee of its residents.

### **2.1 Preamble**

Society of India, made plans to establish India into a self-governing communist common vote based republic and to make sure about to every people of residents, equity, public, economic, governmental, freedom of speech, pronunciation, opinion, assurance and uniformity of rank and all organization guaranteed the respect of the lowest caste people and trustworthiness of country; "According to our constituent provisions, 6th day of November in 1949, do thusly embrace, authorize and provide for ourselves to the constitutions."

### **2.2 Fundamental Rights**

It additionally expresses the goals which is mentioned in third part of the 'Constitution' ensures the Fundamental Rights of each resident of India.<sup>3</sup> These are: (1) Right to Equivalence; (2) Right to Freedom; (3) Right against Misuse; (4) Right to Freedom of Faith; (5) Cultural and Educational Rights; also, (6) Right to Legitimate Remedies. These Rights are required to be provided with an assurance that all Indian people will lead their lives in harmony and with dignity as long as they live inside the territory of India.<sup>4</sup>

### **2.3 Right to Equality**

The Right to Equality covers: (1) Fairness under the watchful eye of the law; (2) related disallowance against separation;<sup>5</sup>217 (3) Fairness of chance in issues of public work; (4) Removal of unapproachability; (5) Cancellation of titles. These are revered in Articles 14 to 18 of the Constitution of India.

### **2.4 Article 14 Equality before the Law**

Government will not negate any people consistency under the rule and guarantee of the laws inside the area of India. Two concepts are associated with Art.14; "equity under the watchful eye of law" and "equivalent insurance of law" 'Correspondence under the watchful eye of law' is a negative idea which guarantees that there is no advantage for any one person and it all are similarly subject to common law of the land. No individual of whatever of his position or status, exempt from the laws that apply to everyone else. This, be that as it may, isn't an absolute guideline and there are various exemptions for it for example foreign envoys appreciate protection from the Indian Judiciary. Indian Constitution, Article 361 provides exception to the President of India and the State lead representatives, public officials and judges additionally some security and a few exceptional advantages by law. The subsequent idea, "equivalent insurance of laws" is a positive in content. It doesn't imply that indistinctly a similar law ought to apply to all people, or that each law must have a complete application inside the country regardless of different circumstances.<sup>6</sup>

### **2.5 Article 14 to 18 establish the "Right to Equality".**

The Article 14, for the most part provides the protection and maintain balance in the society. Indian Constitution, Article 14 says that government cannot reject to any person uniformity according to the Rules of Law and security of rules on ground of rank, race, religion, sex and so forth the creators of India's Constitution were not happy with this sort of undertaking of the privilege of laws regarding to equality. They were very much aware about the wide-spread social and monetary disparities in the nation which have been rehearsed for a great many years by open strategies and exercise of public force upheld by religion and other accepted practices. Such disparities couldn't be eliminated, limited, it would have been an extremely long procedure.<sup>7</sup>

### **2.6 Prohibitions of Differences under Article 15**

Art. 15 of the Constitution, which is important for the major rights ensured to the residents however it was expressed that the state ought not to oppress any resident on ground of religion, race, sex, spot of birth with respect to admittance to shop, utilization of well, tank and so forth. Article 15(4) was included

the Constitution by first revision. The altered Article engaging the govt. to make uncommon provisions for the advance of socially and instructively in reverse classes of residents and for the Reserved Classes and Planned Tribe's. Article 15 contains arrangements for a specific use of the overall rule of "uniformity of treatment" encapsulated in the Article 14. Section 15 arrangements with denial of separation on ground of faith/religions, rank, gender or spot of born. Section 15 of the 'Indian Constitutions "runs as under:<sup>8</sup>

