



# ENACTING LEGISLATION TO PROTECT THE SCHEDULE CASTES COMMUNITY

Sanjay Kumar

Research Scholar Ph.D. (Law)

Mangalayatan University

## ABSTRACT

This paper aims to explore the theme of enacting legislation to protect the Scheduled Castes community in India. It begins by delving into key concepts such as caste, Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). It seeks to provide a comprehensive understanding of these terms to establish a foundation for the subsequent analysis. The paper then examines the status of the SCs prior to the enactment of the Indian Constitution and explores the safeguards that were put in place to safeguard the rights of this marginalized group. It sheds light on the historical context and societal conditions that necessitated such protective measures.

Furthermore, the study investigates the post-constitution status of the SCs and evaluates the efficacy of the implemented safeguards in improving their conditions. It critically examines the challenges faced by the SCs in their pursuit of justice and equality. Additionally, the paper explores the special legislation enacted to protect and uplift the SCs, highlighting their significance in addressing the specific needs and vulnerabilities of this community. It provides an overview of the key legislative measures and their impact on the empowerment of SCs.

Lastly, the study examines the role of the Commissions established to monitor and ensure the effective implementation of constitutional safeguards for vulnerable groups. It assesses the contributions and limitations of these Commissions in promoting social justice and equality for the SCs. By analyzing these various aspects, this paper aims to contribute to the discourse on enacting legislation to protect the Scheduled Castes community, emphasizing the need for comprehensive and proactive measures to address the historical injustices and social inequalities faced by this marginalized group.

## INTRODUCTION

The most marginalised parts of Indian society are the 'Dalits' (legally recognised as 'Scheduled Castes') and the 'Tribals' (legally recognised as 'Scheduled Tribes'). Since time immemorial, they have been subjected to numerous horrors. The Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act of 1989 protects the Schedule caste and Schedule Tribe community against racism and atrocities.

Regardless, the impact and aim of enacting this legislation remain uncertain, as there is considerable worry about the exploitation of its provisions against innocent people. According to the Supreme Court of India, the Schedule Caste and Schedule Tribe Act has degraded into "blackmail" and is currently utilised by certain individuals to exact "vengeance" and promote entrenched interests.

This article studies the enacting legislation to protect the schedule castes community and the consequences leading to the enactment of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. This article explores the intent of parliament for the enactment of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989 (including amendment Act of 2018) and Schedule Caste and Schedule Tribe (Prevention of Atrocities) Rules, 1995 and further investigates and notes the response of the Courts in maintaining the terms of this legislation.

## BRIEF BACKGROUND

In order to understand the theme of enacting legislation to protect the Scheduled Castes community, it is essential to grasp certain key concepts. The fundamental purpose of law is to ensure equality and provide equal access to growth and opportunities for all social groups within a society. However, the concept of justice cannot be uniform for individuals residing in different strata of society. The experience of justice varies depending not only on one's economic status but also on their social status, highlighting the disparities faced by different groups.

Historically disadvantaged and socially oppressed, the Scheduled Castes (referred to as Dalits) and Scheduled Tribes (known as Adivasis) belong to marginalized communities. Additionally, the Other Backward Classes (OBCs) have also faced historical disadvantages. These groups require special protection and support. Granting them equal status alone is insufficient due to the varying levels of exploitation, vulnerability, and disadvantage they face compared to dominant communities.

To comprehend these concepts fully, it is necessary to examine the Varna system. The Varna system consists of four classes: Brahmins, Kshatriyas, Vaishyas, and Shudras. This system has a hierarchical structure, with Brahmins occupying the topmost position as the priestly class, followed by Kshatriyas as rulers and warriors, Vaishyas as farmers, merchants, and craftspeople, and Shudras as farm workers, servants, and laborers. According to ancient texts, the Rigveda states that these Varnas originated from Brahma.

It is important to distinguish between Varna and caste, as there are misconceptions regarding their equivalence. Varna is immutable, meaning the hierarchy remains fixed, with Brahmins consistently at the top, followed by Kshatriyas, Vaishyas, and Shudras. However, caste is not hereditary. It is determined by an individual's merit, aptitude, and qualities. A person's caste can change based on their personal qualities, allowing someone born into a Shudra family to become a Brahmin through their knowledge and merit. Varna division is based on individual temperament and qualities, while caste is characterized by two factors: membership confined to those born into specific castes and the social preference for intra-caste marriages.

