CHAPTER IV

CONSTITUTION OF INDIA AND UNTOUCHABILITY

The Constitution of India does not recognise the caste disabilities and provides for securing political, economic and social justice to all the citizens of India and it has given them the liberty of thought, expression, belief, faith and worship. The Constitution has also guaranteed to all the citizens for equality of status and opportunity and it has recognized the principle of fraternity assuring the dignity of the individuals. The Constitution of India has laid down for a system which is based on the principle of social justice. Social justice, is now a days, a fundamental right of a citizen.¹

Although frowned upon by the rulers during the early British period, the custom of untouchability was tolerated by them, perhaps because, they were neither prepared to involve themselves in social controversies nor they were bothered to indulge in the whole-sale reforms and to make themselves unpopular. Even then in the later British period, on account of western liberal education and the introduction of Common law on the soil of India, the mentality of the people had changed in respect of depressed classes as well as against the untouchability. The first blow, however, fell upon this age-old barbarity through the Indian Constitution, which makes it
impossible to enforce any affirmative legal disabilities on the basis of caste. It is our Constitution, which landed hard on the caste system and abolished the untouchability once and for all.

The Constitution has adopted a two line of action to deal with the problem of untouchability (i) through the abolition of untouchability and, (ii) through promoting the interests of untouchables.

I  **Abolition Approach** :-

Article 17 of the Constitution knocks the whole problem of untouchability at the very bottom and throws it out lock, stock and barrel.

This Article says :-

"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."

The main thrust of Article 17 is to liberate the society from blind and ritualistic adherence and 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 would be violative of the Part III and IV of the Constitution

Article 17 does not stop with a mere declaration but announces that this forbidden "untouchability" is not to be, hence forth, practiced in any form. If it were so practised it shall be dealt with as an offence punishable in accordance with the law.
The word "untouchability" has neither been defined in Article 17 of the Constitution nor under the Protection of Civil Rights Act, 1955. A single judge of the Mysore High Court in Deveraja has rightly held that untouchability in the Act refers to the social disabilities historically imposed on certain classes of people by reason of their birth in certain castes and would not include an instigation of social boycott by reason of the conduct of certain persons. The word "Harijan" prime facie refers to an untouchable. Untouchability is an integral part of caste system and is not based on mens rea.

The term "untouchability" under Article 17 has been used under the inverted comas. It is because the subject matter of Article 17 is not untouchability in its literal or grammatical sense, but the practice as it had, developed historically in this country and that the word "untouchability" is used in that sense under this Article.

As people still do not like to mix with a 'Dom' or 'Chamar' as freely as they would do with a Brahmin or Kshatriya. The term "untouchability" was held to include the act of preventing certain classes of Hindus who were once known as "Depressed classes" from entering a public temple. Not only this but the J&K High Courts in Janki Prasad held, "where a person is refused admission in a temple on the ground of his being a Harijan, the refusal is presumed to be on the ground of untouchability."

Article 17, firstly, makes a declaration for the abolition of untouchability and prohibits its practice in any form.
Secondly it declares that the enforcement of any disability arising out of untouchability is to be an offence punishable in accordance with the law.

The significance of the declaration of Article 17 abolishing untouchability and forbidding its practice in any form should not be underestimated. Even without any supporting legislation under the later part of the Article, abolition of untouchability and prohibition against its practice in any form has the effect of not only invalidating all laws, customs, usages, practices etc. directly or indirectly recognising or encouraging the practice of untouchability but even also any sales, contracts or other private transactions having the effect of such recognition or encouragement.

The second part of Article 17 simply declares that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law and it does not make the enforcement, ipso facto, punishable under the Article. All that, it does is to contemplate legislation making for declaring such practice punishable as an offence. So the later part of this Article should be read with Article 35 of the Constitution which enjoins the Parliament to make appropriate laws punishing as offence every act of individuals or groups which tantamount to applying disability arising out of untouchability. The Parliament, thus, in the exercise of its power, so conferred by Article 35, enacted the Untouchability Offences Act, 1955. Which was later named as Protection of civil Rights Act, 1955.
Article 17 is a prospective legislation and laws in force in the state before the commencement of the Constitution are specifically saved, up to the extent they are not repugnant of this Article, and are to continue until altered, repealed or modified or amended by the Parliament.\footnote{9}

Article 17 fulfils, at least in law, the dream of Gandhiji who worked hard for the eradication of the social evil of untouchability. The Act of 1955, as amended in 1976 has given a realistic and effective shape to the prohibition of untouchability enshrined in the Constitution.\footnote{10}

**Types of Discriminations And their Constitutional Remedies:**

The Constitution of India, not only, abolished the untouchability and made it punishable, but has also given various rights to the depressed classes so as to remove discrimination to which they were subjected before the commencement of the Constitution. The following rights are, inter-alia, conferred to the untouchables.

**(1) Right To Freedom of Religion (Article 25(2)(b)):-**

One of the disabilities that the depressed castes suffered was that they were denied access to Hindu temples. They were required to stop outside the temple proper in the compound and satisfy themselves that they had a glimpse of the idol of God. The movements to abolish this disability gained momentum in the thirties of 20\textsuperscript{th} century. At a public meeting of the Hindus which was held in Bombay on September 25, 1932, following the signing of the Poona Pact on September 24, a resolution was adopted which, inter alia, called for early removal of all social
disabilities imposed by custom on the so called untouchable classes including the bar in respect of admission to temples. This resolution was followed by a spurt in the activities on the part of caste Hindus to throw open temples to the untouchables. Satyagrehas were also launched at different places for admission of untouchables to temples. When independence came in 1947, the exclusion of untouchables from Hindu temples was made a statutory offence throughout India.\textsuperscript{11}

Article 25 of the Constitution made a great social reform in this respect.

Article 25 provides:-

1. \textit{Subject to public order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.}

2. \textit{Nothing in this Article shall affect the operation of any existing law or to prevent state from making any law.}

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

(b) Providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 25 (2) articulated a head of social welfare and social reform measure when it requires a Hindu temple to be opened to the Hindus for unfettered public religious worship, and further provides that it should be thrown open to all classes and sections of co-religionist Hindus. The temple entry for scheduled
castes' men on equal and non-discriminatory basis along with other persons professing the same religion or belonging to the same religious denomination is a head of social reform, and a law providing for this, is deemed not to affect religious freedom of the caste Hindus. In terms, clause 2(b) of Article 25 confers no right of temple entry, but enables the state to provide for this as a social reform and a welfare measure. Indeed no conferment of separate temple entry right is necessary as any opposition to temple entry to scheduled caste men must be an enforcement of disability arising out of untouchability.

