



## CONSTITUTIONAL SAFEGUARDS AND ST DEVELOPMENT IN INDIA

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### Abstract:

Indian Constitution is the umbrella in the life of Scheduled Tribes because it provides safeguards for them. About ST Pandit Jawaharlal Nehru has taken essential steps. How shall the ST secure and promote? Later Dr. B.R. Ambedkar had appropriately dealt with the provisions under the Constitution, How would the rights of ST be protected? But the situation is not different from 1950 because STs are facing social, economic, educational, cultural, political, and service rights issues still today. Usually, rights have violated by another human being; only those are powerful in all aspects. There is an honest attempt to explore the safeguards of STs provided under the Constitution and bring them in the mainstream of the nation.

**Key Words:** Constitution, Safeguards & Scheduled Tribes

### Introduction:

India has the most significant number of tribal population in the world. According to the Anthropological Survey of India, 750 tribes are in the country, and the Ministry of Tribal Affairs has identified 698 ST in India, out of which 75 groups have classified as Primitive Tribal Group. The total Population of ST in India was 8.6%, as per the 2011 census. But since 1950, when the constitution came into force, the ST communities are facing their right issues in India still today. The non-tribes, political authorities, administrative authorities have violated these rights because STs are not well educated. Hence they are unable to understand legal rights; in short social, economic, educational & cultural, political, and service rights are violated today.

### Scheduled Tribe:

In India, terms of *Adivasi*, *Vanyajati*, *Vanvasi*, *Adimjati*, *Anusuchit Jamati* (ST), etc. are used interchangeably, whereas, at the international level, known as indigenous people. The term 'tribe' has not been defined anywhere under the Indian constitution, but it has defined ST under Art. 366 (25) as "*Such tribes or tribal communities or part of or group within such tribes or tribal communities as are deemed under Article 342 to the ST for this constitution*"

According to D. N. Majumdar "*a collection of families or common groups bearing a common name, the members of which occupy the same territory, speak the same language and observe certain taboos, regarding marriage, professions and have developed a well-assured system of reciprocity and mutuality of obligation.*"<sup>2</sup>

### Constitutional Safeguards:

The Constitution of India has incorporated various safeguards and measures to protect the interests and rights of the ST in various spheres to allow them to link the national mainstream. Art. 46 has provided that the State has the responsibility to take care of the educationally and economically of the weaker section of the society, specifically, SC<sup>3</sup> and ST, to protect them from social injustice and all kinds of exploitation. To achieve particular social, economic, cultural, educational, political, etc. objectives. These constitutional safeguards are as follows:

#### i) Social & Economic Safeguards:

Art. 23<sup>4</sup> provides that no one shall be worked as forced labour either he belongs to ST or not, whereas whoever has compelled anybody to work as forced labour without minimum wages, then he shall be liable for punishment. BHAGAWATI, J., insisted, after referring to his ruling in ASIAD case, that every person providing labour or service to another is entitled to the minimum wage; if less than the minimum wage is paid to him, it against Art. 23.

Another expression, Human Trafficking, is the illegal trade in human beings for commercial sexual exploitation, prostitution, or forced labor. It is known in the modern era as slavery. About these issues, the government has enacted; The Immoral Traffic (Prevention) Act 1956 and The Bonded Labour System (Abolition) Act 1976 to prohibit unlawful activities with a human being.

Art. 24<sup>5</sup> it provides that no ST child below the age of 14 years is not allowed to work in any factory, mine, or any dangerous employment. In *M.C. Mehta v. State of Tamil Nadu*,<sup>6</sup> Supreme Court held that to eradicate the practice of employing children below the age of 14 years at hazardous employment and comply with the provisions of the Child Labour (Prohibition and Regulation) Act. The most important thing also held in *Unnikrishnan* case, education up to the age of 14 years it has been declared as fundamental rights.

Art. 25(2) (b)<sup>7</sup> it provides two ideas: firstly, Social reforms are permissible and shall not be void on the factor of interfering with freedom of religion, in *Krishna Singh v. Mathura Ahir*,<sup>8</sup> the Supreme Court held that Fundamental Rights do not touch upon the personal law of the parties. Secondly, the State can open the Hindu

institutions for the public character to all Hindus sections. The State has empowered to allow all citizens as well as the ST to enter into a temple for such purposes of worship. First and foremost, these rights are not unlimited. Hence, the Hindu cannot claim as a part of the right protected by Art. 25(2) (b), that the temples must be kept open for worship in all hours of the day and night or that he should personally perform those religious services or activities in a temple where the *pujaris* alone are right to act.