The Indian caste system also establishes a hierarchy, but it differs from Varna in that it is based on purity and pollution principles. Certain castes are considered higher in social structure due to their association with occupations considered pure, while others are deemed lower castes due to engaging in polluting occupations. Scheduled Castes, being associated with occupations considered polluted or polluting, have historically been treated as untouchables.

In summary, the differences between Varna and caste lie in the fact that Varna is determined by merit and qualities, while caste is ascribed by birth. Varna remains immutable, whereas caste can change within different regions and places. Moreover, while an individual can alter their Varna by improving their capabilities, caste remains unchangeable as it is predetermined by birth. Understanding these concepts is crucial to grasp the complexities and implications of enacting legislation to protect the Scheduled Castes community.

### **WHO ARE SCHEDULE CASTE, SCHEDULE TRIBE, AND BACKWARD COMMUNITIES**

When referring to the Scheduled Castes, there is no specific definition, but they generally encompass indigenous groups known as Untouchables. This category includes all castes considered untouchable. Terms such as Shudra and Dalits have been used synonymously with the Scheduled Caste. These communities have faced historical disadvantages and discrimination. Mahatma Gandhi, in his efforts to uplift them, referred to them as Harijans, meaning "children of God." The term "Scheduled Caste" was coined by the Simon Commission in 1935 and later adopted by the Indian Constitution in 1950.

Dr. Majumdar describes Scheduled Castes as those who endure various social and political disabilities, many of which are traditionally prescribed and enforced by higher castes. Scheduled Tribes, sometimes referred to as Adivasis, form the second-largest group among the backward classes and the underprivileged. They traditionally inhabit hilly areas. The legal term "Scheduled Tribes" refers to the aboriginals who continue to follow their tribal customs. There are three fundamental characteristics for a community to be recognized as a Scheduled Tribe: a primitive way of living, nomadic or remote habitation, and adherence to certain customs. However, it is not necessary for all these characteristics to be fulfilled for a group to be declared as Scheduled Tribes.

Regarding the Backward Classes, there is no specific definition. Generally, the backward classes comprise economically, socially, and educationally disadvantaged groups. The Indian Constitution does not provide a definition for either the “Scheduled Castes or the Scheduled Tribes”. It simply empowers the President of India to appoint a commission to determine the communities falling under these categories.

## **PRE CONSTITUTIONAL-ERA**

During the pre-colonial period, the dominant force in determining the status of backward classes was the caste panchayats. They held significant authority and decided matters related to backwardness. However, during the colonial era, the British introduced a uniform legal system aimed at addressing these disadvantages. As a result, the powers of the caste panchayats were transferred to civil courts. Matters such as marriage, divorce, and other social issues that were previously under the jurisdiction of caste panchayats became the purview of the courts.

The British introduced various acts to alleviate the disabilities associated with caste and to combat untouchability. Acts like the Caste Disabilities Removal Act and the Special Marriage Act were enacted to legalize inter-caste and inter-religious marriages. These acts also allowed for the remarriage of widows. Additionally, progressive Indian citizens initiated social reforms and reform movements to address caste disabilities during this period. The British administration implemented several reforms, but it is important to note that their aim was primarily to maintain control rather than actively reduce caste-based discrimination.

After India gained independence and a new constitution was drafted, the responsibility of eliminating these inequalities fell upon the Constitution itself. The Constitution faced the monumental task of removing disabilities and ensuring social justice for all. Recognizing the deep-rooted nature of caste-based discrimination, the framers of the Constitution sought to create a framework that would guarantee equality and justice for all citizens, irrespective of their caste or social background.

## **CONSTITUTIONAL SAFEGUARDS**

The Constitution employed three key strategies to address the disabilities faced by backward classes. Firstly, it incorporated fundamental rights that guarantee equality under Article 14 and explicitly prohibit discrimination based on caste. Secondly, it introduced compensatory discrimination by providing special provisions, such as reservations in educational institutions, public employment, and political institutions, to ensure representation and opportunities for the backward classes. Finally, by allocating resources and providing advantages to the “Scheduled Castes and Scheduled Tribes”, the Constitution chose a developmental strategy.

