CHAPTER I

INTRODUCTION

1.1 General

India has a composite population consisting of a number of groups based on religion, language, caste or backwardness, such as, Scheduled Castes, Scheduled Tribes, Anglo Indians, Muslims, Parsis, Sikhs, Indian Christians etc. However, with a view to narrowing the study area in the intersect of doing academic justice, the provisions for backward classes viz., Scheduled Castes, Scheduled Tribes, OBCs and women are specifically selected.

The framers of the Constitution of India took care to safeguard the interests of the socially backward classes to give them a sense of security, to protect them against the discrimination and to help them to get integrated in the mainstream of national life. With this in view, a number of provisions have been incorporated in the Constitution for safeguarding the social, economic, educational and political interests of these socially disadvantaged sections of the Indian society.

1.2 Scheduled Castes

The Constitution treats the Scheduled Castes in India with special favour and affords them with some valuable safeguards. Articles 14, 15 and 16 of the Constitution confer several benefits of social and economic advancement and empowerment and social equality of status and dignity of person, by providing reservation in Government services and in educational institutions for the Scheduled Castes and Scheduled Tribes.

The Scheduled Castes are not, strictly speaking, a racial, linguistic or religious minority. They are part and parcel of the Hindu society. They are the depressed sections of the Hindus who have suffered for long under social discriminations and thus need special protection and help for the amelioration of their social, economic and political conditions.

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1. CAD III, 211-314.
They are known as untouchables or Harijans and constitute nearly 15% of the Indian population. They usually engage themselves in the so-called dirty jobs like tanning and skinning of hides, manufacture of leather goods, sweeping of streets, scavenging etc. Even amongst the Harijans, there are high and low, at the lowest rung of the ladder being the bhangi.

The framers of the Constitution were determined to eradicate the practice of untouchability and accordingly, Art. 17 had been incorporated to the Constitution. Besides this, Art. 25(2)(b) provides for opening of Hindu Temples to the Harijans. To promote their educational and economic interests, Articles 15(4), 15(5) and 16, providing for reservation of seats in educational institutions and in government services have been inserted in the Constitution.

1.3 Scheduled Tribes

The Scheduled Tribes, also known as aborigines, are those backward sections of the Indian population who still observe their tribal ways, their own peculiar customs and cultural norms. The tribal people have remained backward because of the fact that they live in inaccessible forests and hilly regions and have thus been cut off from the main currents of national life.

These people are divided into three distinct zones—North-Eastern, Central and Southern. The three main characteristics of these people are their primitive way of living, nomadic habits, love for drink and dance and habitation in remote and inaccessible areas. They constitute nearly 7.5% of the country’s total population. The Constitution enjoins to provide facilities and opportunities for development of economic and educational standard of these tribes.

The Scheduled Tribes also need special provisions for safeguarding their interests. The main problem concerning these people is that their socio-economic condition be improved at such a pace and in such a way as not to disturb suddenly their social organization and way of living. The need is to evolve ways and means to gradually adjust the tribal population to changed condition and integrate them slowly in the general life of the country without undue and hasty disruption of their way of living.

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It has been thought that it may be harmful to the tribal people if they are brought in indiscriminate contact with the outside world. Thus, the Legislatures have been empowered to impose restrictions on the Fundamental Rights guaranteed by Arts. 19(1)(d), 19 (1) (e) and 19(1)(f) in the interests of the Scheduled Tribes, in order that movement of people from developed areas to tribal areas may be restricted so that the tribal people are not exploited by outsiders. Laws are, therefore, enacted prohibiting the entry of non-tribals into the tribal areas without permits, living of non-tribals permanently in tribal areas, and transfer of tribal land to non-tribals. Further, to protect the interest of the tribal people who are simple and less politically conscious, separate provisions have been made for the administration of the tribal areas. Reservation of seats can also be made for them in educational institutions and Government services under Arts. 15(4), 15(5), 16(4), 41, 46 and 335 of the Constitution.

1.4 Identification of SCs and STs

The Constitution does not specify the castes or the tribes which are to be called as the Scheduled Castes or the Scheduled Tribes. It leaves the power to list these castes and tribes to the President, i.e.; the Central Executive.

Scheduled Castes, according to Art. 366(24) read with Art.341, are those castes, races or tribes or parts thereof, as the President may notify. According to Art. 341(1), the President may by public notification specify what castes, races or tribes or groups thereof in each State and Union Territory would be regarded as the Scheduled Castes for the purposes of the Constitution in relation to that State or Union Territory. Thus, the list of the Scheduled Castes may vary from State to State or one Union Territory to another.

As regards the States, the President issues the notification after consultation with the Governor of the State concerned.

The purpose of this provision is to avoid disputes as to whether a particular caste, race or tribe should be specified as a Scheduled Caste or not. Only those races or tribes can be characterized as Scheduled Caste which are notified in the Presidential Order under Art. 341. To determine whether or not a particular caste, race

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4. Art. 244 of the Constitution of India.
or tribe is a Scheduled Caste or not in a State, one has to look only the notification issued by the President under Art. 341.

The Supreme Court has expressed in *Milind*\(^6\) that the words ‘castes’ or ‘tribes’ in the expression ‘Scheduled Castes’ and ‘Scheduled Tribes’ have not been used in the ordinary sense of the terms but are used in the sense of the definitions contained in Arts. 366(24) and 366(25). In this view, a caste is a ‘Scheduled Caste’ or a tribe is a ‘Scheduled Tribe’ only if they are included in the President’s Order issued under Arts. 341 and 342 respectively.

It has been held that a person belonging to SC in one State cannot be deemed to be so in relation to any other State to which he migrates for the purpose of employment or education. Lists of SC are declared in relation to each State separately\(^7\).

Under Art. 341(2), however, once the notification is issued by the President under Art. 341(1), any notification therein, by way of either including or excluding from the list any caste, race or tribe, a part or a group thereof, can be made by the Parliament by law and not by a Presidential notification. This means that the entries in the Presidential notification issued under Art. 341(1) have to be taken as final unless altered by the Parliament by law\(^8\). The Constitutional mandate thus is that it is the President who is empowered in consultation with the Governor of the State, to specify by a public notification the castes, races or tribes or parts or groups within castes, races and tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to that State.

It is not open to anyone to include any caste as coming within the notification on the basis of evidence – oral or documentary, if the caste in question is not specifically mentioned in the notification. It is therefore, not possible to give evidence that a particular caste is a Scheduled Caste even though not mentioned in the Presidential Order\(^9\). Even the Court cannot modify, add or subtract any entry in the Presidential Order. The function of the Court is to interpret what an entry in the Presidential Order is intended to mean\(^10\). In *Pankaj*\(^11\), the Supreme Court has observed

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\(^6\) *Maharashtra v. Milind*, AIR 2001 SC 393.