The right of untouchables to enter and worship in Hindu temples provides the acid-test to see whether untouchability which has been abolished by Article 17 of the Constitution and its practice made an offence punishable under Protection of Civil Rights Act, 1955, remains a mere paper declaration or has really brought about a change of hearts and a change of social attitude towards them. This came before Supreme Court in Shree Venkataramna V. State of Mysore. In this case Shree Venkataramna temple - an ancient temple was declared 'Temple' under Madras Temple Entry Authorization Act. Whereby entry to the temple became open to all Hindus - including so called 'untouchables' also. The trustees of the temple claimed the temple as a private denominational temple and challenged the order and it meant that 'right of entry of untouchables' was also challenged. It was alleged that the temple was originally founded for the benefit of the Gowda Sarswath Brahmans and the fact that other classes of Hindus had free access would not have the effect of enlarging the scope of dedication into one for public
generally. The Court, however, held that Article 25(2)(b) of the Constitution prevails against the right of every religious denomination or any section thereof to manage its own affairs in the matter of religion. The Supreme Court proved itself as vigilant and did not overlook the aspect of entry of untouchables involved indirectly in the claim of trustees and thereby frustrated their indirect attempt to deny social justice to untouchables.

The right of entry into the temple and of worship to the untouchables is not an absolute and unlimited in character. Because no member of Hindus including untouchables could, for example, claim as part of their rights protected by Article 25(2)(b) that a temple must be kept open for worship at all hours of the day and night or that he should personally perform those services which the Acharayas alone could perform. It is again a well known practice of religious institutions of all denominations to limit some of its services to persons who have been specially initiated, though at other times the public in general are free to participate in the worship. Thus the right recognized by Article 25(2)(b) necessarily becomes subjected to some limitations or regulations and such limitations or regulations arise in the process of harmonizing the rights conferred by Article 25 (2) (b) with that protected by Article 26 (b).

Explanation II of Article 25 of the Constitution has used the word ‘Hindu’ in broader sense and the term ‘Hindu’ includes Sikhs, Jains or Buddhists for the purposes of Article 25(2)(b). So religious institutions of public character are thrown open to all
the sections of Hindus instead of being confined to the members of their own sects or denominations.

Article 25(2)(b) has put all the classes and sections of Hindus on an equal footing for temple entry and the discrimination and irregularity has been removed from amongst the various sections of Hindu society. The Article only covers public religious institutions and not private endowments or institutions of the Hindus.

(2) **Prohibition of Traffic in Human Beings and Forced Labour**

Most of the persons belonging to depressed classes constitute labour class and they are often exploited by the Higher class. They form the most vulnerable sections of the population and their condition of living are far from satisfactory. They are steeped in debt and are reduced to the rank of bonded labourers.

This position of the depressed class has been in prevalent in India from time immemorial. These persons had been slaves and their women had often been subjected of immoral traffic.

During the British period this problem was dealt with by the Indian Penal Code, 1860 as well as the Indian Slavery Act, 1843. Nevertheless, the bonded labour system and trafficking in human beings remained prevalent in India.

So as to deal with this problem, the Members of the Constituent Assembly strongly pleaded to have a provision under Indian Constitution. On the pattern of Burmese Constitution, Article 23 of the Indian Constitution was enacted. This Article provides:-
1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of the provision shall be an offence punishable in accordance with law.

2) Nothing in this Article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on the grounds only of religion, race, caste or class or any of them.

Article 23 uses the more comprehensive expression traffic in human beings which includes a prohibition not only of slavery but also traffic in women or children or the crippled, for immoral or other purposes.\(^\text{15}\) Parliament in the exercise of powers conferred by Article 35, has passed the Suppression of Immoral Traffic in Women And Girls Act in 1956. The Allahabad High court in Sharma’s Case laid down that such a law is valid and not inconsistent with the provisions of fundamental rights to carry on any trade etc.\(^\text{16}\)

This Article also prohibits forced labour in any form. The term "forced labour" is a wide expression which is not only attracted when a person is compelled to give his labour or service without payment, but also where a labourer is obliged to do work at wages, less than the minimum wages\(^\text{17}\). The prisoners punished with rigorous imprisonment can be employed to do hard labour irrespective to their consent but others can be permitted to do any work of their choice on their request. Both are entitled to equitable wages, which if not paid, it would amount to forced labour but subject to cl (2)of Article 23 of the Constitution.\(^\text{18}\). Under Article 23 the court may direct
rehabilitation of the bounded labourers or payment to them minimum wages.¹⁹

This Article is enforceable not only against the state, but also against private persons indulging in such practices.²⁰ For effective implementation of the spirit of Article 23, Parliament passed Bonded Labour System (Abolition) Act in 1976 exempting completely the liability to pay the bonded debt. Thousands of bonded labourers have been set free after the implementation of this Act. Article 23 has to be read with the Directives in Articles 39 (c), 41, 42 of the Constitution of India. Article 39(c), provides:

"The state shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

Article 41 says; "The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want."

Article 42 states "The state shall make provision for securing just and humane conditions of work and for maternity relief."

So read, the state shall not only identify bonded labourers but also provide for their rehabilitation.²¹ Failure to do so would constitute a violation of Articles 21 and 23.²² Grant of financial assistance should be adequate.²³
Since most of the bonded labourers belong to Scheduled Castes and Scheduled Tribes. It is the duty of the state, political parties and welfare organisations to work to the cause of upliftment of these sections so as to remove this social evil from the society and have a society based on the ideals of fraternity assuring the dignity of the individuals.

(3) Right to Education Equally (Article 29)(2)

Untouchables were also not allowed to get education. Vedas were not recited in their presence. Even Dr. Ambedkar himself suffered, in his childhood, the curse of untouchability and was not allowed to set with other students. He was not allowed to study Sanskrit. His College Superintendent, being a Brahmin, did not give him tea or water. Such type of disability has also been struck down by Article 29 (2) of the Constitution. Which provides:

"No citizen shall be denied into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them"

This clause is a counterpart of equality clauses of Article 15, which is of general nature. Under Article 29 (2) there should be no discrimination against any citizen on the ground of religion, caste etc in the matter of admission into an educational institution maintained or aided by the state. The right into an educational institution is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. So Harijans i.e. untouchables can not be denied admission on the ground that they are untouchables. Now they have the right to get admission in such institution and even in
the institution run by a minority if it is aided by the state fund. The only option to minority institutions is to adopt their own selection procedure for admission of students and permitted them to admit 50% of their community. The correctness of this proposition has been doubted by S.C in T.M.A. Pai v. State of Karnataka\textsuperscript{26} and the matter is now to be considered by a Larger Bench\textsuperscript{27}

But an untouchable candidate can be denied admission if he does not possess the requisite qualification\textsuperscript{28} or where such student is expelled from an institution for acts of indiscipline.\textsuperscript{29}

This Article has removed the discrimination and disability of the untouchables in the matters of education and has brought them at par with other communities of Hindus on the principle of equality as guaranteed by Article 14 of the Indian Constitution.

