Chapter-I

Constitutional and Legal Measure for the Protection of Dalit Rights

: A Critical Appraisal

The Constituent Assembly debates recognized that a section of people in Indian society had been denied certain basic rights since ancient times and had therefore remained, economically, socially and educationally backward. As a result, this had created widespread disparities between them and the rest of the society and a situation had emerged which underlined the need for special measures to uplift their status. It led to realization of the fact that accommodation of deprived/excluded/discriminated groups is not possible without adequate constitutional safeguard and active intervention of the state through its own policy in favor of such group. This understanding is clearly reflected in the Constitution itself where a chapter under the title “Special provision relating to certain classes” in part-XIV has been incorporated. Special provisions have also been made for the Scheduled Castes and scheduled Tribes in part-X of the Constitution. The Constitution provides for protection and promotion of their social, economic, educational, cultural and political interest to remove the disparities and to bring them on par with other section of the society. In addition, many articles in parts –III, IV, IX, IX-A, Fifth and Sixth Scheduled of the Constitution reinforces these arrangements.

Even before the implementation of the provisions relating to the protection of the rights of dalits, it was realized that a special component of protective measure is required for striking the trinity principle of equality, liberty and fraternity as espoused by Dr. Bhim Rao Ambedkar. According to Dr. Bhim Rao Ambedkar, "Scheduled Castes are more than a minority and that any protection given to the citizens and the minorities will not be adequate for the Scheduled
Castes. In other words, it means that their social, economic and educational conditions are worse than that of the citizens of the other minorities. In addition to protection they would get as citizens and as minorities the Scheduled Caste would require special safeguards against the tyranny and discrimination of the majority."

When the constitution of India came into force on 26th January, 1950 an attempt was made to redress all the wrong done to untouchables. The Constitution enshrines the main purpose and objectives of our national policy. Our society is to be based on twin pillars of social and economic justice

Ambedkar very clearly saw the conflicting interest that severely baffled the untouchables, bureaucratese and the legislators. Who tried to meet out justice to his or her own caste people? Ambedkar was painfully aware that even if adequately represented, untouchables would not be able to meet out justice to their people, because they would be working under terrible pressure and condition of socio-economic insecurity dictated by the dominant forces in this country. Regarding political leader and the legislators, Ambedkar had little hope that they would be able to do any justice to their people without the permission of their political bosses in the Congress party. Therefore, it is clear that for the good of the untouchables. In fact, he gave more importance to social and economic justice. He considered socio-economic justice as the precondition for redeeming political justice on the eve of the adoption of our constitution he said:

We must do is not to be content with mere political democracy a political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life, which recognizes liberty, equality and fraternity as the principle of life. These principles are not to be treated as separate items in trinity. They form a union of trinity, in the sense that
to divorce one from the other is to defeat the very purpose of democracy. ... On the social plan we have in India a society in based on the principles graded inequality, which means elevation of some and degradation for others. On the economic plan, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January 1950, we are going to enter into a life of contradictions. In political life we will have equality and in social and economic life, we will have inequality. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy.

The Scheme of the constitution reflects a three-pronged strategy for changing the status of the Scheduled caste and Scheduled tribe based on the traditional social order. This consists of:

(a) Protection: Legal/Regulatory measures for enforcing equality and removing disabilities; providing strong punitive action against physical violence inflicted on them; eliminating customary arrangement which deeply hurt dignity and person; preventing control over fruits of their labour and striking at concentration of economic assets and resources and settings up autonomous watch-dog institution to safeguard interest, rights and benefits guaranteed to them.

(b) Compensatory Discrimination: Enforcement of reservation provision in public services, representative bodies and educational institutions.
(D) Development: Measures to bridge the wide gap between the Scheduled Caste and other communities in their economic conditions and social status, covering allocation of resources and distribution of benefits.

Development and Protective Safeguards

These safeguards are contained in the Directive Principles of State Policy of the Constitution and a specific provision in Article 46 which is a comprehensive provision comprising both the developmental and regulatory aspects. It reads as follows:-

Article 46 is a comprehensive article comprising both the developmental and regulatory aspects. Its reads as follow: “The state shall promote with special care the educational and economic interest of the weaker section of the people, and in particular, of the Scheduled Castes and scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”

Social Safeguards

Article 17 “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.