\(^7\) *MCD v. Veena*, AIR 2001 SC 2749.


that the Court is devoid of power to include or exclude from or substitute or declare synonyms to be a Scheduled Caste or Scheduled Tribe.

It is for the Parliament to amend the list and include therein, or exclude therefrom any caste, race or tribe.

The purpose of Art. 341(1) is to avoid all disputes as to whether a particular caste is a Scheduled Caste or not for the purposes of the Constitution. It is the President’s notification issued under Art. 341(1), which determines whether a particular caste is a Scheduled Caste or not.

If a particular caste is not mentioned in the Presidential Order it cannot be characterized as Scheduled Caste\textsuperscript{12}. Only those castes can be regarded as Scheduled Castes which are notified in the Presidential Order under Art. 341. The Supreme Court has observed regarding the President’s power under Art. 341 in \textit{Bhaiyalal}\textsuperscript{13} that, in specifying castes, races or tribes, the President has been expressly authorized to limit the notification to parts of or groups within the castes, races or tribes, and after examining the educational and social backwardness of a caste, race or tribe, the President may welcome to the conclusion that not the whole caste, race or tribe, but parts of or groups within them would be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State but in relation to parts of the State where he is satisfied that the examination of the social and educational backwardness of the race, caste or tribe justifies such specification.

The President may specify under Art. 342(1) by public notification what tribes or tribal communities are to be treated as the Scheduled Tribes with respect to each State and Union Territory. A person belonging to a Scheduled Tribe in one State can not \textit{ipso facto} claim the same status in another State unless his tribe is declared to be a Scheduled Tribe in relation to that State\textsuperscript{14}.

In case of the States, the President issues the notification after consulting the Governor of the State concerned. There is no uniform test for classifying the tribes as the Scheduled Tribes and therefore, there exist difficulties in determining which tribe can rightly be included in, or excluded from the schedule of tribes.


\textsuperscript{13} supra note 9.

\textsuperscript{14} \textit{Action Committee v. Union of India}, (1994) 5 SCC 244.
Once these list have been issued by the President, any later addition or subtractions can be made therein only by a law of the Parliament but not by a Presidential notification [Art. 342(2)]. Clarifying the position in this regard the Supreme Court has observed in *Milind*\(^\text{15}\) that the Scheduled Tribes order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part or group of any tribe or tribal community is synonymous to the one mentioned in the order if they are not so specifically mentioned in it. It is also not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned entry in the said order\(^\text{16}\).

Under the above mentioned provisions, the President promulgated a number of orders listing the Scheduled Castes and the Scheduled Tribes, i.e., The Constitution (Scheduled Castes) Order, 1950; The Constitution (Scheduled Castes-Part C States) Order 1951 and The Constitution (Scheduled Tribes-Part C States) Order, 1951. As stated above, once these orders have been issued by the President, no other authority except the Parliament, that too by passing a law, can amend these orders.

These orders did not give entire satisfaction to the people and the Central Government received a number of requests for revision and modification of the lists contained in these orders. The Central Government referred all these requests to the Backward Classes Commission. On the recommendation of the Commission, the Parliament modified the Presidential Orders by enacting the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.

After the re-organization of the State on a linguistic basis in 1957, a new Presidential Order was issued under the States’ Re-Organization Act. Besides, various orders have been issued mainly for the Union Territories. The Scheduled Castes and Scheduled Tribes Orders of 1950 have been further modified by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

The Supreme Court has stated in *Ganesh v. State of Maharashtra*\(^\text{17}\) that the notification of the President under Art. 342 of the Constitution, subject to the Scheduled Castes and Scheduled Tribes Act, 1976 is conclusive and final. Clause 3 of the Scheduled Castes Order, 1950, originally declaring that no person who professes a

\(^{15}\) supra note 6.


\(^{17}\) AIR 1997 SC 2333.
religion different from Hinduism would be deemed to be a member of a Scheduled Caste. This para was substituted by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 by saying that no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.

This provision has created some difficulty as is illustrated by the Supreme Court in *Punjabrao v. Meshram* 18 and also in *Soosai v. Union of India* 19. In the instant cases the Court held that under clause 3 of the Order, only a person professing the Hindu or Sikh religion could belong to a Scheduled Caste and a person who became a Buddhist and declared that he had ceased to be a Hindu could not derive any benefit from the Order. He could not thus contest election from constituency for members of the Scheduled Castes.

To undo the effect of this ruling, the Scheduled Castes Order, 1950 has been amended by the Constitution Scheduled Castes Orders (Amendment) Act, 1990. It has added the word ‘Buddhist’ after ‘the Sikh’ in clause 3. This means that a Scheduled Caste person professing the Buddhist religion does not cease to be a Scheduled Caste 20. This Amendment shows that change of religion does not alter the social and economic conditions of the Scheduled Castes.

In *Soosai* 21, the Supreme Court has posed the following important question:

“Whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity’”?

The question becomes relevant to decide whether certain facilities granted to the Scheduled Castes can be denied to a Scheduled Caste person on changing his religion from Hinduism to another religion? Will this denial amount to discrimination on the ground of ‘religion’ only and thus be violative of Arts. 14 and 15 (1) of the Constitution?

In its judgment, delivered by Pathak, J., the Supreme Court has accepted that caste was retained on conversion from one religion to another. But, the Court has also observed that such an oppressed group of people was part of the Hindu society alone.

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18. AIR 1965 SC1179.
19. AIR 1986 SC733.
21. *supra note 19*. 
The Court insisted that to sustain discrimination the petitioner must prove that the
disabilities and discrimination suffered from such caste membership in the social
order of its origin Hinduism continue in their oppressive severity in the new
environment of a different religious community as well.

In the instant case, no authoritative and detailed dealing with the present
condition of the Christian society had been placed before the Court. Accordingly, the
Court refused to hold that the President acted arbitrarily in the exercise of his
judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) Order, 1950.

The Court asserted that it is well-established that when violation of Art.14 or
any of its related provisions, if alleged, the burden rests on the petitioner to establish
by clear and cogent evidence that the State has been guilty of arbitrary discrimination.
In the instant case, the petitioner had failed to establish his case.

The Supreme Court has also considered another interesting question that when
a member of Scheduled Castes is converted to Christianity and thereafter, is
reconverted to Hinduism, what is his status? The Court has held that reconversion
would not entitle him to be automatically treated as belonging to his original caste,
before conversion; he would belong to his original caste if the members of the caste
accept him as a member. The caste is a social combination of persons governed by its
rules and regulations and it may admit a new member just as it can expel an existing
member. The constitution Bench of the Supreme Court has observed on this point in
_Guntur Medical College v. Mohan Rao_ and _W.S.V. Satyanarayana v. Director of
Tribal Welfare_ that on conversion to Hinduism, a person born of Christian converts
would not become a member of the caste to which his parents belonged prior to their
conversion to Christianity, automatically or as a matter of course, but would become
such member if the other members of the caste accept him as a member and admit
him within the fold.