(4) Prohibition of Discrimination in Social Matters (Article15)

The worst form of discrimination to which untouchables were subjected were the segregation or exclusion of these persons from the places of public entertainment, accommodation like motion pictures, restaurants or hotels or wells etc. The framers of the Constitution of India were aware of this problem and with their characteristic wisdom and foresight made specific provisions in the Constitution of India compelling private action also to comply with the norms of equality and human dignity. In this respect, the provisions of clause(2) Constitution of India are unique and unparallel in any other Constitution of the world. Article 15 (2) provides:
"No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to - 
(a) Access to shops, public restaurants, hotels and place of public entertainment, or 
(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public".

Sub-clause (a) of Article 15 (2) offers equal access to shops, restaurants, hotels and places of public entertainment, owned by private persons, state aid to such institution is not a condition requisite for availability of this right in respect of such places. Sub clause (b) relates to places of public resort which are (1) either maintained by state funds, wholly or in part, or (ii) dedicated to the use of the general public. In the later case, maintenance by state funds in not necessary.

It means private wells and tanks do not come within the perview of this clause. Where untouchables and others can not claim their rights, but they can only claim for their rights if such place has been dedicated to the use of general public. In Lakshmidhar Misra v. Ranglal 30 where the Court held that there can not be dedication only to a limited section of the public like the inhabitants of a village. The prohibition in clause (2) is levelled not only against the state but also against private persons.

Dedication under clause (2) (b) must be in favour of the public generally and not to a section of the public e.g. the Saraswath Brahmin 31 Hence there can not be shops or public
restaurants or other places of public entertainment like a cinema, theatre, coffee houses, circus, fair, exhibition, music halls etc. which are not dedicated to the use of the general public, but exclusively reserved for the members of particular caste, religion, race where the members of other religion or race may not be allowed entry.

The word 'Shop' under Article 15(2) (a) is used in a generic sense and would include any premises where the goods are sold either by retail or wholesale or both and would include a laundry, haircutting saloon or such other places where services are rendered to the customers. A doctor's clinic or a lawyer's office may well be included within the expression "shop". So the refusal of a barber to shave a cobbler in a public saloon was rightly considered as offending Article 15(2) of the Constitution.

Places of public resort' are places which are frequented by the public like a public park, a public road, a public bus, ferry, public urinal, railways, hospitals etc.

The effect of the enactment of this provision is that the untouchables who were denied the admission in the hospital and who could not move on the road between 3:00 p.m. to 9:00 a.m., can now claim their right and can easily avail these rights. The untouchables' social status has been improved to some extent due to these Constitutional rights.

(5) Freedom of Profession, Trade, Business (Article 19(1) (g)

Hindu system is based on the caste system. Shudras, who were considered to be born from the feet of Creature, were required to perform menial type of works in the society such as
scavenging and were not allowed to practice any other profession.

The Constitution of India liberated them from such stigma and conferred on them the right to practice or to carry on any occupation, trade or business through Article 19(1) (g) of the Constitution. Article 19(1)(g) provides:

"All the citizens shall have the right to practice any profession or to carry on any occupation, trade or business."

This freedom means that every citizen including untouchable has the right to choose his own employment or to take up any trade or calling. The right guaranteed by this Article can not be lost by waiver or even express agreement with the state or individual. The right guaranteed by the Article is not an absolute one but it is relative one and the restrictions can be imposed by the state on the grounds mentioned in Article 19(6). Article 19(6) provides :-

"Nothing in sub-clause(g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevent the state from making any law imposing in the interest of the general public, reasonable restriction on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to or prevent the state from making any law relating to -

i) The professional or technical qualification necessary for practicing any profession or carrying on any occupation, trade or business .
ii) The carrying on by the state or by a corporation owned or controlled by the state, of any trade, business, industry or service whether to the exclusion, complete or partial, of citizen or otherwise.

The right to carry on business under the Article is positive as well as negative right. Negative right, hereby, means a right not to carry it on, if he so chooses and no body can be compelled to carry on a business against his will.35

Untouchables are, nowadays, free to carry on any profession, occupation or trade of their choice and they are no more disable in this respect. No person can compel these persons to do menial jobs like scavenging against their will. Constitutionally these persons have right even become priest of a temple.

(6) Right to Property (Article 300 - A)

In Vedas period, the Shudras i.e. untouchables were not even allowed to have absolute property, as their wealth could be appropriated by his master. But the Constitution of India protected the Untouchables from such type of stigma which removes such disability by way of enactment of clause 1(f) under Article 19 (Omitted and substituted by Article 300 A)36 Article 300 A provides:

"No person shall be deprived of his property save by authority of law"

This Article has been inserted by the Constitution (44th Amendment) Act 1978. Prior to this amendment, the right to property was guaranteed by Article 31. While Clause (1) of that Article has been shifted from part III to Article 300 A, Clause
(2) of that Article, which dealt with compulsory acquisition of property, has been repealed. Sub. Clause (f) of Clause (1) of Article 19 which guaranteed right to acquire and hold property, has also been omitted by the same 44th Amendment Act 1978.

The right to property under Article 300 - A is neither a 'basic' feature of the Constitution, nor a fundamental right. It is only a Constitutional right. This right is subject to state restraints and regulations. The remedy for the violation of Article 300 - A is now, available under Article 226 or by a civil court and not under Article 32 of the Constitution.

Now the untouchables can not be deprived of their property by other caste Hindus. They can now have absolute right over their property and which can not subjected to any disability on the ground of untouchability.

(7) Uniform Civil Code: A projection of Equality for the Scheduled Castes

The introduction of Uniform Civil Code is an earnest attempt on the part of the framers of the Constitution to avoid discrimination to which the members of scheduled castes have been subjected in Hindu society.

Article 44 of the Constitution provides:

"The state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

This Article is intended to remove the discrimination in the area of civil law including inheritance, marriage, divorce and succession.

The object underlying the Article 44 embodied in part IV is to cut across the barriers of the caste, creed, religion and usher
India a homogeneous nation, the members of Scheduled Castes have thus, been given opportunity to join the mainstream of the nation, like forgetting the fact that they were at one time considered different from other sections of the society. Through this Article they will get equality of treatment and enjoyment of civil right at par with other castes members of India. In this regard shri Alladi krishnaswami Ayyar rightly expressed.

