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REVIEW ARTICLE

CONSTITUTIONAL SAFEGUARDS FOR DALITS IN INDIA

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ABSTRACT

Dalit, meaning "oppressed" in South Asia, is the self-chosen political name of castes in the SAARC region which the varna system considers "untouchable". Though the name Dalit has been in existence since the nineteenth century, the economist and reformer B. R. Ambedkar (1891–1956) popularised the term. Dalits were excluded from the four-fold Varna system and formed the unmentioned fifth varna; they were also called Panchama. While "scheduled castes" (SC) is the legal name for those who were formerly considered "untouchable," the term Dalit also encompasses scheduled tribes (ST) and other historically disadvantaged communities who were traditionally excluded from society.

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INTRODUCTION

Dalit, meaning "oppressed" in South Asia, is the self-chosen political name of castes in the SAARC region which the varna system considers "untouchable". Though the name Dalit has been in existence since the nineteenth century, the economist and reformer B. R. Ambedkar (1891–1956) popularised the term. Dalits were excluded from the four-fold Varna system and formed the unmentioned fifth varna; they were also called Panchama. While "scheduled castes" (SC) is the legal name for those who were formerly considered "untouchable," the term Dalit also encompasses scheduled tribes (ST) and other historically disadvantaged communities who were traditionally excluded from society. Dalits are a mixed population, consisting of groups across South Asia. They speak a variety of languages and practice various religions. With the Scheduled Castes at 16.6% and Scheduled Tribes at 8.6%, the Dalits and Adivasis together make up 25% of India's population according to the 2011 census. To prevent harassment, assault, discrimination and other criminal acts on Scheduled Castes and Scheduled Tribes, the Indian government enacted the Prevention of Atrocity (POA) act on March 31, 1995. In 1932, the British Raj recommended separate electorates to select leaders for Dalits in the Communal Award. When Mohandas Gandhi opposed this, negotiations produced the Poona Pact with B. R. Ambedkar.

From its independence in 1947 and expanded in 1974, India provided jobs and educational opportunities for Dalits. By 1995, 17.2% of Government sector IVth class jobs were held by Dalits. In 1997, India elected Dalit K. R. Narayanan as the nation's President. Many social organizations have promoted better conditions for Dalits through education, health and employment. While caste-based discrimination was prohibited and untouchability abolished by the Constitution of India, such practices continued. The concern for protecting the rights and dignity of Dalits (Scheduled Castes) has been a major challenge even after India's independence. Despite special protective laws such as the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and their implementation for several decades, the Scheduled Castes continue to be the victims of caste-based untouchability and atrocities. Though most of such incidents go often unreported, even the cases registered under these laws also end in acquittal. This scenario on the one hand raises doubts on the will and commitment of the state, particularly its law-enforcing machinery, on the other hand, it necessitates the need for understanding the various factors that lead to the acquittal of most of these cases.

General Rights in the Constitution

The Constitution of India, which came into force on 26 January 1950. Provides the following fundamental rights to every citizen:-

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WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens

- Justice, social, economic and political;
- Liberty of thought, expression, belief, faith and worship;
- Equality of status and of opportunity, and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation. Equality of status and of opportunity, and to promote among them all fraternity assuring the dignity of the individual and the unity of the nation.

Compensatory discrimination was one of the means chosen to achieve those ends. Its purpose is to promote equalization by offsetting historically accumulated inequalities. The Government of India has used compensatory discrimination as a means of achieving greater equality by deliberately overcoming some of those historically accumulated disabilities from which Dalits have long suffered. The Constitution provides some preferential options to the Dalits who for so many centuries have been deprived of their rights in Indian society. It was Dr. Ambedkar, himself a Dalit and the chief architect of the Indian Constitution, who really formulated the provision of compensatory discrimination.

Article 14: Equality before the Law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth

- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –
- Access to shops, public restaurants, hotels and places of public entertainment; or
- The use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of the general public.
- Nothing in this article shall prevent the State from making any special provision for women and children.
- Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- No citizen shall, on ground only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or

- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained whole or partly out of State funds or dedicated to the use of the general public.