The Constitution's provisions are consistent with the social justice values that were pledged in the preamble. Equal protection under the law is guaranteed by Article 14, and untouchability is expressly forbidden by Article 17. Article 25 mandates that public Hindu religious institutions be accessible to all Hindus, outlawing discrimination against Dalits. Article 46 places a strong emphasis on advancing the economic and educational interests of society's weakest groups. Additionally, the identification and recognition of “Scheduled Castes and Scheduled Tribes” are covered under Articles 366, 341 and 342.

In terms of economic safeguards, Article 23 prohibits trafficking, begar (forced labor), and other forms of exploitative practices. Historically, individuals belonging to the Scheduled Castes have been victims of human trafficking, bonded labor, and unfair wages. Article 16(4) provides reservations in public employment for socially backward classes, and Article 335 allows for the relaxation of qualifying marks in examinations for backward classes.

In terms of political protections, Article 164 requires that each state appoint a minister to oversee the welfare of the “Scheduled Castes and Backward Classes” as well as tribal issues. In the Lok Sabha, Rajya Sabha, panchayats, and municipalities, seats are reserved for members of the “Scheduled Castes and Scheduled Tribes”. The distribution of monies for the advancement of the welfare of “Scheduled Castes and Scheduled Tribes” is outlined in Article 275(1). Additionally, “Scheduled Castes and Scheduled Tribes” who are academically and socially disadvantaged are granted numerous privileges under Articles 338, 341 and 342 of the Constitution.

Articles 32 and 226 provide channels for pursuing remedies when the “rights of Scheduled Castes and Scheduled Tribes” are infringed, protecting basic and constitutional rights. “The Scheduled Castes and Scheduled Tribes” have the right to prompt remedies under Articles 32 and 226 in circumstances of violations of their basic rights, as was highlighted in the “Bandhua Mukti Morcha vs. Union Of India & Others case.”

## LEGISLATIONS

A number of laws have been passed in addition to the Constitution to protect the rights of certain groups. The Untouchability Offences Act of 1955, which was subsequently renamed the Protection of Civil Rights Act in 1976, is an example of such law. In accordance with Article 17 of the Constitution, this law forbids untouchability and regards it as a crime.

The major offenses covered by this act include imposing religious disabilities, preventing entry into public or worship places based on untouchability, enforcing social disabilities that restrict access to shops, hotels, and public entertainment venues, refusing admission to hospitals, refusing to sell goods, insulting or abusing individuals, and compelling people to engage in menial tasks such as scavenging, sweeping, and carcass removal. The act provides punishment for these offenses, ranging from a minimum of one to six months of imprisonment and a fine of at least Rs. 100 to Rs. 500.

The practice of untouchability is categorized as both a cognizable and non-cognizable offense under this act. It covers around 22 offenses related to behaviors that undermine the self-respect of SCs and STs. However, to invoke the act, strong evidence must be presented to establish that the victim belongs to the SC or ST community. Notably, the act applies only if the offense is committed by a non-SC/ST member against an SC or ST member; offenses involving both SC and ST individuals are not covered.



Investigation of offenses under this act can only be conducted by a police officer of or above the rank of Deputy Superintendent of Police, reflecting the seriousness of the state in addressing these atrocities. The trial of such offenses can only take place before a special court headed by a Sessions Judge, and the state must appoint a special prosecutor. In the case of Gangula Ashok and Anr vs. State of Andhra Pradesh, the Supreme Court ruled that cases under this act must follow the committal procedure before the Judicial Magistrate Court before being sent to the special court.

During the committal procedure, the special public prosecutor and defense advocate present their arguments before the Judicial Magistrate. If the court rejects the charges framed by the police, the case is closed, and the accused is discharged. However, if the court finds a prima facie case, it takes cognizance of the charges and transfers the case for trial before the special court. The trial in the special court follows the procedures of a general criminal court. Notably, one important aspect of this act is that Mensrea (the mental state of intent) is not an essential element for constituting a crime under this act.

### **PRIMARY ASPECTS OF THE SCHEDULE CASTE AND SCHEDULE TRIBE (PREVENTION OF ATROCITIES) ACT, 1989**

The Atrocities Act and Rules are organised into three sections, each with a list of issues or subjects related to atrocities against the Scheduled Caste and Schedule Tribe individuals as well as their role in society.