To give effect of this article made an enactment viz., Untouchability (offences) Act, 1955. To make the provision of this Act more stringent, the Act was amended in 1976 and was also renamed as the Protection of Civil Rights Act, 1955. As provided under the Act, Government of India also notified the Rules, Viz., the PCR Rules, 1977, to carry out the provision of this Act. As cases of atrocities on SC/ST were not covered under the provision of PCR Act 1955, Parliament passed another important Act in 1989 for taking to protect the atrocities. This act known as the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, became effective from 30.3.1995.
Article 23- Prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. It does not specifically mention SCs/STs but since the majority of bonded labour belong to SCs/STs this article has a special significance for SC and ST. In pursuance of this article parliament has enacted the bonded labour System (abolition) Act 1976. For effective implementation of this Act. The Ministry of Labour is running a centrally sponsored scheme for identification, liberation and rehabilitation of bonded labor.

Article 24- provides that no child below the age of 14 years shall be employed to work in any factory or mines or engaged in any other hazardous employment. There are Centre and State laws to prevent child labour. This article too is significant for SCs and STs as a substantial portion, if not the majority, of child labour engaged in hazardous employment belongs to SCs and STs.

Article 25(2) (b) – Provides that Hindu religion institution of a public character shall be thrown open to all classes and section of Hindus. This provision is relevant as some sects of Hindus used to claim that only members of the concerned sects had a right to enter their temples. This was only a subterfuge to prevent entry of SCs persons in such temples. For the purpose of this provision the term Hindu inclusive Sikhs, Jains and Buddhists.

Educational and Cultural safeguards.

Article 15(4) – Empowers the state to make any special provision for the advancement of any socially and educationally backward classes of citizens or for SCs/STs. This provision has enabled the state to reserve seats for SCs/STs in educational institutions including technical, engineering and medical colleges and in scientific & specialized courses.
Political Safeguards-

Article 164(1) provides that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

Article 330 –Provides for reservation of seats for SC/ST in the Lok Shabha.

Article 332- Provides for reservation of seats for SC/ST in the State Vidhan Shabha (Legislative Assemblies)

Article 334- Originally laid down the provision relating to the reservation of seats for SCs/STs in the Lok Shabha and the State Vidhan Shabha (and the representation of the Anglo-Indian community in the Lok Shabha and State Vidhan Shabha by nomination) would cease to have effect on the expiration of a period of ten years from, the commencement of the Constitution.

Service Safeguards

Article 16(4) Empowers the state to make “any provision for the reservation in 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”.

Article 16 (4a) – “Nothing in this Article shall prevent the state from making any provision for reservation in matter of promotion to any class or classes of posts in the service 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”.

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Article 16(4B) - “Specific that nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year”.

Article 335. “The claims of the members of SCs/STs shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointment to service and posts in connection with the affairs of the Union or of a State.

Special Enactments

The constitutional safeguards are further buttressed by special enactments relating to the Scheduled caste and Scheduled Tribes. There are the Protection of Civil Rights Acts, 1955 and the Scheduled Castes and Scheduled Tribes (POA) Act 1989.

For Enforcing Equality and Removing Disability.

1. Untouchability Offence Act, 1955: The Article 17 of the Constitution prohibits untouchability. Untouchability means the practices evolved social restriction in sharing foods, access to public places, offerings prayers and performing religious services, entry in temple and other public places, denial of access to drinking water sources, etc. Within 5 years of adoption of the Constitution of India, the untouchability (Offences) Act 1955 was enacted by the parliament. The Act contained a significant provision that where any of the forbidden practices “is committed in relation to a member of a Scheduled Caste” the Court shall
presumes, unless the contrary is proved, that such act was committed on the ground of untouchability. This implied that the burden of the proof lies on the accused and not on the prosecution. Soon after that Act came into force there was a general feeling of dissatisfaction with its impact as the legislation failed to serve the purpose for which it was enacted. The punishment awarded under the Act was also not adequate. Government of India therefore, appointed a Committee in April 1965 under the Chairmanship of Shri Ilaya Perumal to study inter-alia, problems of untouchability vis-a-vis the working of the Untouchability (Offence) Act 1955 and to suggest changes therein. The Committee’s report was submitted in 1969.