- Nothing in this article shall prevent the State from making any special provision for women and children.
- Nothing in this article or in clause (2) or article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16, Equality of Opportunity in matters of public employment

- There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

Article 17, Abolition of Untouchability

'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability' shall be an offence punishable in accordance with law.

Article 25, Freedom of Conscience and Free profession, practice and propagation of religion

- Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- Nothing in this article shall affect the operation of any existing law or prevent the State from making any law –

- (a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II: In sub-Clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

- 2. Special Rights Under the Presidential Order, 1950, known as the Constitution (SCHEDULED CASTE) Order, no.19, Aug.10, 1950

Political Rights and Privileges

Article 330, Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People

(1) Seats shall be reserved in the House of the People for -

- The Scheduled Castes;
- The Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and
- The Scheduled Tribes in the autonomous districts of Assam.

- The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.
- Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said autonomous districts bears to the total population of the State. Explanation: In this article and in article 332, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published: Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.

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

- Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State.
- Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

- The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.
- Notwithstanding anything contained in clause (3), until the taking effect, under article 170, of the re-adjustment, on the basis of the first census after the year 2000, of the number of seats in the Legislative Assemblies of the States of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such State shall be, -

- If all the seats in the Legislative Assembly of such State in existence on the date of coming into force of the Constitution (Fifty-seventh Amendment) Act, 1987 (hereafter in this clause referred to as the existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;
- In any other case, such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly.

- Notwithstanding anything contained in clause (3), until the re-adjustment, under article 170, takes effect on the basis of the first census after the year 2000, of the number of seats in the Legislative Assembly of the State of Tripura, the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to the total number of seats, a proportion not less than the number, as on the date of coming into force of the Constitution (Seventy-second Amendment) Act, 1992, of members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.
- The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.
- The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district.
- (6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district.

The second important element in the compensatory discrimination is found in Article 335

Economic and Social Rights and Privileges

Article 335, Claims of Scheduled Castes and Scheduled Tribes to services and posts

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall 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. When taken with Article 16(4), this forms the basis for reserving jobs in government service for Dalits, Scheduled Tribes and "Other Backward Classes".

Article 16, Equality of opportunity in matters of public employment

- Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

The other important element in the compensatory discrimination system was both the reservation of seats in educational institutions as well as the provision of financial assistance. This was set forth under the Directive Principle of State Policy in Article 46:

Article 46, Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. The Constitution also provided for a special officer (Article 338) for the Scheduled Castes and Scheduled Tribes as well as for a Commission to investigate the condition of the Backward Classes (Article 340). Both of these were appointed by and responsible to the President.

Article 338, National Commission for Scheduled Castes, Scheduled Tribes

There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

- It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

Article 340, Appointment of a Commission to investigate the conditions of backward classes

- The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes

within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

- A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.
- The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.
- The Constitution of India gave a special mandate to the President of India under Article 341 (1) to specify the castes, races under a Schedule. The castes as listed become eligible for the purposes of discriminatory protections and favours designed for that purpose.

The Exclusion of Christian Dalits from Special Rights and Protections

Article 341 (1) empowers the President of India, "...by public notification, (to) specify the castes, races or tribes or parts or of groups within castes, races or tribes which shall, for the purpose of this Constitution be deemed to be Scheduled Castes." But once the President has issued such an order, saying who can be included in the list or schedule, "Parliament may ...include in or exclude from the list of Scheduled Castes ... any ... group ..."

The third paragraph of this Order reads:

"Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hindu, shall be deemed to be a member of a Scheduled Caste."

In making this exclusion, the Indian Parliament had the excuse of following the Government of India (Scheduled Castes) Order of 1936 in which the British had excluded the Christian dalits because these were already enjoying rights and protection as a minority community. This third paragraph was changed in 1956 by Parliament to "Hindu or Sikh" and again in May 1990 it was changed by the Parliament to "Hindu or Sikh or Buddhist." Thus, dalits who have converted to Christianity have lost the constitutional safeguards given to the Scheduled Castes of three other religions. This has increased their vulnerability.

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