The Supreme Court has held that a woman when married to a member of a
tribe, after due observance of all formalities and after getting the approval of the
elders of the tribe would be regarded as a member of the tribe to which her husband
belongs on the analogy of the wife taking the husband’s domicile. In _N.E. Horo v._

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23. AIR 1976 SC 1904.
24. AIR 1997 AP 137.
Jahanara Jaipal Singh\textsuperscript{25}, the husband belonged to the Munda Tribe. His wife sought to contest for a seat in the Lok Sabha from a reserved tribal constituency. It was argued against her that as she was not a member of the Scheduled Tribe, she was not eligible to contest from the reserved seat. The Supreme Court however, ruled that as she was duly married to a person from the Munda Tribe, she acquired membership of that tribe.

A member of a Scheduled Tribe in one State, on migration to another State does not carry with him the tribal status if his tribe is not regarded as to be so in the other State. Each State has its own list of Tribes, according to Art. 342 of the Constitution\textsuperscript{26}. In \textit{Marri Chandra v. Dean, S.G.S. Medical College}\textsuperscript{27}, the petitioner belonged to a Scheduled Tribe in Andhra Pradesh. He migrated to Maharashtra where his tribe was not listed as a Scheduled Tribe. The Supreme Court ruled that he could not be treated as a member of the Scheduled Tribe in Maharashtra though he would be one in Andhra Pradesh. The Court ruled that under Art. 342, the Scheduled Tribes are specified in relation to each State and Union Territory and therefore, a member of a Scheduled Tribe in one State does not carry that status to another State. This interpretation of Art.342 is in the line with the interpretation of Art. 341\textsuperscript{28}. Further, a person belonging to a forward class can not claim the Status of a Scheduled Tribe by obtaining a false certificate to that effect for purposes of admission to an educational institution\textsuperscript{29}.

1.5 Other Backward Classes

Besides the Scheduled Castes and Scheduled Tribes, there are Other Backward Classes. The Constitution of India extends some protection to the ‘Other Backward Classes’ [OBCs] as these classes have been neglected for long.

Under Arts. 15(4) and 15(5), the State is empowered to make any special provision for the advancement of any socially and educationally backward class besides the Scheduled Castes and the Scheduled Tribes. The expression ‘special provision for advancement’ has a wide connotation. It may include many things such as reservation of seats in educational institutions, financial assistance, scholarship,

\begin{itemize}
\item \textsuperscript{25} AIR 1972 SC 1840.
\item \textsuperscript{26} \textit{ibid}.
\item \textsuperscript{27} (1990) 3 SCC 130.
\item \textsuperscript{28} \textit{Dudh Nath Prasad v. Union of India}, AIR 2000 SC 525.
\item \textsuperscript{29} \textit{Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development} (1994) 6 SCC 241.
\end{itemize}
free housing and so on. Under Art. 16(4), the State can make provisions for the reservation of appointments or posts in favour of ‘any backward class of citizens’.

While there exist in the Constitution special provisions for reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha and the State Legislative Assemblies [Arts.330 and 332] and for the representation of the Anglo-Indian community in these various Houses, there exists no such provision for reservation of seats for socially and educationally Backward Classes in the Lok Sabha and the State Legislative Assemblies.

Again while under Art. 335, there is a constitutional obligation to consider the claims of the members of the Scheduled Castes and Scheduled Tribes in the making of appointment to services and posts in connection with the affairs of the Center and the States, there exists no corresponding provision for the Other Backward Classes. However, under Art. 16(4), it is permissible to reserve posts in favour of any backward class of citizens which, in the opinion of the concerned Government, is not adequately represented in the services of the State or the Central Government.

It has been ruled by the Supreme Court that Art. 16(4) must be read along with Art. 335. Though on the express terms of Art. 335, the OBCs are not included therein, even the OBCs are also covered by the trust of Art. 335\(^30\). This means that when the State proposes to provide reservation for OBCs, “if it is considered by the appropriate authority that such reservation will adversely affect the efficiency of the administration, then exercises under Art. 16(4) is not permissible”. This is the constitutional limitation on the exercise of the enabling power of reservation under Art. 16(4).

A very difficult problem of the present days is to identify Other Backward Classes. Generally, socially and educationally backward persons fall within the category of Backward Classes but even after more than six decades of enforcement of the Constitution, it has not been possible to evolve acceptable criteria for the purpose of identifying the OBCs.

It is necessary to state here that the expression ‘weaker sections’ of the people used in Art. 46 is somewhat different from the expression ‘backward class’ of citizens used in Art.16(4) which is only a part of the weaker sections. The expression ‘weaker

\(^{30}\) Indra Sawhney v. Union of India (II), AIR 2000 SC 498.
sections’ of the people is wider than the expression ‘backward class’ of citizens which is only a part of the ‘weaker sections’.

The expression ‘weaker section’ connotes all sections of society who are regarded weaker due to various causes. Art.46 aims at promoting their educational and economic interests and protecting them from social injustice and exploitation. Thus, an obligation is created on the State in consistent with the Preamble as well as Art.38. The term ‘backward class’ denotes a class which is socially backward and whose educational and economic backwardness is because of its social backwardness. The expression ‘backward class’ in Art.16 does not comprise all weaker sections of people but only those which are socially therefore, educationally and economically backward.

The Other Backward Classes have not been specified in the Constitution, because, at the time of making of the Constitution, not much information was available about them. The framers of the Constitution did not even use a single uniform expression, but used various expressions to characterize Backward Classes. In Arts. 15(4), 15(5) and 340, the expression used is ‘socially and educationally backward classes’. In Art.16(4), the expression used is ‘backward’ *simplicitier*; in Art.46, the term used is ‘weaker sections of the people’.

A person belonging to OBC in one State can not automatically claim the same status in another State. Each State has its own list of OBCs. The Supreme Court has explained the rationale underlying this rule as follows\(^\text{31}\):

“Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to the State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social handicaps suffered by that caste or group in that State. However, it may not be so in another State to which a person belongs thereto goes by migration...”

Thus, a person belonging to OBC on migration from the State of his origin to another State where his caste is not in the OBC list is entitled to the benefits or

concessions admissible to the OBCs in his State of origin and Union Government, but not in the State to which he has migrated.

In *Valsamma*\(^{32}\), the Court considered the following general question which is relevant to SCs, STs and OBCs -

“Whether a lady marrying a SC, ST or OBC citizen or transplanted by adoption or any other voluntary act, *ipso facto*, becomes entitled to claim reservation under Art. 15(4) or 16(4), as the case may be”?

