

**NATIONAL COMMISSION
FOR
SCHEDULED CASTES AND SCHEDULED TRIBES**

HISTORICAL BACKGROUND

Original Article 338

The original Article 338 of the Constitution of India read as follows :

"338. Special Officer for Scheduled Castes, Scheduled Tribes, etc.—

- (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.
- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.
- (3) 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."

Commissioner for SC & ST

2. The Special Officer mentioned in Article 338(1) was designated as the Commissioner for Scheduled Castes and Scheduled Tribes by the first President, Dr. Rajendra Prasad. Shri L. M. Shrikant appointed as the first Commissioner on 18-11-1950 continued till the end of 1961. He was succeeded by Shri Anil K. Chanda (1962-66), Shri S.C. Sengupta (November 1966 to June 1967), Prof. Nirmal Kumar Bose (July 1967 to September 1970), Shri Shankarrao Mane (31-7-71 to 31-7-76), Shri Shishir Kumar (November 1976 to November 1981), Dr. B.D. Sharma (February 1986 to February 1991) and Shri S.P. Bagla (February 1991 to 12-3-1992).

3. The organisation of the Commissioner for Scheduled Castes and Scheduled Tribes was weakened by the decision of the Government of India in June 1967 to take away all the 17 field offices which functioned as "eyes and ears" of the Commissioner and regrouping them into five Zonal Offices of Backward Classes Welfare and putting them under the control of a newly created post of Director General, Backward Classes Welfare, under the Union Department of Social Welfare. This step was detrimental to the interests of the Scheduled Castes and Scheduled Tribes as the Commissioner was not left with any independent agency to collect reliable information and for assessment of the problems of these disadvantaged groups and the developmental programmes undertaken for them. In its First Report (1969) the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes deplored this action of the Government and wanted the hands of the Commissioner strengthened. However, the Government did not restore the field organisation to the Commissioner for SC & ST whose effectiveness was thus undermined.

Commission for SC & ST (non-statutory)

4. There was a persistent demand by SC & ST representatives, particularly the Members of Parliament, that the Special Officer under Article 338 should be replaced by an effective multi-member Commission with increased functions and powers. The Ministry of Home Affairs by Resolution No. 13013/9/77-SCT (I) dated 21-7-78 (copy at Annexure I) decided to set up a Commission for Scheduled Castes and Scheduled Tribes. The first Commission was constituted in

August 1978 with Shri Bhola Paswan Shastri as Chairman. However, this step was taken without abolishing the office of the Special Officer for SC & ST. On 3-8-1978 the Government introduced the Constitution (Forty-sixth Amendment) Bill, 1978, in the Lok Sabha to amend Article 338 alongwith Article 350 (B). This Bill could not be taken up in the 1978 winter session of the Parliament. It was brought up again in the Lok Sabha as the Constitution (Fifty-first Amendment) Bill, 1979, but it could not secure the requisite majority. However, in their keenness to get the Bill passed the Government advanced the monsoon session by a week. But before any other business could be taken up a no-confidence motion was moved leading to fall of the Government. The Commission set up by an executive resolution, however, continued to function. It was an unsatisfactory situation with the statutory office of the Special Officer for SC & ST and the non-statutory Commission for SC & ST co-existing charged with the same functions. After the then Commissioner for SC & ST demitted his office in November, 1981 the post was not filled up for more than four years.

National Commission for SC & ST (non-statutory)

5. On 1-9-1987 the Government decided to demarcate the functions of the Special Officer for SC & ST and the Commission for SC & ST. It was decided that only the Commissioner for SC & ST would be submitting the (Annual) Reports to the President and the Parliament and the Commission which was rechristened as the National Commission for SC & ST would conduct studies. The Ministry of Welfare Notification No. BC-13015/12/86-SCD. VI dated 1-9-87 laying down the functions of the National Commission for SC & ST has been reproduced at Annexure II. The first Chairman of the Commission, Shri Bhola Paswan Shastri, was succeeded by Shri K. Rajamallu (17-8-81 to 24-3-83), Smt. M. Chandrasekhar (5-9-83 to 12-1-85), Shri Bheekhabhai (24-2-86 to 27-10-89) and Shri Ram Dhan (1-5-90 to 11-3-92).