"Modern state can not accept the proposition that religious freedom covered personal law. Our ancestors did not think of united Nation to be wielded together into a democratic whole, but we are departing from the past, we want the whole of India to be wielded and unified together as a single Nation. We must end a series of competing communities in the country and seek factors which will help the wielding together of the country. (8) To promote harmony and brother-hood (Article 51 – A)

Article 51 A of the Constitution, relating to fundamental duties, imposes a duty on every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.

The Constitution of India tries by its abolition approach to establish an egalitarian non- discriminatory society. It, thus, not only abolished the practice of untouchability and made it punishable but it has also not recognised the caste system which is the root of untouchability and tried to establish a casteless society. Under the Indian Constitution all persons irrespective of
caste, are equal and equal protection of laws is also available to all of them. The Constitution of India granted the persons various fundamental as well as legal rights equally.

The Constitution of India also imposed duty upon the state to endeavour to have a society of equals, social backdrop changes and a change in the social backdrop has been one of the Constitutional imperatives. But the social outlook of members of upper caste Hindus towards Dalits has not changed so much as Constitutional provisions desired it ought to be. In actual practice even today the Dalits are subjected to many disabilities. In Andhra Pradesh even in chief Minister N. Chandrababu Naidu's Assembly Constituency's village Kuppam, Ramayya, a scheduled caste member, when visits the tea-stall in a market place, has to pick up a soot-covered glass tumbler kept separately for tea. After having the tea, he has to wash the tumbler and place it back in its isolated shelf. Due to the non-change in the social outlook of upper castes, Dalits are being compelled to relinquish Hindu religion and convert their religion. Recently 19 persons, all adults belonging to Scheduled Castes in a village in Kendrapara district in Orissa, have embraced Christianity. Unless social out-look of society is not changed the provisions of Constitution would not work effectively and the problem of discrimination against Dalits shall remain persistent.

II Prospective Approach:

In India where society has not advanced uniformly and certain sections like shudras remained weaker sections. So for
the removal of economic and educational inequalities and ractifying the injustice resulting from the dealings or transactions between unequal in the society, the framers of the Constitution of India desired to have a society of equals. The idea behind enunciating this principle was to do something positive for the oppressed sections. The Constitution of India through Article 14 guarantees.

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

The concept of equality and equal protection of laws guaranteed by Article 14 encompasses social and economic justice in a political democracy. The concept of equality and equal protection under Article 14 means equality in terms of an end (i.e. to establish society of equal persons) and not of means (meaning thereby protective discrimination can be done for weaker classes). The equality here means equality among equals and not unequals and the class legislation is not permitted under this Article, but classification, based on reasonableness, is permitted under this Article.

This Article embodies the concept of "Distributive justice". The Constitution of India also contains many other provisions for securing "equality of status and opportunity" to all the citizens by uplifting the weaker sections.

(1) Promotion of Educational and Economic Interests of Dalits.

Parliament, Legislature of each State and Union Territories, Central Government, State Governments and all the
local and other authorities are required to take active steps for the promotion of educational and economic interests of the Schedule Castes, Scheduled Tribes and other weaker sections so as to bring them at par with other members of the country.

Article 46 of the Constitution relating to Directive Principles of State Policy imposed a duty upon the state to promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

The provisions of this Article are not made mere pious expectations of the framers. They have full legal force and the directives relevant in this context are rules recognizable by the Courts of law. As two provisions relating to Fundamental Rights, viz. Articles 15 and 29 (2) have been amended by the Constitution (1st. Amendment) Act 1951, in order to give effect to the present Article, notwithstanding the existence of those two Fundamental Rights, to contrary. By virtue of this amendment it will now be possible for the state to make special provision e.g. to build a state colony for the habitation of Harijans, notwithstanding the bar against discrimination on the ground of the caste. The state is, now, under obligation to provide the SC, /ST, facilities and opportunities for their economic empowerment as it is their fundamental right.

The Article 46 embodies the concept of "distributive justice" which connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from dealings or transactions between unequals in the society. This may be
achieved by the state by lowering of inequalities by differential taxation, giving debt relief, distribution of property owned by one to many who have none by imposing ceiling on holdings or by direct regulation of contractual transaction by forbidding certain transactions.\textsuperscript{48} It also means that those who have been deprived of their properties by unconscionable bargaining should be restored to their property. Hence, a law invalidating transfers of land belong to a member of ST to a non-tribal and for restoration of such land to the transferor would be an implementation of this Article and is Constitutionally valid.\textsuperscript{49}

The state having implemented the policy of economic empowerment to do economic justice assigned lands to the people belong to S.C. and S.T., alienation of which was held to be opposed to public policy which rendered their sale void.\textsuperscript{50}

Economic empowerment to the Dalits and tribals is one of the principles of economic justice envisaged under Article 46. Permission to alienate the allotted land to them refused.\textsuperscript{51} In view of their economic empowerment the Supreme Court directed the Government to regulate their possession on the uncultivable waste land, granted to them on lease as per policy then in vogue when the Government Sought their eviction after the expiry of the lease period.\textsuperscript{52}

The protection of these members, which is an obligation of state, is also in the interests of general public under Article 19 (6).\textsuperscript{53}

\textbf{(2) Promotion of Education of Scheduled Caste etc. (Article 15, (4))}
Any section of the community which is backward impede the progress of the rest. It is an open secret that Scheduled Castes have been neglected in the past and their rights and claims have been denied to them because of their backwardness. Any special discrimination in favour of these Scheduled Castes would not be violative of the basic principles of the equality for all persons in the country. For the advancement of these people, the Constitution of India through Article 15(1) forbids the state from discriminating against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them. But so as to override upon the decision of Supreme Court in State of Madras V. Champakam Dorirajan\textsuperscript{54} and to bring Articles 15 and 29 in line with Articles 16(4), 46 and 340 and to make it Constitutional for the state to reserve seats in education for these backward classes. The 1\textsuperscript{st} Amendment in the Constitution took place in June 1951 and clause 4 was added to Article 15. Article 15(4) provides

"Nothing in this Article or clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes."

Clause (4) of the Article 15 is an exception to the general rule laid down in clause (1) of Article 15 and clause (4) is an enabling provision and benefits under it can not be claimed by Scheduled Caste as a matter of right. The efficacy of this provision seems to have been whittled down slightly by Supreme Court in Balaji v. State of Mysore.\textsuperscript{55} in which the order of the Government of Mysore reserving 68% of the seats in the
Engineering and Medical colleges, was struck down as unreasonable.