2. The Protection of Civil Rights Act, 1955 (PCR Act): based on the recommendation of the committee, this Act was comprehensively amended in 1976 and its name was changed to “The Protection of Civil Rights Act, 1955”. The amended Act came into force from 19th November 1976. Under this Act, the preaching and practice of ‘untouchability’ or the enforcement of any disability arising there from and for matters connected therewith, was made cognizable and non-compoundable offence and the terms of imprisonment were enhanced. The PCR Act provides for penalties for refusing admission to hospitals, educational institutions or hostels, for refusing to sell goods or render services, for preventing the exercise of any rights under Article 17, for demanding unlawful compulsory labor relating to unsociability like scavenging, sweeping, removal of carcass, flaying animals, or removing the umbilical cord or any job similar in nature. The Act provides that for reprisal or revenge against a person for exercising rights under Article 17, where the offence is punishable with imprisonment under the Indian Penal Code (IPC) for a term exceeding two years, it shall not be less than two years and also with fine. The Act also provides for cancellation and suspension of licenses, assumption or suspension of grants and imposition of collective fine. Subsequent convictions carry higher penalties.
Every such offence except where it is punishable with imprisonment for a minimum term exceeding 3 months may be tried summarily.

B. For Creating Deterrence against Physical Violence

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989: The enforcement of Protection of Civil Rights Act, 1955 also brought to the fore limitation both of the law as well as its implementation in eliminating the practice of untouchability in view of its entrenched position in the psyche and behavior of the caste Hindus and their resistance to change. Society as a whole never accepted the Protection of Civil Rights Act. Meanwhile various atrocities against Scheduled Castes and Scheduled Tribes continued to be committed in different parts of the country. It was realized that even the amended protection of Civil Rights Act, 1955 and normal provision of IPC did not provide deterrence in preventing violence on Scheduled Castes and Scheduled Tribes especially offense committed on caste background. Accordingly, parliament passed another law called “Schedule Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989”. The Scheduled caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 specifies the atrocities which are liable to penalties under Act, those are, forcing the eating’s of noxious substances, dumping waste matter on land, denudation, wrongful occupation of land, dispossession, bonded labours, intimidation, intimidation during voting, mischievous litigation, false information, public humiliation, outraging modesty, sexual exploitation, fouling of water source, obstruction of entry into a place of public resort, eviction from habitation, mischief’s with explosives, destruction of buildings and suppression of evidences. These offences under Prevention of Atrocities Act carry heavier penalties than similar offences under the IPC.
Atrocities on Scheduled Castes and Scheduled Tribes and Status of Implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989

Article 17 of the Constitution has been abolished “untouchability” and its practice is forbidden in any form. The thrust of this article is to liberate society from blind and ritualistic adherence to traditional beliefs. It seeks to establish a new and ideal society. The disabilities, to which dalits were subjected, have been outlawed and subjecting them to those disabilities is volatile of part 111(Fundamental Rights) and Part IV (Directive Principles of State policy) of the Constitution. To enforce this Constitutional provision, the Untouchability (Offences) Act, 1955 was enacted and amended in 1976 and renamed as the Protection of Civil Rights Act, 1955 (PCR ACT), which extends to the whole of India. Under the PCR Act the practice of untouchability in various overt and covert forms is a cognizable and non-compoundable offence, and strict punishment is provided for offences committed under the Act. Further, to check and deter atrocities against Scheduled castes and Scheduled Tribes, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought into force in January 1990, which extends to all States and UTs except Jammu & Kashmir. This Act defines various types of Atrocities against Scheduled Caste and Scheduled Tribes, and prescribes appropriate punishments for such atrocities. In respect of corresponding offences under IPC it prescribes higher level of punishment. It also provides for special Courts for trial of such offences and for the relief and rehabilitation of the victims. Both these Acts have been enacted by the Government of India to safeguard the interest of persons belonging to the Scheduled Caste and Scheduled Tribes. Police and public order are the State subjects under the Seventh Scheduled to the Constitution of India and, therefore the primary responsibilities of detection, registration, investigation and prosecution as well as prevention of crime and maintenance of law and
order lies with the State Government. The State Government are duty bound to maintain law and order, uphold the Constitution and implement all laws for protecting and securing the lives and liberty of the citizens. Section 21(1) & (2) of the SCs/STs (POA) Act stipulates that the State Government shall take such measures as may be necessary for the effective implementation of the Act. Similarly, section 15(A)(1) & (2) of the PCR Act, stipulates that the State Government shall take such measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by the persons subjected to any disability arising out of "untouchability".6