The Court has answered the question in the negative. The Court has argued that SCs, STs and OBCs have suffered social disabilities for long and so they have become socially, culturally and educationally backward. The object of reservation is to remove these discriminations and to bring them in the main stream of national life. A person belonging to a forward class has an advantageous start in life; when he/she is transplanted in the backward class by adoption or marriage or conversion, he/she can not claim the benefits of reservation either under Art. 15(4) or 16(4), as the case may be. Acquisition of the status of a SC etc. by voluntary mobility into these categories would fraud on the Constitution and would frustrate to begin constitutional policy under Articles 15(4) and 16(4) of the Constitution.

1.6 Women

Women as a class neither belong to a minority group nor regarded as forming a Backward Class. India has traditionally been a male dominated society and therefore, women suffer from many social and economic disadvantages. They are socially discriminated. It thus, becomes necessary that such conditions be created, and necessary ameliorative steps be taken, so that women as a class may make progress and be able to shed their disabilities as soon as possible.

The Constitution does not contain many provisions specifically favoring women as such. There is Art. 15(3), which is a provision of permissive nature as it merely says that the State is not prevented from making any special provision for women. Then, there are a few general provisions such as Art. 14 and 15(2) which outlaw any kind of gender discrimination against women. Art. 21 is also there which can be used to spell out some safeguards for women. The Supreme Court of India has, in course of time, by its interpretative process of these various constitutional provisions extended some safeguards to women.

\(^{32}\) *Valsamma Paul v. Cochin University*, AIR 1996 SC 1011.
Recognizing the fact that, women in India need to be liberated from unjust social, political and economic suppression, the Supreme Court has declared in *Bodhisattwa*\(^{33}\) that rape is a heinous crime against women and amounts to violation of Fundamental Right guaranteed under Art. 21. The Court has gone further and recognized the right of a rape victim to claim compensation from the offender for violation of the constitutional right to live with human dignity which is guaranteed to her under Art.21 of the Constitution.

In *Visakha v. State of Rajasthan*\(^{34}\), the Supreme Court has come down heavily on sexual harassment of women at work places and has declared the same to be violation of women’s right under Art. 21.

1.7 Supervising Machinery over the Safeguards to the Socially Backward Classes

In order to ensure that the safeguards provided to the various socially disadvantaged groups under the Constitution are implemented effectively, the Constitution makers felt it necessary to set up a machinery for keeping continuous watch and vigilance over the workings of these safeguards throughout the country and also to bring to the notice of the government and the legislature concerned any defect existing in the protection of these various groups.

1.7.1 Commissioner for Scheduled Castes and Scheduled Tribes

Art. 338(1) of the Constitution provides for the appointment of a Commissioner for the Scheduled Castes and Scheduled Tribes. He is appointed by the President. His duty is to investigate all matters relating to the safeguards provided to the Scheduled Cates and the Scheduled Tribes under the Constitution and to report to the President upon the working of these safeguards from time to time.

The Commissioner uses to make annual reports, to collect materials for these reports from his own personal observations, informations received by him from various State Governments, Government of India and non-official agencies. The Commissioner uses to receive a larger number of complaints from individuals and non-official agencies relating to injustices against, and harassment of the Scheduled Castes and Scheduled Tribes. He investigates these complaints in order to ascertain facts.


\(^{34}\) AIR 1997 SC 3011.
His reports usually deal with such matters as social disabilities, legislative measures adopted by the various governments for the advancement of the Scheduled Castes and the Scheduled Tribes, representation of the these communities in Parliament and State Legislatures, administrative set up in the Governments to look after the interests of these various classes; reservations made for them in government services; educational facilities granted to the students of these classes by the government, welfare schemes of the State Governments for improving the conditions of the Scheduled Castes, Scheduled Tribes, Backward Classes and Scheduled Areas and grant-in-aid by the Central Government to the State Governments for these schemes.

In brief, the reports of the Commissioner contains valuable information and important source-material not only on the working of the various safeguards – constitutional, statutory and administrative – for the Scheduled Castes, Scheduled Tribes and other weaker and backward sections of the population, but also on sociological and economic conditions of these people in the various regions of the country.

In addition to the obligations imposed on the Commissioner under the Constitution, he also discharges, by convention, certain other functions, such as, representation of the Union Government on the managing committees of the non-official agencies receiving grants from the centre, examining accounts of these organizations, advising the Central Government regarding the schemes for development of the Scheduled and Tribal areas, removal of untouchability and welfare of the Scheduled Tribes and other backward classes, submitted by the State Governments and non-official agencies for grant-in-aid.

On the whole, the Commissioner is concerned with the amelioration and development of the Scheduled Castes and Scheduled Tribes, Tribal Areas and their administration, removal of untouchability etc. To maintain a live contact with local conditions, a few Regional Assistant Commissioners function throughout the country to assist the Commissioner.

In his report for the year 1957-58, the Commissioner made an extremely valuable suggestion. He stated that backwardness has a tendency to perpetuate itself and become a vested interest and that if the ultimate goal of having a classless and casteless society is to be attained, the lists of Scheduled Castes and Scheduled Tribes would have to be reduced from year to year and replaced in due course by a list based
on criteria of income-cum-merit. This has not, however, happened so far. In fact, the list originally drawn in 1950 has become longer and longer since then. More and more communities constantly pressurize for inclusion in the list. Logically, with the rising tempo of development activities, one would have expected that some of these communities would by now be ready to be excluded from the list of Scheduled Castes, but, what one actually finds is a reserve process in operation, viz. that of enlargement of the lists as more and more communities want to enjoy the rights and privileges available to these classes.

The Advisory Committee for the revision of the lists of Scheduled Castes and Scheduled Tribes, appointed by the Central Government in 1965, suggested that the more advanced communities in the lists concerned be gradually descheduled and a deadline be fixed when these lists would totally be dispensed with in the interest of complete integration of the Indian population. But, it is not expected that any such suggestion will be acted upon in the near future because this is an area where political expediency takes precedence over sagacious action.

In 1968, Parliament appointed a Parliamentary Committee on the welfare of the Scheduled Castes and Scheduled Tribes and thus, another concrete step was taken towards strengthening the supervisory mechanism over the working of the safeguards for these people.

The Committee consists of 20 members elected from the Lok Sabha and 10 members elected from the Rajya Sabha. It has been invested with powers to criticize, guide and control the Government of India in the matter of Scheduled Castes and Scheduled Tribes.

The Committee also goes into the question of their employment in services under the Central Government including the public sector undertakings. The Committee could thus go deeper into the major recommendations made by the Commissioner and could assess how far these recommendations had been implemented.