The Supreme Court held:

"It is because the interest of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorizes special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that is clearly outside the scope of the Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15 (4), the Constitution intended to provide that where the advancement of the backward classes or the Scheduled Castes and tribes was concerned the fundamental rights of the citizens consisting the rest of the society were to be completely and absolutely ignored. A special provision contemplated by Article 15 (4) like reservations of posts and appointments contemplated by Article 16 (4) must be within reasonable limits. The interests of society which are a first charge on the states and the centre, have to be adjusted with the interest of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a state reserves practically all the seats available in all the colleges, that would be subverting the object of the Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make, speaking generally and in a broad way, a special provision would be less than 50% how much less than 50% would depend upon the relevant prevailing circumstances in each case."
If a candidate gets selected for admission to a course on the basis of merit as a general candidate, he should not be treated as reserved candidate.\textsuperscript{56}

Article 15 (4) envisages the policy of compensatory or protective discrimination within reasonable limit and consistent with ultimate public interest\textsuperscript{57} The Special provisions permissible under Article 15(4) are not confined to positive action programmes for the advancement of backward classes but would include 'reservation' in educational institutions and other walks of life.\textsuperscript{58} Even reservation for admission to the specialties, super specialties in post graduate and doctoral courses in medicine are permissible.\textsuperscript{59}

Scheduled Caste and Scheduled Tribes constitute protected class. So the state is entitled do every thing for the upliftment of these castes and tribes, to make reservations for their admission to educational institutions and to impose such conditions as would make reservation effective. It can prescribe lesser qualifying marks. The Government may make relaxation of the rules for admission to such institutions or for selection to Government employment by lowering the minimum qualifying marks or other conditions or by offering them two avenues for promotion in place of one for the rest of the people or reservation of selection posts for them.\textsuperscript{60}

(3) EMPLOYMENT OPPORTUNITY:

Before the commencement of Indian Constitution, the condition of Harijan was more deplorable than that of any man was living in this country. The Backwardness of these people was the result of the conditions, which had been persisting and
was in existence for several centuries and ages. In matters of employment poor Harijan's candidates did not get proper appointments in Government services. The officers of higher castes selected only their own people, but not the Harijans. The Harijans, though, they were well qualified did not get opportunity and fair treatment in the services. The scathing attack was launched by the Constitution of India to the age-old barbarity and it extended equal opportunity in respect of public employment to all citizens of India through Article 16(1)(2):

1) "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the state."

But mere removal of discrimination was not enough for upliftment of Harijans, but something more was required in employment opportunities so as to bring them equal with rest of the citizens of India, because the country was to move forward as a 'Nation' or 'Indians' and not as so many Brahmins, or non-Brahmins etc. So special care is also taken by the Constitution for providing equal job opportunities to these people by making special provisions by way of relaxation of standards of general suitability, reservation and concession to counter the want of requisite relative excellence and also by way of reservation of posts and positions for them.

Article 16(4) provides:
(4) "Nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.

(4A) Nothing in this Article shall prevent the state from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the state in favour of the scheduled castes and scheduled tribes which, in the opinion of the state, are not adequately represented in the services under the state.

(4B) 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 provision for reservation made under clause (4) or (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 per cent reservation on total number of that year."

Article 16(4), which expressly uses the term "Backward class" also implicitly includes the persons belonging to Scheduled Castes and Scheduled Tribes. Although Article 16(4) is an enabling provision which does not confer any fundamental right to persons of backward classes to claim it as a matter of right. It only confers a discretionary power on the state to make a reservation of appointments in favour of Backward Classes of citizens, which in its opinion, is not adequately represented in
the state yet in the matter of implementation of reservation rules, it is a Constitutional duty of public servant to perform it honestly, sincerely and in its true content and spirit and in case of non-implementation of reservation, the public servant entrusted with the duty and power to implement it, should be accountable.  

Reservation is dynamic and flexible concept and the departure of the principle of equality [Articles 14, 16 (1) (2)] has to be constantly watched. It is a transitory measure and as the backwards are able to secure adequate representation in services, the reservation will not be required. While considering the claims of Scheduled Castes and Scheduled Tribes for appointments, the maintenance of efficiency shall be kept in mind. In the matter of due representation in services for SC/ST/BC maintenance of efficiency of administration is of paramount importance. So the provisions of Articles 16 (4), (4A) are to be read with Article 335 of the Constitution which deals with the claims of Scheduled Castes and Scheduled Tribes to services and posts.

Article 335 of the Constitution provides:

"The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the working of appointments to services and posts in connection with the affairs of the Union or of a State. Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or
lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."

It is a Constitutional duty of the state to take into considerations the claims of the members of Scheduled Castes and Scheduled Tribes in the matter of appointments subject, to the consideration of the efficiency of the administration. This duty is to be exercised with special care of the educational and economic interests of Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation.70

Overlapping between Article 335 and Article 16(4) has now been abolished by the addition of proviso, inserted by the Constitution (82 amendment) Act 2000. Because some sacrifice of merit has to be made in making reservation of these backward classes, that cost has to be paid, for ensuring "Social justice" as an objective of our Constitution 71

In modern time, most of the appointments are made through public service commissions. For that purpose, the commissions conduct examinations and make rules by way of Article 320 of the Constitution. But clause (4) of the Article 320 is an exception of other clauses of Article 320 and does not have effect upon the provisions of Articles 16(4), 46, 335 of the Constitution.

Article 320 (4) provides:

"Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred in clause (4) of Article 16 may be made
or as respects the manner in which effect may be given to the provision of Article 335." This clause makes it clear that commission has no right to be consulted in the matter of reservations of posts for Backward classes nor can it itself make any such reservations.  

(4) Reservation of Seats in Legislatures.

(A) In Lok Sabha (Article 330)

Dr. B.R. Ambedkar, a champion of untouchables, was in favour of separate electorate for untouchables in the Legislature. But on the other hand Gandhiji was of the view that there was no need of separate electorate for untouchables and they should be mixed with other Hindu electorates. The Constitutional framers resolved this controversy by making provisions for reservation of seats for these people in Lok Sabha as well as in State Legislatures in the Constitution of India for a transitional period perhaps with the expectation that the evil of untouchability would die out by them.

Article 330 of the Constitution provides:

1. Seats shall be reserved in the House of People for:

(a) The Scheduled Castes
(b) [The Scheduled Tribes except the Schedule Tribes in the autonomous districts of Assam.]
(c) The Scheduled Tribes in the autonomous districts of Assam.