C. For Elimination of Degrading & Humiliating Customary Practices


The most degrading of all occupations and forms of labour thrust upon untouchables by the caste based social order is that of manual scavenging. Members of communities who are engaged in manual scavenging are made to clear faeces from public and private latrines, using broom, tin plate and a basket and carry them to dumping grounds or disposal sites. Those working in private establishments and households are paid very low wages.7 In cities, scavengers are lowered into filthy gutters in order to unclog them and are fully immersed in human waste without any protective gear. A number of them die as a result of carbon monoxide poisoning. The practice of manual scavenging has been prohibited by law under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The act bars any person to engage in or employ or promote to be engaged in or employed any other person for manually carrying human excreta or construction of a dry latrine. The Act also empowers the State Government to make one or more schemes for
regulating conversion of dry latrine into water sealed latrines and rehabilitation of persons who were engaged in or employed for manual scavenging. The act mandates a time bound phased programme for conversion of dry latrines into water sealed latrines, provision of technical or financial assistance for alternate low cost sanitation, construction and maintenance of community latrines, registration of manual scavengers and their rehabilitation. The Act makes violation of the law an offence punishable with imprisonment for a term which may extend to one year or with fine or with both.


Devdasi means a female servant of God. This ancient system entails the ceremonial or rituals dedication or marriage of a girl, traditionally from scheduled Caste community, who is yet to attain the age of puberty, to a deity or to a temple. Devdasi originally had only religious functions, but the practice subsequently degenerated into sexual abuse of these women by high priest and royal patrons and, later, by landed gene try and other powerful persons. Once dedicated, the Devdasi girl cannot marry and is forced to become a prostitute for caste Hindus and eventually auctioned to brothels. The practices are prevalent largely in Karnataka, Andhra Pradesh, Maharashtra and Orissa. There is no national legislation outlawing the practice of Devdasi system. However, Andhra Pradesh has enacted a law called “Andhra Pradesh Devdasi (Prohibition of Dedication) Act, 1992.

D. For Curbing Unequal Distribution of Economic Assets.

There are a number of laws, both Central and State, which provides for safeguards to SCs & STs. Some of these emanate from the various Constitutional provisions. An illustrative list of such laws is given below:
- The Bonded Labour System (Abolition) Act, 1976 (in respect of Scheduled Castes)
- The Child Labour (Prohibition and Regulation) Act, 1986 (in respect of Scheduled Castes)
- The Minimum Wages Act, 1948 (in respect of Scheduled Castes)
- Acts and regulations in force in different States to prevent alienation of land belonging to SCs. In some States such provision exists in the Land Revenue Code.

Chapter (ii) of Section (3) Punishment for Offence of Atrocities Against SCs & STs.

1. Forcibly drink or eat inedible or obnoxious substances - Section 3(i)(i)
2. Causing injury insult or annoyance - Section 3(i) (ii)
3. Derogatory Act - Section 3(i) (iii)
4. Wrong occupation or cultivation of land etc. -Section 3(i) (iv)
5. Relating to land, premises and water -Section 3(i) (v)
6. Beggar or Forced or bonded labour -Section 3(i) (vi)
7. Relating to right to franchise -Section 3(i) (vii)
8. False, malicious or vexatious legal proceedings -Section 3(i) (viii)
9. False and frivolous information -Section 3(i) (ix)
10. Insult, Intimidation and Humiliation -Section 3(i) (x)
11. Outraging the modesty of a woman - Section 3(i) (xi)

12. Sexual exploitation of a woman - Section 3(i) (xii)

13. Fouling of water - Section 3 (i) (xiii)


The communities officially designated as Scheduled Castes (SCs), Scheduled Tribes (STs) and other Backward Classes (OBCs), have historically been subjected to various forms of exclusions and discrimination. Their protection has been ensured through various safeguards and constitutional instruments. Though there are wide gap between the precept and practice of the instruments, their relevance cannot be ruled out. In fact, these communities have been provided not only elaborate constitutional rights of protection but also various instruments and institutional mechanisms have been created which have their own areas of operation and competence. These are:

The National Commission for Scheduled Castes and Scheduled Tribes.