(1) State Government shall not oppress or separate the citizen on grounds of religions/faith, race, caste system, sex, spot of birth, or any other. (2) Any citizen of India on grounds of belief, gender, faith, class, rivalry, place of genetic and others, and subject to any handicap, responsibility, condition not denied to: (a) Enter to public shop, hostels, spots of public amusement, (b) The usage of mines, boilers, washing Ghats, streets and public wastage or government assets prepared out of the state funds. This places is devoted to the public for its use. (3) This Article not restricted the any state of India to make any different provisions for the women and children's. (4) The provision of this article or in the provision (2) of Article 29, will not restrict the State government to create any special provision or rules for the development of backward classes who is socially and educationally weak citizen and also for the lowest classes. (5) The provision of this article or in the 'sub-clause(g) of clause(1) of Article 19" will not restrict the State government to create any special provision for the development of backward classes who is socially and educationally weak citizen and also for the lowest classes and clans as well as the provisions for admitting to any education organizations including the public, private, aided and unaided referred by the minority education organization, or state mention in Article 30 clauses (1).<sup>9</sup>

### **2.7 Article 16, Equality of Openings in Matter of Employment**

(1) For all citizen, it will guarantee the equal opportunities related to employment or job in any office of the State. (2) ) Any citizen of India on grounds of belief, gender, faith, class, rivalry, place of genetic, residence will not be discriminated related to appointment in any office of the state.<sup>10</sup> Article secures the citizen of India equal opportunity in case of employment. It describes that no citizen will be discriminated on the basis of job opportunity. These two provisions of article 16, did not discriminate on the basis of castes, race, faith, gender and place of birth etc. This is one of the important Article of constitution drafted the provisions for lowest classes. This Article provides the power to Parliament of India to make any Laws and Act for the requirements and protection of lowest classes and make provisions related to employment in any central or state governments.<sup>11</sup>

### **Reservation in Service**

(1) Citizens of lowest or backward classes (1) as defined in article 16 clause (4), will be recognized on the base of class or not on the base of economical reason. 2. 'Creamy layer' must be barred from backward Classes. 3. Reservation will not surpass from the 50%. 4. Reservations can be made by 'Executive order'. 5. No Reservation in advancements.

### **3. Legal Rights**

The major legitimate institutions and Laws made by the Parliament are as follows:

(1) The Protection of Civil Rights Act', 1955 was incorporated for the protection of people lowest classes or promotion of the Article 17, to remove the practice of untouchability from the society. (II) 'The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act,' 1989 From 30th January 1990, this act came for power in request to prevent wrongdoings against people of SCs/STs These act provide punishments which is more severe than the offenses defined in Indian Penal (III) 'Indian Penal Code and Abolition of Untouchability Act, 1976'. (IV) Many "Special Courts have been set up in some state for the disposal of cases rapidly register under these act"s.

### **4. Educational Safeguards for SC/ST**

Reservation to the educational organizations are provided in Article 15(4) and reservation in the service or promotion is granted in Article 16 clause (4), 4(A) and 4(B) of constitution. In constitution, numerous provision have been unified for the protecting the interests and right of SC and ST in the various domains. (a) Reservation of seats in schools, universities and other instructive Institutions for the Scheduled Castes where they are doing studies. (b) Relaxation in age, cut off points and least fees for applying the educational forms.<sup>12</sup>

### **5. Social and Administrative Safeguards**

The social control practiced by the people of highest status against them, or guarding their occupational rights and other rights reserved for the lower castes and safeguards to protect their livelihoods. Thus the Scheduled Caste people group remained both monetarily poor and socially in reverse. Simply after the freedom, government of India has been putting forth attempts to handle this issue on public level. A portion of the endeavours are: - 1. Article 14 provide that the state will not negate to any individual 'right to equivalence and equal safeguard of law' in the land. 2. By making the act of 'Untouchability



(Offenses) Act, 1955 and Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act'. 3. Article 23 restrict the traffic of human beings, beggar, bonded labour, it has a special importance also for the scheduled tribes. Similarly, another article 24 restrict the employ of child of under the phase of 14 years in the workshop or any other dangerous places is also significant for the child of SC and ST. Despite this arrangement applies to all residents all in all, it has exceptional essentialness to the Booked Caste, who has been the principle survivors of the monetary abuse by country landowner

## 6. Cultural Safeguards

1. In Article 29(1) it is provided that any people of the citizen of Indian Territory or any other part, they have a different language, culture and script shall have the right to follow it. 2. For providing special attention and care to weaker section, Scheduled Caste and Scheduled Tribes, promote their economic and educational interests in Article 46 it is provided. The State Government shall protect them from injustice, exploitation of all kind. It is also provided in the provision that State provide special fun for the SC/ST for their development.

