

A JUDICIAL ANALYSIS OF THE CONSTITUTIONAL SAFEGUARDS FOR THE PROMOTION OF SOCIAL JUSTICE IN BHARAT

Dr. Sabia Malik

Assistant Professor, GNIOT Group of Institutions, Greater Noida

Dr. Amitesh Anand

Associate Professor College of law, IIMT University Meerut

Abstract

In Bharat Social Justice has always been a matter of regular debates and discussions. Bharat consists of a large group of people who on certain bases needs social justice. This paper specifically focuses on socially disadvantaged peoples in Bharat. This article primarily focuses on two groups—Scheduled Castes (SCs) and Scheduled Tribes (STs)—who have long faced social hardships. Since the enactment of our Constitution, it has established several provisions to protect SCs and STs, such as: preventing discrimination, eliminating untouchability, improving their education and economic status, and protecting tribal areas. These provisions help achieve the goal of equality and social justice in our country, as enshrined in the Preamble to the Constitution. This study also cites some important court decisions, such as: *State of Madras v. Champakam Dorairajan*, *Indira Sawhney v. Union of India*, *Nandini Sundar v. State of Chhattisgarh*. These decisions have helped us understand how the constitutional safeguards provided for SCs and STs should be implemented. The article also discusses the problems that arise when implementing these safeguards, such as: lack of proper enforcement of regulations, social and political obstacles. Therefore, this study suggests that courts must remain constantly vigilant and proactive to ensure that SCs and STs receive all the rights and justice guaranteed by the Constitution.

Keywords: Social Justice, Bhartiya ,Constitution, Socially Disadvantaged, Apex Court

INTRODUCTION

The Preamble of the Constitution of Bharat lists the essential values that form the cornerstone for the aforesaid ultimate legal document in the country. This above-mentioned statement expresses the following: "We, the entire Bhartiya population, have made a solemn vow through this proclamation to build our nation Bharat as an independent, autonomous, socialist, secular, and democratic republic, and to ensure that all its citizens are entitled to-

Justice that considers social, political, and economic factors; Liberty that includes freedom of thought, expression, belief, faith, and worship; Equality in terms of social standing and opportunities; and to foster unity among all citizens while preserving individual dignity and national integrity.¹ On November 26, 1949, the Constituent Assembly formally adopted, enacted, and made available to the public the Constitution that established all the goals. The Bhartiya Constitution has a few clauses for this purpose, to protect the rights of the Scheduled Castes (hereafter SCs) and Scheduled Tribes (hereafter STs). A deep concern of the Constitution makers for the upliftment of the socially disadvantaged people such as SCs, STs and OBCs people is observed in the elaborate Constitutional mechanism setup. In 1991 census, when we were close to 138 million people approximately over 16% of Bharat's population - were classified as belonging to SCs. Constitution Articles prohibits discrimination, abolishes untouchability, and promotes the educational and economic interests of SCs and STs, reflecting the state's commitment to these goals. As a result, the Bhartiya Law of Land's framers included and established a strong set of protections to advance social justice and equality, as well as to guarantee the development and prosperity of the Bhartiya SC and ST communities and their participation in the process of national progress. It should be highlighted, nonetheless, that the Constitution does not provide clear definitions for the phrases. To fulfil their Constitutional obligations in an independent Bharat and advance the interests of the SC and ST communities, the Central and State Governments have also put in place a few welfare and development programs. In terms of social, economic, political, and

¹ *The Constitution of India*, 1950.

cultural advancement, these programs seek to make it easier for other facets of Bhartiya society to achieve parity.²

On the above bases it can be readily apparent that there are several legislations in the nation not only to control the hatred but also promotes and enhance the socioeconomic status of SCs and STs, but then also they are facing conditions of infirmity, discrepancies, violence and vulnerabilities continue. No doubt here the role of 4th pillar as the savior and promoter increases because it has been given the power of interpretation and enforcement of laws which ensures the credibility of the Constitutional promises to its citizens speaking through its preamble and some of the other provisions as given in part 3rd and Part 4th etc. which secure social justice to the citizens. This paper takes over a critical examination of the existing Bhartiya Constitutional provisions and importance of statutory legislations in the context of SCs and STs. Finally, this paper also efforts to focus upon the role of judiciary in Bharat to make stronger sections of society as the welfare authority establishing social justice expression as provided in Article 38 of Constitution which is the enacting part for these SCs and STs Communities as enshrined in various parts of Constitution through the landmark pronouncements.