- The first group includes criminal law provisions. This category, in general, provides criminal culpability for several precisely defined offences, as well as broadens the scope of various penalizations specified in the Indian Penal Code (IPC).

The following are the primary aspects of the act:

- The establishment of new types of offences that aren't governed by the “Indian Penal Code (IPC) and the Civil Rights Protection Act of 1955.”
- The Act identifies thirty-seven offences that are connected with different patterns or acts resulting in illicit activities and harm to the self-respect and dignity of the scheduled castes and tribes society. This includes denial of economic, democratic, and social liberties, as well as discrimination, exploitation, and legal system exploitation. defines many types of atrocities perpetrated against SCs/STs and imposes severe penalties for such acts.
- Improved the severity of the penalty for certain offences.
- Increased minimum punishment for public employees.
- Penalty for a public servant's failure to perform his or her obligations.
- Property attachment and forfeiture.
- Potential offenders are expelled.

## NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES

“The National Commission for Scheduled Castes and Scheduled Tribes” was established with the intention of safeguarding the interests of these communities. The commission is responsible for receiving complaints and investigating matters that are brought to its attention, including those reported in newspapers or through other media sources. It is worth noting that the commission can initiate its work based not only on specific complaints but also on reports from the media.

The commission has been given civil court-like authority. The commission was eventually split into two independent organisations, the “National Commission for Scheduled Castes and the National Commission for Scheduled Tribes”, in recognition of the particular difficulties encountered by “Scheduled Castes and Scheduled Tribes”. This separation was implemented to make sure that each commission can successfully handle the unique problems that these communities confront.

Similarly, in 1993, a “National Commission for Backward Classes” was created in reaction to the Mundell Commission case ruling. This commission is concerned with issues surrounding the admission or removal of certain castes and communities from the category of the “backward class.” It is essential for keeping track of government initiatives and welfare programmes to make sure they are carried out correctly and to determine if they are benefiting the “Scheduled Castes, Scheduled Tribes, and lower classes.”

Additionally, the backward classes, Scheduled Castes, and Scheduled Tribes each have their own commissions in each state in India. These commissions at the state level aim to safeguard these groups' interests within their own states. States have the option of either adhering to the federal government's list of “Scheduled Castes, Scheduled Tribes, and backward classes” or creating their own list depending on their unique conditions.

Consolidated efforts have been made “to safeguard the rights and interests of India's Scheduled Castes and Tribes” via these different national and state-level commissions. These commissions are essential in making sure that these marginalised populations get fair treatment, have access to opportunities, and that policies and programmes are carried out effectively.

## CONCLUSION

In conclusion, the enactment of legislation to protect the Scheduled Castes community in India has been a crucial step towards addressing the historical injustices and social inequalities faced by this marginalized group. In order to establish the groundwork for the study, this article has offered a thorough knowledge of essential terms including caste, Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

The pre-constitutional era witnessed the dominance of caste panchayats in determining the status of backward classes, but with colonial influence, a uniform legal system was introduced to combat caste-based discrimination. However, it was the Indian Constitution that took on the responsibility of eliminating inequalities and ensuring social justice for all citizens. Constitutional safeguards, including fundamental rights, compensatory discrimination, and a developmental approach, were incorporated to protect the rights of SCs and STs.

The rights of the community of Scheduled Castes were crucially protected by law. Untouchability, “crimes against SCs and STs,” and victim rehabilitation were all addressed by laws like “the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989” and “the Untouchability Offences Act of 1955 (Protection of Civil Rights Act)”. To safeguard their dignity and defend their rights, these laws provide legal redress and consequences for crimes against SCs and STs.

“The National Commission for Scheduled Castes and Scheduled Tribes,” which was subsequently split into distinct organisations, was established to defend the interests of these groups. Similarly to this, the “National Commission for Backward Classes and state-level commissions” have been essential in overseeing government initiatives, welfare programmes, and making sure that laws are implemented correctly.

Overall, enacting legislation and establishing commissions have been significant steps in promoting social justice, equality, and the empowerment of the Scheduled Castes community in India. However, challenges persist, and further comprehensive and proactive measures are needed to address the deep-rooted inequalities and discrimination that continue to impact the lives of SCs. By acknowledging and addressing these challenges, society can move closer to achieving true equality and justice for all its citizens.

[1] SC ST (POA) Act, 1989