Under Art. 338 (3), the Commissioner of Scheduled Castes and Scheduled Tribes also discharges similar functions with respect to such other backward classes as the President on receipt of the report of the Backward Classes Commission, specifies by order.
1.7.2 National Commission for Scheduled Castes and Scheduled Tribes

In course of time, it began to feel that instead of a special officer (Commissioner for Scheduled Castes and Scheduled Tribes), a more effective arrangement for the purpose would be to have a high level multi-member Commission to guarantee Constitutional safeguards for these people. Accordingly Art. 338 has been amended by the Constitution (65th Amendment) Act, 1990, so as to abolish the office of the Commissioner and to provide for the appointment of the National Commission for the Scheduled Castes and Scheduled Tribes.\(^{35}\)

The Commission is to consist of a Chairperson, Vice-Chairperson and five other members to be appointed by the President of India. Subject to any law made by the Parliament, the conditions of service and tenure of office of these persons are to be determined by rules made by the President.\(^{36}\)

The Commission investigates and monitors all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution, or under any other law or under any order of the Government. The Commission is also to evaluate the working of the safeguards. The Commission is to inquire into specific complaints with respect to deprivation of any rights and safeguards to these people and to participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and State.\(^{37}\)

The Commission is to make recommendations as to the measures to be taken by the various Governments for the effective implementation of these safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes.\(^{38}\)

In addition, the Commission is to discharge such other functions in relation to the protection, welfare and development or advancement of the Scheduled Castes and Scheduled Tribes as the President may, subject to any law made by the Parliament, by rule specify.\(^{39}\)

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\(^{35}\) Art. 338 (1).
\(^{36}\) Art. 338 (2).
\(^{37}\) Art. 338 (5) (a), (b), (c).
\(^{38}\) Art. 338 (5) (e).
\(^{39}\) Art. 338 (5) (f).
The Central and every State Government are required to consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes. The Commission has the power to regulate its own procedure\textsuperscript{40}.

The Commission is to make an annual report to the President. It can also make a report as and when it thinks necessary. These reports are to be placed before each House of Parliament alongwith a memorandum by the Government as to the action taken or proposed to be taken on the recommendations made by the Commission. Any report of the Commission pertaining to a State Government is to be forwarded to the State Governor and is to be placed before the State Legislature with a Government memorandum explaining the action taken or proposed to be taken on these recommendations or the reasons, if any, for the non-acceptance of any of such recommendations\textsuperscript{41}.

The Commission has been given power of a civil court in trying a suit and in particular, in report of such matters as summoning and examination of witnesses, discovery and production of documents\textsuperscript{42}. But, the Supreme Court of India has ruled that the Commission has no power to grant injunctions whether temporary or permanent\textsuperscript{43}.

The Commission has several State offices located in different States and Union Territories. These offices serve as the ‘eyes and ears’ of the Commission as these offices keep the Commission informed of all important activities, decisions and orders of the State Governments concerning SCs and STs.

The important Constitutional safeguards for the SCs and STs are as follows:

(i) Art. 15 (4), empowering the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

(ii) Art. 15 (5), empowering the State for making any special provision by law, for the advancement of any socially and economically backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private

\textsuperscript{40} Art. 338 (9).
\textsuperscript{41} Art. 338 (6), (7).
\textsuperscript{42} Art. 338 (8).
\textsuperscript{43} Indian Overseas Bank v. Union of India (1996) SCC 106
educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Art. 30.

(iii) Art. 16 (4), empowering the State to make 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.

(iv) Art. 16 (4-A), empowering the State to make any provision for reservation in matters of promotion, with consequential seniority, 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.

(v) Art. 17, providing for abolition of untouchability.

(vi) Arts. 23 and 24, providing for right against exploitation.

(vii) Art. 25 (2) (b), empowering the State to make laws for social welfare and social reform.

(viii) Art. 46, refers to developmental and protective safeguards. Because of Art. 46, an Act made to protect and preserve the economic interests of persons belonging to the Scheduled Castes and Scheduled Tribes and to prevent their exploitation would not infringe Art.1444.

(ix) Art. 244, providing for the administration of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

(x) Art. 244 A, empowering the Parliament to form an autonomous State comprising certain tribal areas in Assam and create local legislature or Council of Ministers for such State.

(xi) Art. 275 (1), providing grants from the Union to certain States as Parliament may determine to be in need of assistance.

(xii) Art. 330, providing for the reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the people.

(xiii) Art. 332, providing for the reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

44 Art. 340 (2).
Art. 335, laying down that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consisting 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.

Art. 338 (5) (c) of the Constitution refers to socio-economic development of the SCs/STs. This is a very important function of the Commission, which has to keep track of all the major policy decisions, legislative or executive action by the Government of India or any State Government. The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of SCs and STs\(^45\).

A number of statutes have been enacted to provide safeguards to SCs/STs. For example, to give effect to Art. 17 the protection of Civil Rights Act, 1955 has been enacted. This Act makes the practice of untouchability as both cognizable and non-compoundable offence and provides for strict punishment for the offences committed under the Act. Under the Act, the responsibility is casted on the State Governments to take such measures as may be necessary for ensuring that the rights arising from abolition of untouchability are made available to the persons subject to any disability arising out of untouchability.

There is also the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Act specifies the atrocities which are made penal under the Act.

The Commission concerns itself with devising ways and means to ensure effective implementation of these Acts\(^46\). The Commission makes suggestions to the State Governments for effectively dealing with the crimes committed under these Acts. The Commission concerns itself with the education of children of SCs and STs make recommendations for strengthening the infrastructure for the purpose.

Another area of interest for the Commission is economic development of the SCs and STs. For this purpose, the Commission reviews the development programmes undertaken by the States for SCs and STs\(^47\).

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\(^{45}\) Art. 338 (b).


\(^{47}\) *ibid* 260-264.
1.7.3 Backward Classes Commission

To facilitate the task of identifying the backward classes and laying down criteria for the purpose, Art. 340 (1) empowers the President to appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of ‘socially and educationally backward classes’ in India and the difficulties under which they labour.

The Commission may recommend the steps that should be taken by the Central and State Governments to remove their difficulties and improve their conditions. The Commission may also make recommendations as to the grants which should be made for the purpose by the Centre or any State and the conditions subject to which such grants should be made. The Presidential Order appointing the Commission is to define the procedure to be followed by the Commission.

The Commission is to investigate the matters referred to it and present its report to the President setting out the facts as found by it and making its recommendations. The report of the Commission together with a memorandum setting out the action taken thereon by the Central Government is to be laid before each House of Parliament.

1.7.4 First Backward Classes Commission

As envisaged by the Constitution the Backward Classes Commission was appointed by the President in January, 1953, under the Chairmanship of Kaka Kalekar. The Commission was asked, among other things, to determine the criteria to be adopted for classifying socially and educationally backward classes.

The Commission submitted its report in 1955. The report was not unanimous and disclosed a considerable divergence of opinion among its members and failed to specify any easily discernible objective tests to define ‘backwardness’. The majority of the members of the Commission expressed the view that the position of the individual in social hierarchy based on caste should determine backwardness.

The Central Government accepted such criterion because ‘the caste system is the greatest hindrance in the way of our progress towards an egalitarian society and the recognition of specified castes as backward may serve to maintain and even perpetuate the existing distinctions on the basis of caste’.