2. The number of seats reserved in any state or union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state or union
territory in the House of People as the population of the Scheduled Castes in the state or union territory or of the part of the state or union territory as the case may be, in respect of which seats are so reserved bears to the total population of the state or union territory.

3. Notwithstanding anything contained in clause (2), the number of seats reserved in the House of People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that state in a proportion not less than the population of the scheduled Tribes in the said autonomous districts bears to the total population of the state.

**Explanation**- In this Article and in Article, 332, the expression population means the population as in the last preceding census of which the relevant figures have been published.

Provided that the reference in this explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figure for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.\(^74\)

(B) In State Legislatures (Article 332)

Article 332 provides:

1. "Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes,\(^75\) except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every state."
2. Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the state of Assam.

3. The number of seats reserved for the Scheduled Castes or Scheduled Tribes in the Legislative Assembly of any state under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the state.

(3 A) Notwithstanding anything contained in clause (3) until the taking effect, under Article 170, of the readjustment on the basis of the first census after the year 2000, of the number of seats in the Legislative Assemblies of the states of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland the seats which shall be reserved for the Scheduled Tribes in the Legislative Assembly of any such state shall be-

(a) If all the seats in the Legislative Assembly of such state in existence on the date of coming into force of the Constitution (Fifty-Seventh Amendment) Act 1987 (hereinafter in this clause referred to as existing Assembly) are held by members of the Scheduled Tribes, all the seats except one;

(b) In any other case such number of seats as bears to the total number of seats, a proportion not less than the number (as on the said date) of members belonging to the Scheduled Tribes in the existing Assembly bears to the total number of seats in the existing Assembly.

(3 - B) Notwithstanding anything contained in clause (3) until the re-adjustment, under Article 170, takes effect on the basis of the first census after the year 2000, of the number of seats in the Legislative Assembly of the state of Tripura the seats which shall
be reserved for the Scheduled Tribes in the Legislative Assembly shall be, such number of seats as bears to total number of seats, a proportion not less than the number as on the date of coming into force of the Constitution (seventy-second Amendment) Act 1992 of the members belonging to the Scheduled Tribes in the Legislative Assembly in existence on the said date bears to the total number of seats in that Assembly.

4. The number of seats reserved for an autonomous district in the Legislative Assembly of the state of Assam shall bear to the total number of Seats in that Assembly a proportion not less than the population of the district bears to the total population of the state.

5. The constituencies for the seat reserved for an autonomous district of Assam shall not comprise any area outside the district.

6. No person who is not a member of a Scheduled Tribe of an autonomous district of the state of Assam shall be eligible for election to the Legislative Assembly of the state from any constituency of that district."

The effect of reservation of seats for Scheduled Castes or Scheduled Tribes is to give them minimum number of seats in the Lok Sabha and State Legislatures. Though the seats are reserved for them, they are elected by all the voters in the constituency. There is no separate electorate for the Scheduled Castes and Scheduled Tribes. Article 325 of the Constitution expressly provides that there shall be one general electoral roll. This means that a member of Scheduled Castes and Scheduled Tribes can also contest any seat other than reserved.78
The provisions of Article 330 and 332 are for the time being as mentioned in Article 334. Originally under Article 334, the reservation was made for ten years from the date of commencement of Constitution. Since then this Constitutional provision was extended by ten years each time. The word "Twenty" was substituted by the Constitution (8th Amendment) Act 1959, for the words "Ten Years", Again the word "Thirty" was substituted by the Constitution (23rd Amendment) Act 1969 for the word "Twenty". Again the word "Forty" was substituted by (45th Amendment) Act 1980, for the words "Thirty", Again the word "Fifty" was substituted by Constitution (62nd Amendment) Act 1989 and lastly the word "Sixty" was substituted by Constitution (79th Amendment) Act 1999 in Article 334 of the Constitution.

These provisions are still continuing in free India even after 54 years of Independence only to strengthen the hands of those who thought that separate representation would not help in removing the disabilities, which were basically social in character. Political safeguards, instead of making real efforts for bringing untouchables in the mainstream, have perpetuated separateness and divisiveness and has brought in a castiest Society.

(5) National Commission For Scheduled Castes and Scheduled Tribes

To deal with various matters of Scheduled Castes and Scheduled Tribes for the removal of disabilities and for ameliorating the condition of these people. The Constitutional (Sixty-Eight Amendment) Bill 1990, popularly known as the
"Ram Dhan Bill" because of the interest and initiative taken by Ram Dhan, was debated in the Lok Sabha on May 28-30, 1990 and in Rajya Sabha on May 31, 1990 and ultimately became the Constitution (Sixty-fifth Amendment) Act 1990 on obtaining the assent of the President on June, 1990 and came into force from March 12, 1992. This Amendment Act establishes a 7-member National Commission for Scheduled Castes and Scheduled Tribes including a chairperson and a Vice-Chairperson by amending Article 338 of the Constitution.\textsuperscript{79}

Prior to the substitution of this Article, Article 338 provided for a Special Officer for the Scheduled Castes and Scheduled Tribes to investigate all matters relating to the safeguards provided for them under the Constitution and to report to the President on their working. It was felt that a high level five member commission under Article 338 will be more effective arrangement in respect of the Constitutional safeguards for Scheduled Castes and Scheduled Tribes than a single special officer. It was also felt that it was necessary to elaborate the functions of the said Commission so as to cover measures that should be taken by the Union or any state for the effective implementation of those safeguards and other measures for the protection, welfare socio economic development of the Scheduled Castes and Scheduled Tribes and to entrust the Commission such other functions in relation to the protections, welfare and development and advancement of these people, as the President may, subject to any law made by Parliament, by rule specify. It was also felt that Reports of the said Commission should be laid before Parliament and Legislature of the states.\textsuperscript{80}
While amending Article 338, it was observed that legislation would not even touch the fringe of the problems of Scheduled Castes unless there is a basic change in the attitude of the people of the country and unless punitive measures are taken whenever there is a violation of the minimum safeguards in the Constitution. The Special Officer under Article 338 had, to some extent, a reporting role. He could investigate a matter and send his report to the President. But he had got no direct authority to implement something or redress something. His role was advisory reporting. The Commission’s role is similar to that of the Special Officer but with wide-ranging powers. It enjoys the same powers as are enjoyed by a Commission constituted under the Commission of Inquiry Act. It would also send its representatives to participate in the meetings held at the Planning Commissions of various states and the Central Planning Commission. The Commission has been given full authority to go into cases of atrocities, socio-economic matters, matters relating to reservation and like 81

Article 338, as amended, stands as follows:

1. "There shall be a Commission for the Scheduled Castes and Scheduled Tribes to be known as the National Commission for the Scheduled Castes and Scheduled Tribes."

2. Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other members so appointed shall be such as the President may by rule determine.
3. The Chairperson, Vice-Chairperson and other members of the commission shall be appointed by warrant under his hand and seal.

4. The commission shall have power to regulate its own procedure.

5. It shall be duty of the commission-
   (a) To investigate and monitor all matters relating to safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution or under any other law for the time being enforce or under any order of the Government and to evaluate the working of such safeguards;
   (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes.
   (c) To participate and advice 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 any state.
   (d) To present to the President, annually and at such other times as the Commission in may deems fit, reports upon the working of those safeguards.
   (e) To make in such reports, recommendations as to the measures that should be taken by the Union or any state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes and
   (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the
Scheduled Castes and Scheduled Tribes as the President may, subject to provisions of any law made by Parliament, by rule specify.

6. The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the union and the reason for the non-acceptance, if any, of any of such recommendations.

7. Where any such report or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the state, who shall cause it to be laid before the Legislature of the state alongwith a Memorandum explaining the action taken or proposed to be taken on the recommendation relating to the state and the reason for the non-acceptance, if any, of any of such recommendations.

8. The commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely: -

(a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath
(b) Requiring the discovery and production of any document;
(c) Receiving evidence on affidavits;
(d) Requisitioning any public record or copy thereof from any court or office;
(e) Issuing commissions for the examination of witnesses and documents;

(f) Any other matter, which the President may, by rule, determines.

9. The union and every state Government shall consult the Commission on all major policy matters effecting Scheduled Castes and Scheduled Tribes.82

10. In this Article references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of Article 340, by order specify and also to the Anglo-Indian community.

Under Article 338 [5(a)&(b)] the Commission has the power to investigate into the matters and enquire into the complaints but it has no power to grant injunction-permanent or temporary.83

Clause (2) of amended Article 338 empowers the President to frame rules for the conditions of service and the tenure of office of the Chairperson, Vice-Chairperson and other members of the Commission. Accordingly, the National Commission for Scheduled Castes and Scheduled Tribes Chairperson, Vice-Chairperson and members (Condition of Service and Tenure) Rules 1990 were framed and issued on November 3, 1990 under Resolution No. GSR891 (E) of the Ministry of Welfare (Department of Welfare) Government of India, regarding qualifications of members, Chairperson and Vice-Chairperson, it was laid down.
1. The members shall be appointed from amongst persons of 
ability, integrity and standing who have a record of selfless 
service to the cause of justice for the Scheduled Castes and 
Scheduled Tribes.
2. The chairperson shall be appointed from amongst eminent 
Socio Political workers belonging to the Scheduled Castes or 
Scheduled Tribes, who inspire confidence amongst Scheduled 
Castes and Scheduled Tribes, by their very personality and 
record of selfless service.
3. The Vice-Chairperson and not less than three other 
members shall be appointed from amongst persons belonging to 
the Scheduled Castes and Scheduled Tribes.
4. At least one other member shall be appointed from 
amongst women.

The term of office of every member shall be for three 
years. While the first Chairperson shall hold office for a term of 
five years. The office of the Chairperson shall be rotated in such 
a manner that in a block of three-year term of office, a person 
belonging to Scheduled Castes shall hold for two terms and a 
person belonging to Scheduled Tribes shall hold office for one 
term. When the Chairperson is a person belongs to the Scheduled 
Castes, the Vice-Chairperson shall be a person belonging to the 
Scheduled Tribes and its vice-versa.

Now that a more powerful multi-member Commission, 
composed of members belonging to Scheduled Castes and 
Scheduled Tribes, has been set up, it has to be watched how its 
functioning would help the Scheduled Castes and Scheduled 
Tribes to achieve what they could not obtain so far. It is
common desire of all people that this National Commission will bring about a change in the social condition of a large segment of population and integrate them with the general public of the society for all times to come. It is hoped that the National commission will create climate in the society when this cancer of casteism will not be perpetuated any longer and the scheduling of caste will be done away with.

(6) **Reservation of Seats in the Panchayats (Article 243 D)**

The worst affected areas of untouchability have been villages where the untouchables have been subjected to various disabilities. They are required to live outside of villages. They are not allowed to mingle with the people of other castes of the villages. They could not even actively participate in the democratic organizations of the villages.

So for ameliorating the conditions of these persons and to allow them to take active participation in democratic institutions of village, the seats are reserved for these people in Panchayats by way of Article 243D of the Constitution.

Article 243D of the Constitution provides:

1. **Seats shall be reserved for**
   
   (a) The Scheduled Castes and  
   
   (b) The Scheduled Tribes

   *In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to*
the population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

2. Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Caste or as the case may be, the Scheduled Tribes.

3. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Caste and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

4. The offices of the chairperson in the panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a state may by law provide:

Provided that the number of offices of chairpersons reserved for the Scheduled Caste and Scheduled Tribes in the Panchayats at each level in any state shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes or of the Scheduled Tribes in the state bears to the total population of the state.

Provide further that not less than one-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women.
Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

5. The reservation of seats under clause (1) and (2) and the reservation of offices of chairperson (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

6. Nothing in this part shall prevent the Legislature of a state from making any provisions for reservation of seats in any Panchayat or offices of chairperson in the Panchayats at any level in favour of backward class of citizens.

The period under clause (5) of Article 243(D) for reservation of seats in Panchayat is sixty years\(^8^5\) from the date of commencement of Indian Constitution, by way of Article 334.

(7) Reservation of Seats in Municipalities (Article 243T)\(^8^6\)

Seats for Scheduled Castes and Scheduled Tribes are not only reserved in Panchayats but also in Municipalities in urban areas where the persons of the depressed classes have been subjected to inequality from other persons. Article 243T is worth of noting for the purpose of this amelioration:

This Article provides:

1. Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipalities and the number of seats so reserved shall bear, as nearly as may be, the same proportion of the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in that Municipal area or of the Scheduled Tribes in that
Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

2. Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Caste or as the case may be, the Scheduled Tribes.

3. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Caste and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

4. The offices of the chairperson in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a state may by, law, provide:

5. The reservation of seats under clause (1) and (2) and the reservation of offices of chairperson (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

6. Nothing in this part shall prevent the Legislature of a state from making any provision for reservation of seats in any Municipality or offices of chairpersons in the Municipalities in favour of backward class of citizens.