## 7. Political Safeguards

The 'Constitution (Seventy-third Amendment ) Act, 1992' has been established to provide the status in panchayat raj. The provisions for the Panchayati Raj is in consonance with the Directive Principle defined in Article.<sup>13</sup> 1. In any State, there should be a Minister who shall be in charge of the Tribal welfare, reserved classes, regressive castes and for other work under Aarticle 164(1), it is provided. 2. For lowest castes and clans, reservation in seats has been given in Article 243 D. 3. The Constitution explicitly gives saved seats with respect to figure for lowest classes in the 'House of people and the Vidhan Sabha'. 4. Articles 330 and 332 accommodate the booking of seats for books caste and Planned clans in Lokk Sabha However, all equality of rule valued in Constitution has neglected to end the difference and separate practices up to the level of application of it.

## 8. Protection of SC/ST, Removal of Untouchability in Article 17

The word 'untouchability' is annulled and the use of its word is illegal. Any disability emerged out of the word of untouchability will be punishable and offense made by this culpable as per law. Article 17 annuls "distance" and precludes its used in anywhere. Un touchable is eliminated and its exercise is prohibited. The implementation of any incapacity arise out of it shall be disciplinary as per laws;" The Aarticle 17 doesn't stop with simple announcement however declares that it is not to be used in any form. "Untouchability" is neither characterized in the charter nor in the Lae since it isn't exactly defined. In Devaraffah v. Padmanna, the Mysore High Law court has said that the term isn't to be perceived in its exacting or grammer sense however to be perceived as the 'practice as it had created truly' in Indian culture. By the different segments of Indian culture, it is supposed in this sense, it is a system of the Hindu class society as per which specific area among the Hindus had been stared as untouchables. An exacting development of the term would incorporate people who are treated as untouchables by the same people brief or in any case for different reasons, for example, suffered with the irresistible infections for example, are related with birth or passing or by virtue of social blacklist coming from class or other fight. In either case such people can guarantee the insurance or advantage both of Article 17 or 'The Protection of Civil Rights Act, 1995'.<sup>14</sup>

## 9. Reservation of Seats:

Local Self Government Parts 9th plus 9th -A were added to Constiitution by 'Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Alteration) Act, 1992' famously known as Panchayatii Rajj and Nagarpalikka Constitution Amendment Acts. The Panchayati Raj and Nagarpalika Constitution Amendment Act, give Constitutional assurance to premise and fundamental of sovereign autonomous organizations in metropolitan territories, including normal decisions to Panchayats, reservation of seats to lowest castes booked Tribes and female. 1. Seat will be booked or reserve for lowest classes and clansin Article 243-D as per Indian Charter, 1950. (b) Fixed number of seats shall be booked as the similar proportion to complete number of seats occupied by the through political race or voting in the panchayat and every Panchayat. Such seat shall be allocate by the rotation and the populace of SC and ST in the zone of endures to the complete populace of that zone. (2)Seats will be booked for those women whose relate to lowest caste and scheduled clans not less than 1/3rd of total number of seats reserved for them. . (3) Total number of seats reserved for the women to be occupied by straight voting of Panchayat also includes women's of lowest caste or clans and those seats to be allocate by rotation not be less than one third.<sup>15</sup> (4) In this artiscle, For women, Scheduled Castes and Scheduled Tribes, there shall be reservation of the office of the chairperson in panchayat at township level or other level in that was as state-run government shall provide the number of office reserved for them shall bear in similar proportion to the extent of total number of office in Panchayat as the population of category of SC in the state and category

of St in the state, bears to the absolute populace of the State: This further provide that, reserved office in this article will be apportioned by the variation to distinct Panchayat for each levels (5) In Clause (1)&(2) there is reservation or booking of seats and In clause (4), there is reservation for SC, ST and Women regarding offices of Chairperson in Panchayat will cease to effect after the expire of period as mentioned in Article 334. (6) This article shall not restrict the state's legislature from creating any clause or provision regarding the reservation of the seats in the office of the chairperson or in Panchayat at the any level in the support of citizens of backward castes.