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49. Art. 340 (3).
Besides, while some members in some castes may be characterized as backward ‘educationally and economically’, some may not be so classified. Similarly, among the so called upper and advanced classes, there are large number of persons who are not less backward educationally and economically, and even among the backward classes some castes are more backward than others. Then conditions differ from State to State and region to region.

The Commission also suggested certain other criteria to identify backwardness, e.g., lack of general educational advancement among the major sections of a caste or community, inadequate representation in the communities consisting of a large percentage of small landowners with uneconomic holidays etc. The Government’s reaction to this was that these are obviously vague tests, more or less of an individual character and even if they are accepted they would encompass a large majority of the country’s population and if the entire community, barring a few exceptions, were thus to be regarded as backward, the really needy would be swamped by the multitude and hardly receive attention or adequate assistance, nor would such a dispensation fulfill the conditions laid down in Art. 340 of the Constitution.

The Government of India thus came to the conclusion that further investigation was necessary with a view to devise some positive and workable criteria to specify the socially and educationally backward classes so as to give them adequate assistance and relief in all suitable ways so as to enable them to make up for the leeway of the past and to acquire the normal standards of life prevalent in the country on a systematic and elaborate basis. In the meantime, relief was to be provided to such groups of people to whom disabilities were attached by reasons of environment and occupations considered to be low, and to other classes who, adjudged in the light of reasonable standards, might well be regarded as socially and educationally backward.

The task to devise positive and workable criteria to identify backwardness on an all-India basis thus remained incomplete. No indisputable yardstick could be evolved for the purpose. Each State defined backwardness in its own way, and political expediency played some role in this matter. There was thus no uniformity of approach in the country in this respect.

For purposes of Arts. 15 (4), 15 (5) and 16 (4), it is for the State concerned to list the Backward Classes. The Centre can also list them for purposes of admission into central educational institutions and central services. Even the Centre was not able
to do this. The task is an extremely difficult one. Many communities desire to be characterized as backward because of the facilities of admissions and services which are available to such classes, and they thus bring political influence to bear upon the government for being recognized as ‘backward’. When a class is designated as backward, then even rich and well educated members of the class claim the privileges available; the more unfortunate members of the class thus get excluded. This is against the best interests of the really backward persons. This frustrates the basic objective of the Constitution, viz., amelioration of the really and factually weak and downtrodden people.

A bulk of case-laws have arisen on this point. The Courts have been able to instill some rationality in this regard by insisting that for purposes of Art. 15 (4), 15 (5) and 16 (4), caste can not be the sole determinant of backwardness and that other tests like economic, professional, environmental, educational should also be taken into consideration.

The practice to name the castes as ‘Backward Classes’, without any economic considerations, has two main defects. One, it has a tendency to perpetuate the caste system and thus, hamper the growth of an egalitarian society. To accept caste as the basis of backwardness, it will lead to legitimation and perpetuation of the caste system in the country which goes against the secular character of the Indian polity. Also, the traditional caste system is breaking down and is gradually being replaced by contractual relations between individuals.

The future Indian society has undoubtedly to be classless and casteless. It is also not true to assume that all members of a caste are socially and educationally backward in an equal manner. Within a backward caste, if no economic considerations are applied, then all the privileges may be utilized by well-to-do people leaving the poor in the cold. It is, therefore, imperative that the castes as such should not be recognized for purposes of giving assistance. Instead, economic backwardness of classes of people should be the criteria for the purpose.

These considerations have an impact on the judicial approach concerning characterization of backward class so much so that caste can not be taken as the sole criterion for the purpose and increasing emphasis is being laid on economic factors. Reference may be made to a few of these judicial pronouncements.
In Balaji\textsuperscript{50}, the Supreme Court ruled with reference to Art. 15 (4), that it may not be irrelevant to take into account ‘caste’ to determine social backwardness. But it should not be made the ‘sole dominant test’ for the purpose without regard to other relevant factors. It was observed in the instant case that ‘social backwardness is the ultimate analysis on the result of poverty to a very large extent’. The Court also emphasized that for purposes of Art. 15 (4), the backwardness must be social and educational and not either social or educational.

In Rajendran\textsuperscript{51}, the Court accepted classification of backward classes on ‘caste’ because the social and educational backwardness of the castes was based on their occupation.

In P. Sagar\textsuperscript{52}, caste-wise classification was rejected because no other factor except caste was taken into consideration. The Court maintained that in determining whether a particular section forms a class, caste could not be excluded altogether. But in case the caste was made a criterion, proper inquiry or investigation should be conducted by the State Government before listing certain castes as socially and educationally backward.

In K.S. Jayasree v. State of Kerala\textsuperscript{53}, the Supreme Court upheld a Government order listing backward classes but exempting therefrom such families as had an aggregate annual income of Rs. 10,000/-. The order was challenged by a candidate belonging to the backward class but who was denied the privilege of preferential admission to a medical college because her family income exceeds Rs. 10,000/- annually. The Court emphasized that poverty or economic standard is a relevant factor in determining backwardness. Neither caste nor poverty alone could be the sole or dominant test, but both are relevant, to determine backwardness. With the improvement in economic position of a family, social backwardness disappears. To permit these persons to take advantage of the privileges meant for backward persons, is to deprive the real backward poor persons of their chance to make progress.

\textsuperscript{50} Balaji v. State of Mysore, AIR 1963 SC 649.
\textsuperscript{51} P. Rajendran v. State of Madras, AIR 1968 SC 1012.
\textsuperscript{52} P. Sagar v. State of Andhra Pradesh, AIR 1968 SC 1379.
\textsuperscript{53} AIR 1976 SC 2381.
The question has been elaborately considered by the Supreme Court in *Indra Sawhney I* and *II*\(^{54}\) respectively. For example, Pandian, J., has stated that before a conclusion is drawn that a caste is backward “the existence of circumstances relevant to the formation of opinion is a *sine qua non*. If the opinion suffers from the voice of non-application of mind or formation of collateral grounds and extraneous material, then that opinion is challengeable”. Similarly, Jeevan Reddy, J., has emphasized that opinion in regard to backwardness must be based on relevant material. He went on to observe that under Art. 16 (4), reservation is not being made in favour of a ‘caste’ but a backward class. Once a caste satisfies the criteria of backwardness, it becomes a backward class for the purposes of Art. 16 (4). Jeevan Reddy, J., further emphasized that once backward, always backward is not acceptable. Therefore, if a caste ceases to be backward in course of time, it should be excluded from the list of Backward Classes.

The Supreme Court has observed in *Indra Sawhney II*\(^{55}\) that caste only can not be the basis for reservation. Reservation cannot be for a backward class of citizen of a particular class. Therefore, from that, the creamy layer and the non-backward class of citizens are to be excluded.

