

CONSTITUTIONAL SAFEGUARDS AND LEGISLATION FOR SCs/STs

Constitutional Safeguards

According to the Constitution of India, which resolved India into a sovereign socialist secular democratic republic, Right to Equality is a Fundamental Right that includes the right to equality before law; Prohibition of discrimination (Article 15); equality of opportunities in matters of public employment (Article 16). The Constitution further specifies that this will not prevent the state from making special provisions for women, Children, Scheduled Castes, and Scheduled Tribes. Article 17 declares abolition of untouchability, forbidding its practice in any form.

The Directive Principles of State Policy of the Constitution include promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker sections (Article 46). The Hindu religious institutions of public character are thrown open to all classes and sections of Hindus (Article 25b). Any disability, liability, restriction of conditions with regard to access to shops, Public restaurants, hotels, and places of public entertainment or 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 general Public are removed according to Article 15(2). Article 16 and 355 permit the states to make reservation for backward classes in public services in case of inadequate representation.

Tribal advisory councils and separate departments are set up in states to promote the welfare and safeguard the interests of the Tribals (Article 164 and 338 and Fifth Scheduled). Article 244 and Fifth and Sixth Schedules make special provision for administration and control of scheduled and tribal areas.

The Reservation Policy is a Constitutional device in the creation of a society of equals. It is an exception to the principle of equality, as the principle of equality operates within the equals and to equate equals, with unequals is to perpetuate inequality. Reservation for SCs and STs is founded upon the ideology of compensatory justice for their sufferings for ages for no fault of theirs. The quota of reservation has been decided by the Constitution in accordance with the percentage of the population of SCs and STs, being 15% and 7.5%, respectively.

LEGISLATION

The Protection of Civil Rights Act 1955 (earlier Untouchability Offences Act, 1955), which is in force since 1976, provides for penalties for preventing any person on grounds of untouchability, from enjoying the rights accruing on account of abolition of untouchability.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 specifies the offences which are considered as atrocities and provides for deterrent punishments of commission of the same. Comprehensive Rules prepared under this Act provide for relief and rehabilitation of the affected persons and envisage preventive measures.

By virtue of the Constitution (65th Amendment) Act of 1990, the Special Post under Article 338 of the Constitution has been substituted by the National Commission for Scheduled Castes and Scheduled Tribes, mainly to investigate and monitor all matters relating to the safeguards to SCs/STs under the Constitution and Laws.


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