National Commission for SC & ST (statutory)

6. The Constitution (Sixty-eighth Amendment) Bill, 1990, was passed unanimously by the Lok Sabha on 30-5-1990 and the Rajya Sabha on 31-5-1990. It received the President's assent on 7-6-1990 and was notified as the Constitution (Sixty-fifth Amendment) Act, 1990, in the official Gazette on 8-6-1990. The Act has been reproduced at Annexure III.

7. The Chairperson, the Vice-Chairperson and the Members of the new Constitutional National Commission for SC & ST (hereinafter referred to as the Commission) were to be appointed by the President of India in accordance with the conditions of service and tenure of office as the President might by rule determine. These Rules were notified on 3-11-1990. The Commission was, however, reconstituted in accordance with these Rules only on 12-3-1992. The present composition of the Commission is as follows:

- (1) **Shri Ram Dhan**, ex-MP, appointed as Chairperson for a period of five years. He was elected to the Lok Sabha five times and is a freedom fighter.
- (2) **Shri Bandi Oraon**, MLA (Bihar), appointed as Vice-Chairperson for three years. He had been a Minister in Bihar.
- (3) **Shri B. Sammaiah** appointed as Member for three years. He was a Minister in Andhra Pradesh during 1982-83.
- (4) **Dr. Smt. Sarojini Mahishi** appointed as Member for three years. She was a Minister in Smt. Indira Gandhi's Cabinet from 1966 to 1976.
- (5) **Choudhary Hari Singh**, MP (Rajya Sabha), appointed as Member for three years. He had been a Minister in U. P.

- (6) **Shri P. N. Brahma** appointed as Member for three years. He is an important Bodo leader and a well known educationist. He had been a Member of the Assam Public Service Commission.
- (7) **Shri Jhinabhai R. Darjee** appointed as Member for three years. He had been a Minister in Gujarat and Chairman of the National Commission on Rural Labour (August 1987 to May 1990).

FUNCTIONS

8. The functions of the Commission have been laid down in clauses (5), (8), (9) and (10) of the amended Article 338 of the Constitution. These functions are briefly discussed here.

INVESTIGATION INTO AND MONITORING OF SAFEGUARDS PROVIDED UNDER THE CONSTITUTION, LAW AND ORDERS

9. The Commission is required to investigate and monitor all matters relating to the safeguards provided for SC & ST under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards.

Constitutional Safeguards

The important Constitutional safeguards for SC & ST are mentioned below:

(A) Directive Principles of State Policy

Article 46 is a comprehensive article comprising both the developmental and regulatory aspects. It reads as follows:

“The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

(B) 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.

There are two important legislations relating to this article, viz., the Protection of Civil Rights Act, 1955, and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Article 23 prohibits traffic in human beings and *begar* 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 SC & ST but since the majority of bonded labour belong to SC & ST this article has a special significance for SC & ST. In pursuance of this article there is the Bonded Labour System (Abolition) Act, 1976, and there is a Centrally Sponsored Scheme for identification, liberation and rehabilitation of bonded labour.

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. There are Central and State laws to prevent child labour. This article too is significant for SC & ST as a substantial portion, if not the majority, of child labour engaged in hazardous employment belong to SC & ST.

Article 25(2)(b) provides that Hindu religious institutions of a public character shall be thrown open to all classes and sections 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 SC persons in such temples. For the purpose of this provision the term Hindu includes Sikh, Jaina and Buddhist.

(C) Economic Safeguards

The provisions of Articles 46, 23 and 24 mentioned above also form part of the economic safeguards. The specific safeguards for the Scheduled Tribes are mentioned below :

Article 244 : According to clause (1) the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Mizoram and Tripura.

According to clause (2) the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Mizoram and Tripura.

Article 275(1) provides that "there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State."

A similar provision exists in this article for paying such special grants to the States covered under the Sixth Schedule out of the Consolidated Fund of India.