LITERATURE REVIEW

Land Reforms and Social Justice: Fundamental Insights Classical texts, including **D.D. Basu's** 'Introduction to the Constitution of India' and Granville Austin's 'The Indian Constitution: Cornerstone of a Nation,' emphasize the original intent of the framers to foster socio-economic equity via land reforms. The policies of land redistribution were considered essential for dismantling feudal systems and advancing equality.

Safeguards for Marginalized Communities: Judicial activism in cases concerning land acquisition and tribal rights. The judiciary's evolving approach to laws like the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) and the Forest Rights Act, 2006, has been both lauded and critiqued for its impact on safeguarding indigenous land rights.

² Saptarshi Mandal, *Right to Property and the Supreme Court: The Return of the Judiciary in Land Acquisition*, 10 NUJS L. Rev. 513 (2017).

RESEARCH METHODOLOGY

This research employs a qualitative and doctrinal methodology, concentrating on the judicial interpretation of land legislation and constitutional protections aimed at advancing social justice in Bharat (India). The examination relies chiefly on legal documents, case law, constitutional clauses, and scholarly analysis.³

BHARTIYA DISADVANTAGED SOCIETY AND THE MARGINALIZED SECTIONS OF BHARAT

Bharat, since its existence, is characterized by its rich socio-cultural, linguistic variances and diverse social hierarchical structure. Bharat is currently the world's second most populated nation. where several faiths, sects, cultures, and languages are practiced. Of these, the SC and ST populations make up to than 23% of the total population. These people experienced socioeconomic adversity and frequent denials of their fundamental human rights. When Bharat gained independence in August 1947 and the "Constitution of Bharat" was ratified to govern its people, it guaranteed every Bhartiya citizen the right to live in dignity, equality, freedom, and protection from exploitation. It also protected their human rights by enacting protections and privileges in its provisions through government agencies. Dr. Bhimrao Ramji Ambedkar, considered to be 'Father of Modern Bharat' never gave edge to any community. He just as an 'Architect of Modern Bharat' gave all individual of the nation equal rights irrespective of gender, religion, caste, creed or society. In this way Bharat, after freedom when established it a democratic republic nation through its national document, became cognizant of its responsibility to safeguard the well-being of all i.e. to the people, by the people, for the people without any discrimination.

Here we have historically several major religions, their division into different sects, various social groups and inclusive society. For example, in Hindu religion there is a division of four Varnas as Brahmin, Kshatriys, Vaishya and Shudra. Among these Shudras and there are certain sections of society which are still marginalized and oppressed after 75 years of independence. These disadvantaged and marginalized groups which specifically are SCs and STs for centuries have faced and are still facing

³ Arvind Narrain, Land Acquisition, Displacement, and *the Right to Fair Compensation: Legal Developments in the Indian Judiciary*, 9 Indian J. Const. L. 95 (2016).

discrimination socially, deprivation economically, and exclusion politically and many more from the society. If we see the history of Bharat the division of Hindus in different caste have developed as a caste system prevailing everywhere in which the SCs and STs which are oppressed and marginalized groups have been deprived of even the essential basics of life such as property, education, freedom, equality and political influence. Our historical literature has been filled with bulk of incidents and stories which were prevalent in society expressing their real conditions which made them "untouchables," hence were subjected to severe social atrocities, hatred and even restricted from accessing temples, drinking water, public ways, public rituals and other basic resources and opportunities easily available to other three communities. It is said that the caste system originated in ancient times with the division of labor. Jobs such as leather work, removing dead animals from the village, cleaning toilets, and funeral rites were considered very lowly.

For this reason, Shudras were placed at the lowest level in society and were forced to perform the dirtiest and most difficult jobs, such as forced labor and bonded labor.