In view of their weak social position, it had been realized at the time of framing the constitution itself, that safeguards provided for SCs/STs in its provisions and also other laws, regulatory arrangement and policy measures, may not get implemented due to apathy or bias of the implementing agencies or pressures mounted by the vested interest in the society who stood to lose from them. Accordingly, the needs was felt to have a standing body as a watch dog institution to continuously monitor whether the activities of the Government are in consonance with the declared intentions, designed legal & institutional arrangement and policy statements. A permanent institutional arrangement called Special Officer for SCs and STs incorporated under Article 338 of the constitution served this purpose. Later, this arrangement was strengthened and
in 1990 the constitution was amended providing for a multi-member National Commission for SCs and STs with enhanced powers. The Commission is required to submit report annually to the Parliament. The first Constitutional Commission became operational on the 12th of March 1992. In subsequent years it has been realized that the SCs and STs communities cannot be treated in identical terms. There are significant amount of difference in terms of nature of exclusion and violation of their rights. Therefore, the earlier institution, known as the National Commission for SCs and STs have been bifurcated into two different set of institutions, known as the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes.

2. National Human Rights Commission

The Human Rights Act, 1993 seeks to provide regulatory framework for protection of rights related to life, liberty, equality, dignity of individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. Section 3 of the act generates space in the Constitution for National Human Rights commission. In pursuance of section 3, a National Human Rights Commission is already in existence since 12th October, 1993. It takes up the cases regarding human rights violation addressed to it and through its own initiatives. As atrocities on SCs are violation of Human Rights, it intervenes in complaints relating to them also. The commission is also required to submit a report annually which is laid on the table of both the house of the Parliament.

3. National Commission for Women

Section 3 of National Commission for women Act, 1990 provides for the constitution of National Commission for women to investigate and examine all matters relating to safeguards provided for the women under the Constitution
and various other laws. The First National Commission was constituted on the 31st of January, 1992. It considers the complaints referred to it for redressal irrespective of caste. Accordingly problems of SCs women including those of physical violence against them are also dealt with by it. As other statutory commission, the commission has to submit a report annually which is laid on the table of both house of the Parliament.


The National Commission for Safai Karamcharis was constituted on the 12th of August, 1994 for a period of 3 years under the provision of the National Commission for Safai Karamcharis Act, 1993 to promote and safeguard the interests and rights of Safai Karamcharis. The National Commission has, inter alia, been empowered to investigate specific grievances as well as matters related to the implementation of programmes and scheme for welfare of Safai Karamcharis. The Commission is required to be consulted on all major policy matters affecting Safai Karamcharis. The term of the Commission was extended from time to time and the tenure of the present Commission has been extended through a Resolution of Govt. of India up to 31/12/2007.

5. National Commission for Backward Classes

The National Commission for Backward Classes Act, 1993 provides for the constitution of the commission for Backward Classes. The prime objective of the creation of this institution is to identify the caste/communities as backward and recommend the remedies provided under the measures of affirmative action. It is the responsibility of the Commission to examine the requests for inclusion of any class of citizens as a Backward Class in the Central List of Backward Classes and hear complaints of over-inclusion or under-inclusion of any Backward Class in the lists and tender such advice to the Central Government as it deems appropriate.
The entire aim of incorporating safeguards to the Scheduled Castes in our Constitution is to bring peaceful, political and socio-economic smooth transition to balance the conflicting interest in Indian society securing the satisfaction of maximum of wants with minimum of fraction. Since the Dalits suffered from the gross social injustice, discrimination and disability and inhuman suppression and economic exportation, to which they have been subjected to over the centuries, the Constitution, incorporated various provision with the aim and objective of promoting and safeguarding their social, political, economic and educational interest. In India a number of laws, both central and state, which provide for the safeguards to dalits, has been passed. Article 17 abolished Untouchability and its practice in any form is forbidden. Besides the IPC, the Protection of Civil Rights (PCR) Act of 1955 and the Scheduled Caste and Scheduled Tribes (Prevention of atrocities) 1989 Act, are two major legal instrument which help prevent/control the atrocities against dalits. Besides extending support for social and economic rehabilitation of dalits Victims ... After studying the national crimes records bureau (Crimes of India), the number of cases registered after 1976 amendment has increased. It reflects the ineffectiveness of various law mechanisms.
Notes:


8. Ibid. p.141