Art. 46<sup>9</sup> there is a special obligation of the State to promote and secure educationally and economically weaker sections of the society; in particular, SC and ST protect them from social injustice and all forms of exploitation. Another thing is that the state can categorize SC and ST for the object of adequate representation in the services under Art. 46 separately. It shall not require violating Art. 14<sup>10</sup> and 46.<sup>11</sup>

#### **ii) Educational & Cultural Safeguards:**

Art. 15(4) -Capacitates the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of the society such as SC and STs. Concerning this issue, the Supreme Court held that classified students only on the ground of 'caste' and 'religion' irrespective of their merit.<sup>12</sup> After that the Supreme Court has observed in *Indra Sawhney v. Union of India*:<sup>13</sup> ".....it is well settled that reservation in educational institutions and other walks of life can be provided under Art. 15(4) just as reservation can be provided in services under Art. 16 (4). If so, it would not be correct to confine Art. 15 (4) to programmes of positive action alone. Art. 15 (4) is wider than Art. 16 (4) is as much as several kinds of positive action programmes can also be evolved and implemented thereunder (in addition to reservation) to improve the condition of SEBCs,<sup>14</sup> SC and ST. whereas Art. 16 (4) speaks only of one type of remedial measure, namely, reservation of appointments/posts." However, reservation of posts and appointments must be within reasonable limit, viz., 50%.

Art. 29 the ST has the right to conserve their language, Script and culture is made absolute by the Constitution under Art. 29 (1). As well as a minority community can preserve its language. Script or culture by and through the educational institution. Art. 29 (2) is not restricted to minorities but extends to all citizens whether belonging to majority or minority. In *State of Bombay v. Bombay Education Society*,<sup>15</sup> the Supreme Court struck down an order of the Bombay Government banning admission of those whose language was not English into school having English as a medium of instruction. It denied admission solely on the ground of language. The Court said the order would not be valid, even if the object for making it was the promotion or advancement of the national language. In *State of Madras v. Champakam Dorairajan*,<sup>16</sup> the Supreme Court denied admission to a person only on the ground of religion or caste.

Art. 46 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. •

Art. 350-A the Constitution imposes a duty on every State to provide adequate instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups. With this view improving the accessibility and acceptance of education among tribal communities, they should be given education in their dialect, to the extent possible, and measures are initiated taken for developing curricula training material, etc. for the purpose on a top priority basis. In *English Medium Students Parents Association v. State of Karnataka*,<sup>17</sup> Supreme Court held that the State has no power to compel the linguistic minorities to choose their tongue only as a medium of instruction in primary schools.

#### **iii) Political Safeguards:**

Art. 164(1) provides that in the states of Bihar, Orissa, and Madhya Pradesh, there would be a Minister-in-charge of tribal welfare who may, in addition, be in charge of the welfare of the SCs and Backward Classes or any other work. In *M.P. Sharma v. P.C. Ghose*,<sup>18</sup> Court held that any condition or restriction does not fetter the Governor's pleasure under Article 164 (1). The withdrawal of the Governor's pleasure is a matter entirely at the discretion of the Governor.

Art. 330 it provides that the reservation of seats only for SCs and STs in the *Lok Sabha*. In pursuance of this article, 106 out of 545 seats are reserved for members of SC/ST communities. Its intent to guarantee a minimum number of seats to the SCs and STs.

Art. 332 it provides reserved seats for SCs and STs (except the STs in the autonomous district of Assam) in the Legislative Assemblies of every State.

Art. 334 by the Constitution (Ninety-Fifth Amendment) Act of 2009, the word "Sixty" has again been substituted by the word "Seventy" in Art. 334 extending the reservation of seats for SCs/STs and Anglo Indians in the *Lok Sabha* and State Assemblies up to 70 years; its effect from 2010.

Art. 243 (D) it provides that in every *Panchayats*, seats shall be reserved for the SCs and STs. Out of the total number of seats reserved under clause (1), not less than 1/3 seats shall be reserved for women belonging to the SCs and STs under clause (2).

Art. 243 (T) it provides that 1/3 seats shall be reserved for women belonging to the SCs and STs in every municipality.

**iv) Service Safeguards:**

Art. 16<sup>19</sup>(4) as per the *Mandal Commission case*<sup>20</sup> the total reservation shall not exceed 50% and the 50% limit can only be exceeded in an extraordinary situation prevailing in a state, i.e., Nagaland, Tripura, etc. in the public employment. The first and foremost principle of the case is to promote and give adequate representation to backward classes in public services. The aim of Art. 16 (4) is not economically upliftment the poverty but who have remained out of it mainly on account of their social and, therefore, educational and economic backwardness. In short, this provision protects the rights of SCs and STs in case of public employment.

Art. 335<sup>21</sup> this article in a way puts a limit on the extent of reservation. It must not go beyond that limit so as to affect the efficiency of administration. The framers of the constitution, it is submitted, must have visualized such a situation, wherein this provision could be used in future for lowering the efficiency of administration. Later, Art. 335 provides that “nothing in this article shall prevail in making of any provision in favour of members of SCs and STs for relation in qualifying marks in any examination to any class or classes of services or posts in connection with the affairs of the Union or State.”<sup>22</sup>

**Conclusion:**

Under Indian Constitution provides the Special Privileges, Rights, Duties, and Reservation Quotas to the Scheduled Tribes to secure and promote them. If once STs have changed socially, economically, educationally, culturally, politically, etc., they will easily adjust to the civil society. Hence their rights should be protected by the non-tribes, political sovereign, and administrative authorities must have to exercise a crucial role towards the ST in case of their radical development.

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