These jobs gradually led to these people being called "untouchables." Society ostracized them. They were denied the necessary facilities, resources, and opportunities for development. This pushed them into deep and persistent poverty.

By enshrining certain advantages that are described in its provisions, such as the right to equality, freedom, prohibition of forced labor, right to religion, etc., the Bhartiya Constitution has successfully protected the human rights of many categories of citizens. Despite Constitutional provisions abolishing un-touchability and prohibiting caste-based discrimination, SCs continue to face social and economic challenges. STs, on the other hand, comprise indigenous communities that have traditionally lived in remote and forested areas. They have faced displacement, loss of livelihoods, and cultural erosion due to industrialization and urbanization. No doubt the government is not aware and conscious of all this.⁴ The Bhartiya government time to time has taken affirmative action to implement govt. policies, including reservations in education, reservations in employment, and reservations in political representation on percentage basis to address the historical injustices such as separation from society, schools,

⁴ Usha Ramanathan, Demolition Drives and Legal Dispossession, 43 Econ. & Pol. Wkly. 11 (No. 24, 2008).

cremation grounds, access to public services such as water wells, taps, health care, education, prohibition of access to public roads, temples etc. faced by SCs and STs. However, these measures alone are insufficient to overcome deeply entrenched social biases and structural inequalities. The way the Bhartiya Constitution treats STs makes it stand out from the others. Facilitating the socioeconomic advancement of underprivileged populations, particularly the SCs and STs, was the primary goal of putting these protective measures into place. As can be seen, the procedures were put in place to help ensure that the Directive Principle is implemented effectively. Caste prejudice must be eradicated, and an inclusive culture that celebrates and respects diversity must be established. Making ensuring that these communities are treated equally with other parts of the country is the ultimate objective. The broad adoption of Constitutional provisions that allow members of the upper caste Hindu community to have exclusive control over social status, property, and education is necessary to create a welfare society. Due to the caste system, the underprivileged groups in society experienced a condition of deprivation that resulted in property loss, restricted access to education, reduced freedom, weakened social equality, limited economic prospects, and weakened political power. Certain groups of people were granted hierarchical benefits under the caste system, while others were subjected to permanent restrictions that were carried down through the generations.⁵

In this entire purview, this paper takes over a critical examination of the existing Bhartiya Constitutional provisions and importance of statutory legislations in the context of these disadvantaged and marginalized groups. Finally, this paper also efforts to focus upon the role of judiciary in Bharat to make stronger sections of society as the welfare authority establishing social justice expression as provided in Article 38 of Constitution which is the enacting part for these SCs and STs Communities as enshrined in various parts of Constitution through the landmark pronouncements.

The constitution and the provisions safeguarding protection and promotion of disadvantaged and marginalized people.

It is one of the chief characteristics of the Bhartiya Constitution to ensure welfare of every individual it consists of several provisions which secures equality, freedom, right

⁵ Arunabh Khaitan, Directive Principles and the Expressive Role of the Constitution, 6 Indian J. Const. L. 23 (2012).

against exploitation and protection of the rights of SCs and STs Communities who faced the historical injustices and systemic discrimination from hierarchical social groups. Dr. Bhimrao Ramji Ambedkar, who assumed the role of committee chairman, is credited with the inclusion of these protective measures within the framework of the Bhartiya Law of Land. Dr. Bhimrao Ramji Ambedkar first introduced them in 1931 which was just carried out in 1950 at the time of enforcement of Bhartiya Law of Land. Key among these provisions is Article 14, Article 15, Article 16, Article 17 and Article 29(2). Reservation according to him was just part of affirmative action which is also given in US, Japan, Russia the developed nations as equality measures to some races, minorities and tribes. In addition, a number of measures, such as Article 46, were approved by the Constituent Assembly, indicating a new policy that brought hope to many of their once neglected countrymen. A number of protections for SCs and STs are based on Article 46, which requires the state to protect these groups from exploitation and other types of injustice in society as well as to advance their economic and educational interests. Additionally, Article 275, Article 332 provides SCs and STs Reservation for the seats in the House of the People and State Legislative Assemblies, respectively, ensuring their adequate representation in the legislative process. Furthermore the Fifth and Sixth Schedules of the Constitution contain provisions for addressing interests of the tribal communities' protection, the administration and control of scheduled areas and tribal areas, ensuring the unique needs and challenges faced by tribal communities and to ensure their participation in the governance of their regions. Under Part IXth reservation for SCs and STs in local bodies has been envisaged and provided, Article 338 establishes the National Commission for SCs and Article 338A establishes the National Commission for STs, both of which are tasked with monitoring and reporting on the implementation of safeguards for these communities. The action's goal was to specify the actions that the Union and individual states should take to guarantee the successful execution of the previously mentioned protections as well as other programs intended to safeguard the welfare, socioeconomic advancement, and general advancement of the SCs and STs. Additionally, the commission was given additional duties pertaining to the development, protection, welfare, and advancement of the SCs and STs.