Fifth Schedule contains provisions regarding the administration and control of the Scheduled Areas and Scheduled Tribes. There are eight States having Scheduled Areas, viz., Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. The Governors of these States have special responsibilities and powers. These States have Tribes Advisory Councils. (In addition, Tamil Nadu and West Bengal, which do not have any Scheduled Areas, also have statutory TACs.) The Governors of these eight States have the power to make regulations for the peace and good government of any Scheduled Area, particularly for the following purposes :

- (a) to prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area,
- (b) to regulate the allotment of land to members of the Scheduled Tribes in such area,
- (c) to regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

Sixth Schedule contains provisions relating to the administration of the Tribal Areas in the States of Assam (North Cachar Hills District and Karbi Anglong District), Meghalaya, Mizoram and Tripura (Autonomous Hill District). There are Autonomous District Councils and Autonomous Regional Councils in these areas which have a long tradition of self-management systems. These Autonomous Councils not only administer the various Departments and developmental programmes but they also have powers to

make laws on a variety of subjects, e.g., land, forest, shifting cultivation, village or town administration including village or town police and public health and sanitation inheritance of property, marriage and divorce and social customs.

(D) 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 SC & ST. This provision was added to the Constitution through the Constitution (First Amendment) Act, 1951, which amended several articles. This provision has enabled the State to reserve seats for SC & ST in educational institutions including technical, engineering and medical colleges. In this as well as in Article 16(4) the term 'backward classes' is used as a generic term and comprises various categories of backward classes, viz., Scheduled Castes, Scheduled Tribes, (Other) Backward Classes, Denotified Communities (*Vimukta Jatiyan*) and Nomadic/Semi-nomadic Communities.

Article 29(1) provides that "any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same". This article has special significance for all the Scheduled Tribes. Santhals have a script of their own, viz., Olchiki.

Article 350 A : "It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups, and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities." Most of the tribal communities have their own languages or dialects which usually belong to a different family of languages than the one to which the State's official language belongs. Various expert commissions and committees have recommended that instruction should be imparted to tribal children in their mother tongue in primary schools, at least in classes I and II.

(E) 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 Sabha.

Article 332 provides for reservation of seats for SC & ST in the State Vidhan Sabhas (Legislative Assemblies).

Article 334 originally laid down that the provision relating to the reservation of seats for SC & ST in the Lok Sabha and the State Vidhan Sabhas (and the representation of the Anglo-Indian community in the Lok Sabha and the State Vidhan Sabhas by nomination) would cease to have effect on the expiration of a period of ten years from the commencement of the Constitution. This article has since been amended four times, extending the said period by ten years on each occasion. This provision is now to expire in January 2000.

Article 371A contains special provisions with respect to Nagaland.

Article 371B contains special provisions with respect to Assam.

Article 371C contains special provisions with respect to Manipur.

Article 371F contains special provisions with respect to Sikkim.

(F) Services Safeguards

Article 16(4) empowers the State to make "any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State".

Article 335 : "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

Article 320(4) provides that consultation with the UPSC or any State Public Service Commission shall not be required as respects the manner in which any provision under Article 16(4) may be made or the manner in which effect may be given to the provisions of Article 335.

Laws

There are a number of laws, both Central and State, which provide safeguards for SC & ST. Some of these emanate from the various Constitutional provisions. An illustrative list of such laws is given below :

The Protection of Civil Rights Act, 1955

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

The Bonded Labour System (Abolition) Act, 1976

The Child Labour (Prohibition and Regulation) Act, 1986

Acts and Regulations in force in different States to prevent alienation of land belonging to SC & ST. In some States such provision exists in the Land Revenue Code.

Acts in different States for restoration of alienated land to SC & ST

The Forest Conservation Act, 1980

The Commission proposes to compile a complete list of all such laws, both Central and State, which provide safeguards to SC & ST or protect their interests.

Orders

Similarly the Commission proposes to undertake an exercise of listing such executive orders issued by the Government of India or the State Governments which are not covered by the Constitutional safeguards or the laws referred to above but which provide safeguards to SC & ST or protect their interests. For instance, in pursuance of the Constitutional provisions of services safeguards, the Government of India have issued a large number of orders for reservation of seats for SC & ST in services and posts both in recruitment and promotion. Besides they have issued many orders extending various facilities and concessions to SC/ST employees. There may be a large number of orders covering various aspects of SC & ST communities and relating to various sectors. All these orders will have to be compiled in respect of the Union and the States.