### **10. Reservation of seats in house of parliament and legislatures**

The Constitution of India, offers booking of seats in the Lok Sabha for lowest caste and clans. Article 332 offers reservation in seats for lowest caste, Schedule Tribe in the Law-making Assemblies of each State. Initially, under Article 334 the booking for these Castes were made for a long time. Since at that point, this term has been reached out every now and then. Its reason is that stress on the improvement of backward caste and booked clans', Government has organized many programs in the topographical regions for the development of population of lowest caste. Article 330 offers the reserved sets and guarantee to reserve seats to these category. Article 330 gives that: (1) Positions will be saved in the Lok Sabha (a) "Scheduled Caste" (b) "Scheduled Tribes aside from the Scheduled Tribes in the autonomous districts of Assam".<sup>15</sup> (2) 'Scheduled Tribes in the independent areas of Assam'. Number of positions booked or kept in the Government or Union Land for the category of lowest classes or tribes in part (1) will be the similar extent to proportion to the total figure of booking of seats allotted to the union territory and State'<sup>16</sup>

### **11. NATIONAL COMMISSION FOR SCHEDULE CASTE AND SCHEDULE TRIBE**

In the compatibility of the Article 338 or article 338-An of govt. charter, the president had delegated a assignment for lowest caste' who played out the capacity demonstrated in condition (2) subsequently and routinely presented its report to the head of state. Object of this Article is to give protect and different measures for the upliftment of more vulnerable segment of society. Throughout time, it was felt that rather than an extraordinary official (commission of booked class and clans a more viable plan for the reason is have an elevated level multi-part commission to ensure established protections for these individuals. As needs be, Article 338 has been altered by the constitution (65th Amendment) Act, 1990, to abrogate the workplace of the commission and to accommodate the arrangement of the public chief for the Planned Castes and Scheduled Tribes.<sup>17</sup>

(1) The commission is to ask into explicit objections with regard to hardship of any privilege and shields to these people. and to take an interest and prompt on the arranging cycle of financial advancement of Scheduled Castes and Planned ethnic group.<sup>18</sup> The obligations under condition (5) (b) of Article 338 (preceding change) didn't stretch out to either to issue of standing authentication or to renounce or drop a rank declaration or to settle on the legitimacy of the position testament.

### **12. Administrations of Schedule Area and The Welfare of the Schedule Tribe**

The Constitution of India under Article 339 enabled the president may designate a commission to write about the organization of the booked territory and the government assistance of the Scheduled Tribes in the state. The President of India under this article is additionally enabled to characterize the organization, force and system of the commission and may contain such accidental or subordinate arrangements as the President may thought about fundamental. Article 339(1) sets out that the President may name a commission, to write about the organization of the booked territory and the government assistance of the planned clans. Proviso (2) of the article 339 gives that the chief intensity of the association will reach out to the provider of guidance to a state with respect to the drawing up and execution of plans indicated in the ways to be fundamental for the government assistance of booked clans in the state. The producer of the Indian Constitution were very much aware of rank ridden cultural lop-sidedness in India. In request to keep up legitimate balance in the public eye, they anxiously gave unique shields in support of Schedule Caste and Schedule Tribe. The Constitution treats the Scheduled Castes in India with uncommon kindness and manages the cost of them with some important protections. The Constitution of India allows the State to embrace such governmental policy regarding minorities in society or reservation as it esteems important to inspire the Scheduled Caste and Scheduled Tribes to the levels of fairness with rest of comrades. A specific number of seats are saved in spots of learning and public assistance for the Planned Tribes and Other Backward Classes, to the rejection of all others, independent of legitimacy. Hence, reservation strategy is intended to annihilate the current social, instructive and monetary inconsistencies brought about by intentional cultural separation over the ages. In any case, the inclination concurred to these classes, as conceived in the Constitution of India, didn't add up to any "separation" or even "compensatory segregation" yet was a piece of customized social equity.<sup>19</sup>

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