Together, these Constitutional clauses seek to eliminate the socioeconomic inequalities that SCs and STs experience while fostering their inclusion and self-

determination in Bhartiya society. However, to fully fulfill the promise of these protections, they must be implemented effectively and subject to ongoing court monitoring. However, it is concerning because over a period of more than 75 years, it is clear that the application of the reservation policy has not successfully improved the socioeconomic conditions of the SCs and STs.

LEGAL ANALYSIS AND ARGUMENT

A Judicial Proclamation to Protect Bharat's Disenfranchised and Marginalized Population

Today everyone has guaranteed the right to fundamental rights; however, sometimes certain people and agencies try to take them away. In that situation, the judiciary ensures protection and lets every citizen live in peace and harmony. It is an irony in Bharat the oppressed caste groups SCs and STs which have been, for centuries, the most neglected, marginalized and exploited people historically have faced several forms of discrimination and atrocities still faced ostracized scourge of untouchability.. Hence have always been playing a significant crucial role in the protecting and empowering SCs and STs in Bharat through landmark judgements and time to time interpreted the Constitutional provisions and other rulings to protect the rights of these marginalized communities as a guardian of their rights. This role of Apex Court as the guardian of the fundamental rights had become clear in the first few years itself of the enforcement of Constitution in the verdict of State of Madras Vs. V. G. Row in which C. J. Patanjali Sastri, observed that: Our country's Constitution clearly states that the courts can examine whether any law made by the government is in accordance with the Constitution. This is different from the United States. So, when the court examines a law, it does not do so to fight the government. It is simply performing its duty as mandated by the Constitution. This is even more important for fundamental rights. The Supreme Court protects people's rights like a vigilant sentinel. The court respects the lawmakers (MPs/MLAs), but the final decision on whether a law is in accordance with the Constitution or not is the court's. The right to equality is guaranteed in the Arts. 14 to 18. Article 17 clearly abolishes untouchability provision. The guarantee of equal protection is not only against substantive laws but against the procedural laws as well. In this way the Bhartiya Judiciary, through its judgments, have not only interpreted and applied these principles to address challenges faced by these communities

contemporarily but also established the principles of equality and social justice for these communities. Hereunder are certain famous judgments elaborating this role of Judiciary.⁶ Let's take a view of them:

The case of ***State of Madras v. Champakam Dorairajan***⁷ is in relation of Court's right to make special provisions for SCs and STs. In this case the Apex judiciary promoted the reservation policy and held that the state can make special provisions for SCs and STs. *This case is declared as one of the earliest significant cases where Apex Court elevated the reservation policy of Bharat.* This landmark judgement prepared the ground for future subsequent affirmative action policies by the Bhartiya government.

Similarly in a subsequent judgement of ***Indra Sawhney v. Union of Bharat***,⁸ famously known as the ***Mandal Commission case***,⁹ the Apex Court upheld out of total reservation, the 27% reservation for Other Backward Classes (OBCs) while reciting the importance of reservations for SCs and STs and the judgement given by Apex Court in ***State of Madras v. Champakam Dorairajan case***.¹⁰ In the same case the Court emphasized that to establish social justice in society there is the need to balance with every individual and group and Other Backward Classes (OBCs) are the communities' which historically have faced these disadvantages.