### 1.7.5 Second Backward Classes Commission

The Government of India again appointed the Backward Classes Commission (Known as the Mandal Commission after its Chairman B.P. Mandal) under Art. 340 on January 1, 1979, with a view to investigate the conditions of socially and educationally backward classes within the territory of India. The terms of reference of the Commission were as follows:

(i) To determine the criteria for defining the socially and educationally Backward Classes;

(ii) To recommend steps to be taken for the advancement of the socially and educationally backward classes of citizens so identified;

(iii) To examine the desirability or otherwise of making provision for the reservation of appointments or posts in Central and State Governments in favour of Backward Classes;

(iv) To make such recommendations as the Commission thinks proper.


\(^{55}\) *ibid.*
The Commission submitted its report on 31\textsuperscript{st} December, 1980. The Commission was \textit{inter alia} entrusted with the task of determining the criteria for defining the socially and educationally backward classes in the country. To determine social and educational backwardness, the Commission evolved eleven indicators or criteria, grouped under three broad heads – social, educational and economic.

The Commission looked at the whole question of quotas for backward classes in recruitment for government services. The Commission held that (besides the Scheduled Castes and the Scheduled Tribes who amount 22.56\% of the total population), 52\% of the total Indian population could be characterized as backward and therefore, 52\% of all posts could be reserved for them. The Commission, however, refrained from making such a drastic recommendation in view of the Supreme Court’s ruling that the total quantum of reservations under Art. 16 (4) should be below 50\%. In view of this legal constraint, the Commission was obliged to recommend reservation of 27\% only for the Other Backward Classes so that the total reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes would amount to a little less than 50\%.

The Commission by and large identified castes with backward classes and more or less entirely ignored the economic tests\textsuperscript{56}. The Commission also ignored the fact that even among the so-called higher castes, there may be a number of socially and educationally backward people deserving of help. On the whole, the Commission’s recommendations have proved to be very controversial.

Subsequent to the Report of the Backward Commission, the question of characterizing backward classes again cropped up before the Supreme Court. In \textit{K. C. Vasant Kumar}\textsuperscript{57}, the judges of the Supreme Court expressed a diversity of views in this regard. The only point on which all the judges were agreed was that ‘caste’ can not be sole determinant of backwardness, but it is not an irrelevant test and can be taken into account alongwith other factors. Some of the judges were in favour of adopting the means-cum-caste test to determine backwardness.

Then in 1993, in the famous *Indra Sawhney*\(^{58}\) case, a nine Judges Bench of the Supreme Court considered in depth the question of backwardness and reservation of posts under Art. 16 (4).

### 1.7.6. National Commission for Backward Classes

In *Indra Sawhney* case, the Supreme Court had directed that an expert body consisting of officials and non-officials be established at the level of the Centre and each State to look into the complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Backward Classes other than the Scheduled Castes and Scheduled Tribes. Accordingly, Parliament has enacted the National Commission for Backward Classes Act, 1993 to establish the National Commission for Backward Classes.

The function of the Commission is to examine requests for inclusion of any class of citizens as a Backward Class in the lists and hear complaints of over inclusion or under inclusion of any Backward Class in such lists and tender such advise to the Central Government as it deems appropriate\(^{59}\). The advice of the Commission shall ordinarily be binding upon the Central Government\(^{60}\). Lists of Backward Classes are prepared by the Central Government from time to time for purposes of making provision for the reservation of appointments or posts in favour of the Backward Classes of citizens which, in the opinion of that Government are not adequately represented in the services under that Government or any other authority under the control of that Government\(^{61}\).

The Central Government revises these lists from time to time. At the expiration of three years from the enforcement of this Act, and after every succeeding period of ten years thereafter, the Government is bound to undertake revision of the list with a view to excluding therefrom those classes who have ceased to be Backward Classes, or for including in such lists new Backward Classes. While undertaking any such revision, the Central Government is to consult the Commission\(^{62}\).

The Commission consists of the following members nominated by the Central Government:

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\(^{58}\) supra note 54.

\(^{59}\) *The National Commission for Backward Classes Act*, Sec. 9 (1).

\(^{60}\) *ibid.*, Sec. 9 (2).

\(^{61}\) *ibid.*, Sec. 2 (c).

\(^{62}\) *ibid.*, Sec. 11.
(a) A Chairperson, who is or has been a Supreme Court or High Court Judge;
(b) A social scientist;
(c) Two persons having special knowledge in matters relating to Backward Classes and
(d) A member secretary, who is or has been an officer of the Central Government in the rank of a secretary to the Government of India. Every member holds office for a term of three years from the date he assumes office. The Commission meets as and when necessary and has power to regulate its own procedure.

While performing its functions, the Commission enjoys powers of a civil court in trying a civil suit in respect of such matters as summoning witnesses etc.

The Commission submits an annual report of its activities during the year to the Central Government. The Central Government lays the report before both Houses of Parliament along with a memorandum of action taken on the advice tendered by the Commission and the reasons for the non-acceptance of any such advice.

1.7.7 National Commission for Women

To ameliorate the general social condition of the women in the country, the Parliament has enacted the National Commission for Women Act, 1990, to establish the National Commission for Women (NCW).

The Commission consists of the followings:
(a) A Chairman, committed to the cause of women;
(b) Five members nominated from amongst persons having experience in law, trade unionism, management of an industry, administration, social welfare, women’s voluntary organizations;
(c) A member-secretary who is either a member of a civil service under the centre or an expert in the field of management, sociological movement.

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63. The National Commission for Backward Classes Act, Sec. 3.
64. ibid., Sec. 4.
65. ibid., Sec. 8.
66. ibid., Sec. 10.
67. ibid., Sec. 14.
68. ibid., Sec. 15.
69. The National Commission for Women Act, 1990, Sec. 3.
All these persons hold office for three years and are appointed by the Central Government\textsuperscript{70}.

The Commission has power to constitute committees as may be necessary to deal with special issues taken up by the Commission from time to time\textsuperscript{71}. The Commission has power to regulate its own procedure\textsuperscript{72} and has power of a civil court in matters like summoning witnesses\textsuperscript{73}. The Commission presents an annual report of its activities\textsuperscript{74}, which is presented to both Houses of Parliament alongwith a Government memorandum of action taken thereon\textsuperscript{75}.

The terms of reference of the Commission as laid down in the Act are very comprehensive. The Commission discharges the following functions\textsuperscript{76}:

(a) Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;

(b) Present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(c) Make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;

(d) Review from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies and shortenings in such legislation;

(e) Take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;

(f) Look into complaints and take \textit{suo motu} notice of the matters relating to—

(i) Deprivation of women’s right;

(ii) Non implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;

\textsuperscript{70} The National Commission for Women Act, 1990, Sec. 4.

\textsuperscript{71} ibid., Sec. 8.

\textsuperscript{72} ibid., Sec. 9.

\textsuperscript{73} ibid., Sec. 10.

\textsuperscript{74} ibid., Sec. 13.