The period under clause (5) of Article 243T, for reservation of seats in Panchayat is sixty years\(^87\) from the date of commencement of Indian Constitution.
The rules provided that the offices of Presidents of Municipalities, under clause (4) of Article 243T, shall be filled from amongst the members belonging to SC, ST, BC and women in rotation. The SC women, being the sole SC member elected from a reserved seat, was entitled to the office of the President and not the SC women elected from a general category seat. Reservation is with reference to the category/caste to which the person belongs and the nature of constituency from which he/she was elected.

(8) Equal Justice And Free Legal Aid (Article 39 A)

The Harijnas are mostly down-trodden. In case of violation of their legal rights, they are unable to knock the doors of courts of law due to poverty. Article 39 A has imposed a duty on the state to provide them free legal aid so that they would be able to get equal justice like others.

Article 39 A provides:

"The state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislature or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

In compliance of this provision the legal aid is being given to poor people including the persons of Scheduled Caste and Scheduled Tribes.
Duty of State to Raise the Level of Nutrition and Standard of Living (Article 47)

There is normal practice particularly in the villages that Dalits eat the food left by the others. The standard of living of these oppressed persons is also very low and they, normally live in a dirty locality. The intoxication is a common feature in the locality of these oppressed people. So they are often subjected to many ailments. Article 47 of the Constitution provides remedial measure and imposes a duty upon the state to raise the level of nutrition and the standard of living and to improve public health.

Article 47 provides:

"The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibitions of the consumption, except for medical purposes, of intoxicating drinks and of drugs which are injurious to health."

The Constitution thus extends full legal and civic equality in every form to Scheduled Castes. The Universal adult franchise and common citizens for inclusion in it, are inter alia, designed to ensure political, social justice and equality. The guarantee of one man one vote, non-discrimination on grounds only of religion, race, caste, sex, place of birth and provisions for representation in proportion of their population on the basis of reservation of seats in Houses of Parliament, states/union territories legislatures, Municipalities, and Panchayats and the provisions for their educational, economic employment opportunities, upliftment and to raise the level of Nutrition and
standard of living etc. are intended to make the members of Scheduled castes and Scheduled Tribes equal citizens of the Republic.
References

4. Deverajia v Padmanna AIR 1961 Mad 35 (39)
6. P.S. Charya and Others v State of Madras AIR 1956 Mad 541
9. P.S. Charya and Others v State of Madras AIR 1956 Mad 541
10. Chaterjee, S.K. *op.cit.* P-384
11. *ibid* p.399
12. AIR 1958 SC. 255
14. *ibid* AIR 1958 SC. 255
15. Raj Bahadur v Legal Rememberancer AIR 1953 Cal 523
16. Sharma v U.P. AIR 1959 All, 57
17. Peoples Union for Democratic Rights v Union of India, AIR 1982 SC. 1473
19. Sanjit Roy v State of Rajasthan AIR 1983 SC. 328
20. *ibid* p. 328
22. *ibid* SC. 1099
28. Nageswara Rao v Principal Medical College AIR 1962 AP. 212
29. Ramesh v Principal B.B. Inter College 1952 A.L:J 173
30. AIR 1859 P.C. 56
31. Venkataramna Devaru v State of Mysore, AIR 1958 SC. 255
32. Banalidas v Bakhu Bhandari AIR 1951 Cal 167
33. State of Rajasthan v Vyas Mohan Lal AIR 1971 SC. 2068
34. Section 27 of Indian Contract Act, 1872
35. Hathi Singh Manufacturers Co. v Union of India AIR 1960 SC. 923
36. [44th Amendment] Act, 1978 W.e.f. 20-6-1979
38. ibid
39. Jaswal, Surendra Singh *The Reservation Policy and the laws* 
   *pages* (New Delhi, Deep & Deep Publication) pp.82-83
40. C.A.D. vol VII p. 549
41. Hindustan Times Ed Jaipur July 9, 2001 p.9
42. ibid p.11
43. Dalmia Cement (Bharat)Ltd v Union of India (1996) 10 SCC 104
44. State of Madras v Chmpakam Dorari Rajan AIR 1951 SC. 226
45. Jaswant Kaur Kesarsing Dang v State of Bombay AIR 1952 SC. 461
46. Panchayat Varga Sharaji vi Samudaik Sahakari khedut Cooperative society v Haribhai Mevabhai AIR 1996 S.C. 2578
47. Tara Chand Vyas v Chairman & Discilinary Authority (1997) 4 SCC 565 (Para 2)
49. ibid
50. R.Chandevvarappa v State of Karanataka (1995) 6 SCC 309 (Paras 6,9,10)
52. Charan Singh v State of Punjab (1997) 1 SCC 151 (Para 10)
53. Basu, D.D *op.cit* p. 459
54. AIR 1951 SC. 226
55. AIR 1963 SC. 649
56. P.G.I. of Medical Education and Research v K.L. Narasimhan (1997) 6 SCC 283
57. Preeti Srivastava (Dr.) v State of M.P. (1999) AIR 2898
58. Indra Sawhney v Union of India AIR 1993 SC 477
60. Basu D.D. *op. cit* p. 132
61. Chaterjee, S.K *op. cit* p. 550
62. *ibid* p. 573
63. Clause (4-A) inserted by the Constitution (77th Amendment) Act 1995 w.e.f. 17-6.1995
64. Clause (4-B) inserted by the Constitution (81st Amendment) Act, 2000
69. Inserted by the Constitution (82nd Amendment) Act, 2000
71. Indra Sawhney v Union of India AIR 1993 SC 477
74. Inserted by the Constitution (42nd Amendment) Act. 1976
75. Substituted by the Constitution (51st Amendment) Act. 1984
76. Sub-Section (3-A) has been inserted by the Constitution (57th Amendment) Act. 1987
77. Clause (3-B) has been inserted in Article 332 by the Constitution (72nd Amendment) Act. 1992 W.e.f. 5-12-1992
78. V.V. Giri v D.S. Dora, AIR 1969 SC. 1318
79. Chaterjee, S.K. *op.cit.* p. 891
81. Chaterjee, S.K. *op.cit.* ps. 891, 92
82. Renumbered by the Constitution (65th Amendment) Act. 1990
83. All India Overseas Bank SC. & ST. Employees welfare Association v Union of India (1996) 6 SCC. 606 (Para 10)
84. Inserted by the Constitution (73rd Amendment) Act, 1992
85. The Previous word "fifty" Substituted by the word "sixty" by the Constitution (79th Amendment) Act. 1999
86. This Article has been inserted by the Constitution (74th Amendment) Act. 1992 W.e.f. 1-6-1993
87. Article 343 T Inserted by *ibid*
91. Inserted by the constitution (42nd Amendment) Act, 1976