Further in a case the Court focused upon state-sponsored vigilantism in tribal areas. Addressing the issue the Apex Court condemned the use of tribal youth in anti-Maoist operations and stated that this is a matter of extreme concern to take immediate steps to protect the youth from such activities. Furthermore, the honourable Court highlighted the need for protection to tribal proper and establishment of proper governance in tribal regions (***Nandini Sundar v. State of Chhattisgarh***).¹¹

⁶ Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India*, 9 J. Nat'l L. U. Delhi 45 (2018).

⁷ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

⁸ *Indra Sawhney v. Union of India*, 1992 Supp. (3) SCC 217

⁹ *Ibid.*

¹⁰ *Supra Note 7.*

¹¹ *Nandini Sundar v. State of Chhattisgarh*, (2011) 7 SCC 547.

The **Sabarimala Case**¹² is also a landmark and famous case which attract the people towards it. In this case the Court ruled that to stop and exclude women from entering and worshipping from the Sabarimala temple is unLaw of Land. It invokes the Constitutional principles of equality and non-discrimination. In this way Apex Court forcing on the guarantee of equality also protects SCs and STs on this ground.

Another important judgment is **Vikas Yadav v. State of Uttar Pradesh**¹³, where the Apex Court took a firm stand against "honour killings," often perpetrated against inter-caste couples, many of whom belong to SCs or STs Communities. The Court mandated strict action and emphasized the protection of individual rights.

Last not the least, the judiciary has also been proactive in interpreting the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In **Subhash Kashinath Mahajan v. State of Maharashtra**¹⁴ the Court initially imposed safeguards to prevent misuse of the Act but later, in 2019, restored the original provisions, recognizing the continuing vulnerabilities of SCs and STs.

Above all judicial verdicts are enough to demonstrate that the Bhartiya judiciary is always vigilant towards its responsibilities as a protector and promoter of human rights as well as fundamental rights and its commitment to protect and ensure social, economic and political justice for SCs and STs, through their inclusion in Bhartiya society. The Judiciary as a 4th pillar always inclined towards the Constitutional aims and stand firmly as a protector and promoter of rights of individuals given by the Law of Land. In conclusion, it is indeed gratifying that the interpretation of the fundamental rights by the Courts, has, by and large, tended to inspire and sustain the belief of the common man not only in law and legislature of the nation but also in this great organ of government.

¹² *Indian Young Lawyers Ass'n v. State of Kerala (Sabarimala Case)*, (2019) 11 SCC 1.

¹³ *Vikas Yadav v. State of Uttar Pradesh*, (2016) 9 SCC 541.

¹⁴ *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454.

CONCLUSION

Conclusively from the above discussion it can be easily observed that the oppressed society i.e. SCs and STs in Bharat have historically always faced discrimination, social exclusion, economic exploitation, illegal land acquisition, displacement destruction of property and different forms of violence. To address all these issues, the Bhartiya legal framework drafted and enforced several important statutes and provisions as The Constitution of Bharat, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act), The National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST), The Protection of Human Rights Act, 1993 which establishes the National Human Rights Commission (NHRC) and State Human Rights Commissions to address human rights violations, including those affecting SCs and STs have been established. But then also the atrocities against them are in regular process everywhere in practice. While existing laws provide a framework for protecting SCs and STs, then also several areas require further attention such as:

- Strengthening the implementation of laws and ensure their effective enforcement
- Enhance judicial scrutiny and faster legal processes and ensure timely justice of cases.
- Increase awareness about rights and legal protections among SCs and STs.
- Engaging SCs and STs communities in the policy-making process and decision-making can ensure that their perspectives and needs are adequately addressed.
- Improved data collection on atrocities and the effectiveness of protective measures can help in formulating better policies and interventions.

In conclusion, while laws and protections are in place to safeguard SCs and STs from atrocities, continuous efforts are needed to enhance their effectiveness and address emerging challenges. Strengthening implementation, promoting socio-economic development, and fostering community involvement are keys to advancing the protection and empowerment of these marginalized communities.

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