\textsuperscript{75} ibid., Sec. 14.

\textsuperscript{76} ibid., Sec. 10 (1).
(iii) Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities;

(g) Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(h) Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;

(i) Evaluate the progress of the development of women under the Union and any State;

(j) Inspect or cause to be inspected a jail, remand home, women’s institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;

(k) Fund litigation involving issues affecting a large body of women;

(l) Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

(m) Any other matter which may be referred to it by the Central Government.

The Central Government is required to lay before the two Houses of Parliament all the reports sent to it by the Commission under clause (b) above, alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of any such recommendations.

If a recommendation relates to a State Government, the Commission sends it same to that Government which lays the same before the State Legislature alongwith an explanatory memorandum.

The Central Government makes grants to the Commission for being utilized for the purposes of the Act.

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78. *ibid.*, Sec. 10 (3).
79. *ibid.*, Sec. 11.
The salaries and allowances payable to the Chairperson and members of the Commission and its administrative expenses are to be paid out of the grants as mentioned above.\(^\text{80}\).

While investing any matter referred to in clause (a) or sub-clause (i) of clause (f), the Commission enjoys all the powers of a civil court in trying a suit, such as, summoning of witnesses, receiving evidence on affidavits etc.

Under the Act it is obligatory on the part of the Central Government to consult the Commission on all major policy matters affecting women.\(^\text{81}\).

A reference to the annual report of the Commission for the year 1997-98 throws light on the functioning of the Commission. The Commission has undertaken review of all laws for the protection and empowerment of women. Out of 39 such laws, the Commission has reviewed the following 10 laws during the year under review, viz., the Commission of Sati (Prevention) Act, 1987; The Medical Termination of Pregnancy Act, 1971; The Child Marriage Restraint Act, 1929; The Family Courts Act, 1984; The Foreign Marriage Act, 1969; The Guardian and Wards Act, 1869; The Indian Succession Act, 1925; The Hindu Marriage Act, 1955; The Indian Penal Code, 1860. The Commission has suggested suitable amendments in all these laws to afford better protection to the women. In Chapter III of the Report, the Commission has reviewed cases of violence against women. The Commission has observed in this connection, “Gender based violence is recognized today as a major issue on national human rights agenda”.

The Commission views violence against women as one of the most crucial social mechanism by which women are forced into a subordinate position.

In Chapter IV, the Commission has surveyed the problem of prostitution and has suggested strict implementation of Sec. 13 of the Immoral Traffic Prevention Act, 1956 which provides for appointment of special officers to fight traffickers.

In Chapter V, the Commission has looked into the problems being faced by certain groups of women such as Scheduled Castes and Scheduled Tribes, mentally ill and handicapped women, widows, minorities etc. These groups need special attention because the problems of such women were peculiar to the socio-economic, cultural and situational factor affecting them.

\(^{80}\) The National Commission for Women Act, 1990, Sec. 6.

\(^{81}\) ibid.
Other issues considered by the Commission in this report are: political participation by women (Chapter VI); socio-economic development of women (Chapter VII); women in custody (Chapter VIII).

The Commission has defined its function as follows:

“The ultimate objective of the Commission is to help and enable the women to live a dignified life without distress and with undiscriminated socio-economic status in the society”.

1.8 Additional Provisions for Scheduled Tribes

The Constitution provides for the appointment of a Minister for Tribal Welfare in each of the States of Bihar, Madhya Pradesh and Orissa. This Minister can also be put additionally in charge of the welfare of the Scheduled Castes and Backward Classes, or any other work.\(^{82}\)

The President may appoint a Commission at any time and must appoint it after ten years of the commencement of the Constitution to report on the welfare of the Scheduled Tribes in the States and the administration of the scheduled Areas.\(^{83}\) The Presidential Order appointing the Commission may define its composition, powers and procedure and may make other incidental or ancilliary provisions. No such provision has been made in the Constitution as regards the Scheduled Castes.

The Centre is empowered to issue directives to any State giving directions as to the drawing up and execution schemes specified in the directives to be essential for the welfare of the Scheduled Tribes in the State.\(^{84}\) This provision is supplementary to Art. 275 (1) which provides inter-alia that grants-in-aid shall be payable to a State out of the consolidated fund of India for purposes of meeting costs of such schemes of development as the State may undertake with the approval of the Government of India for promoting the welfare of the Scheduled Tribes in that State. Art. 275 (1) furnishes the raison d’être of Art. 339. The Central Government has been given the power to give directions with respect to such schemes because it pays the cost thereof.

There are special provisions made for administration of the areas known as the Scheduled Areas (Schedules V and VI to the Constitution).

The main problem with the Scheduled Tribes is to improve their socio-economic condition not at a very quick pace, but in such a way as not to do violence

\(^{82}\) Constitution of India, Proviso to Art. 164 (1).

\(^{83}\) Constitution of India, Art. 339 (2).

\(^{84}\) ibid., Art. 339 (2).
to their social organization and way of life. The need is to evolve ways and means of gradual adjustment of the tribal population to the changed conditions, and their slow integration in the general life of the country without undue and hasty disruption of their way of living.

It has been thought that it may be harmful to the tribal people as they are brought indiscriminate contact with the outside world. Thus the legislatures have been empowered to impose restrictions on the Fundamental Rights of other citizens guaranteed by Arts. 19 (1) (d) and 19 (1) (e) in the interest of the Scheduled Tribes, so that the movement of people from the progressive to the tribal areas, may be restricted. Accordingly, to check exploitation of the tribals, many States have enacted laws prohibiting non-tribals into the tribal areas without permits, living of non-tribals permanently in tribal areas and the transfer of tribal land to non-tribals. Reservations can also be made for them in educational institutions and Government services under Arts. 15 (4) and 16 (4) respectively.

1.9 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Parliament has enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with the purposes of preventing the commission of offences of atrocities against the Scheduled Castes and Scheduled Tribes; establishing special courts for the trial of such offences and providing for the relief and rehabilitation of the victims of such offences.

Sec. 3 (1) of the Act contains a list of such acts as fall within the category of atrocity. These acts have been made punishable with imprisonment for a term of six months to five years and with fine.

Sec. 3 (2) lists certain other acts, such as giving of false evidence against a member of Scheduled Castes or Scheduled Tribes to implicate him in a criminal offence, which have also been made punishable.

Provision has been made under Sec. 4 of the Act for designating special courts for the purpose of providing for speedy trial of offences under the Act. Collective fines also may be imposed under Sec. 16 of the Act.

Sec. 20 of the Act, provides that the provisions of the Act override the provisions of any other Act.
Under Sec. 21 (4) of Act every year the Central Government has to lay on the table of each House of Parliament a report on the measures taken by itself and the State Governments in pursuance of this Act.

Sec. 21 of the Act lays down that the State Governments are required to make provision for the economic and social rehabilitation of the victims of atrocities and for providing them legal aid.