INQUIRY INTO SPECIFIC COMPLAINTS

10. The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of SC & ST. In order to enable the Commission to perform this function within manageable limits the Commission would like to appeal to members of SC & ST that before submitting any specific complaint to the Commission

for redress of their grievances they should clearly state if and how there has been a violation of their rights and safeguards. The Commission would not like to be burdened with flimsy or irrelevant complaints. A large number of representations are regularly received from SC & ST employees working in Government Departments, public sector undertakings and autonomous bodies. The Commission would like them to know that it will be in a position to inquire into their service grievances only if there has been a violation of any provision of the Acts governing reservation in services and posts for SC & ST (the State Governments of Manipur, Orissa and West Bengal have passed such legislations) or, in the case of the Government of India, of the orders contained in the brochures relating to reservation matters issued by the Ministry of Personnel, the BPE/administrative Ministries in relation to the public sector undertakings under them, the Ministry of Railways, the Banking Division, etc. The Commission would not like to interfere in vigilance cases, disciplinary cases, criminal cases before a court of law, merits of adverse remarks in annual confidential reports and the like. In addition, the following guidelines are laid down for submission of specific complaints :

- (i) The complaint should be directly addressed to the Chairman, National Commission for SC & ST, or the heads of its field offices. No action will be taken on representations which are addressed to other authorities with only an endorsement to the Commission.
- (ii) The complainant should disclose his full identity and give his full address. No action will be taken on an unsigned complaint.
- (iii) Complaints should be legibly written and, where necessary, supported by authenticated documents.
- (iv) No action will be taken on matters which are *sub judice*.
- (v) Cases in which a court has already given its final verdict shall not be taken up afresh by the Commission.

SOCIO-ECONOMIC DEVELOPMENT

11. The Commission is required to participate in and advise on the planning process of socio-economic development of SC & ST and to evaluate the progress of their development under the Union and any State. The role of the Commission in these areas will be at various levels, i.e., the Planning Commission, the Central Ministries and the State Governments. The Commission and its officers both at the Headquarters office and in the field offices would be involved with the formulation of policies and developmental programmes for SC & ST including the Special Component Plan for the Scheduled Castes and the Tribal Sub-Plan. The Commission would evolve the necessary procedures for such participation and evaluation work.

ANNUAL REPORT

12. The Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of the safeguards provided for SC & ST under the Constitution, various laws and orders. These reports shall contain 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 SC & ST. The President shall cause all such reports to be laid before each House of Parliament alongwith a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

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 along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

POWERS OF THE COMMISSION TO ACT AS A CIVIL COURT

13. While investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), the Commission shall have the powers of a Civil Court trying a suit and in particular in respect of the following matters :

- (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, determine.

The Commission does not have any power to give any verdict or direction. It can only give its findings and recommendations.

CONSULTATIVE ROLE OF THE COMMISSION

14. The Constitution has made it mandatory for the Union and every State Government to consult the Commission on all major policy matters affecting SC&ST. This is a very important function of the Commission which has to keep track of all the major policy decisions taken by the Government of India or any State Government. These decisions could be legislative or executive. Obviously it is not possible for the Commission alone to find out what all policy decisions have been or are being taken by the Government. Therefore, the Commission would welcome information about this matter from all quarters so that the interests of SC & ST are not affected adversely by default.

INQUIRY INTO CASES OF ATROCITIES ON SC&ST

15. Whenever information is received by the Commission about any incident of atrocity on a person or persons belonging to SC & ST, the Commission would inquire into it to determine the circumstances that led to the occurrence of the incident and to see if the law and order and other State machinery have taken proper action including distribution of relief to the affected persons or their families. The Commission would lay down detailed procedure for conducting such inquiries at different levels. Such inquiries may be conducted directly by the Members of the Commission or through the investigating teams from the Headquarters office of the Commission or the field officers of the Commission. All the concerned authorities at the Centre or in the States would be expected to render assistance to the Commission in such inquiries. For the general information of the public copies of two important legislations, viz., the Protection of Civil Rights Act, 1955, and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, have been given at Annexures IV and V respectively.

GENERAL INFORMATION

16. The office of the Commission is located in Loknaya Bhawan (Floor V), New Delhi-110003. Its Head of Department is Secretary to the Commission, an officer of the rank of Secretary to the Government of India. The Commission proposes to have a number of wings to perform the various functions laid down in the Constitution. It has submitted its proposals for sanction of additional staff to the Government.

17. At present the Commission has 17 field offices whose location, addresses and telephone numbers, alongwith their respective jurisdiction are given in Annexure VI.

18. The Commission hopes that with the necessary cooperation from the Government and ready response from the public in general and members of SC&ST in particular it will be able to carry out its onerous tasks and responsibilities faithfully and effectively.