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Has India moved beyond Tokenism?

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India is a diverse country, which consists of people belonging to different religions, ethnicities, castes, and regions. In ancient times, the Hindu society was divided into a four-fold varna system, which was later subdivided into “numerous castes(jatis) and sub-castes due to racial admixture, geographical expansion and diversification of crafts”. The Scheduled Caste and Scheduled Tribes occupy the lowest rung in this caste system and have faced immeasurable discrimination. India is plagued with deep-rooted caste-based discrimination which compelled our Constitution makers to provide special provisions for the upliftment of SC/STs in the Constitution. This article focuses on these special provisions and investigates whether these provisions have been able to bring about concrete changes in the lives of SC/STs or have acted as mere tokens.

Keywords: *tokenism, reservation, scheduled castes, scheduled tribes, community.*

INTRODUCTION

A senior position had to be filled at S.H. Associates and the running contenders for that position were Vijay and Ruchita. Earlier, the Firm had been accused of being male-dominated, so they thought that by appointing a woman as Senior Manager they might be able to rescue the name of the Firm and appear as a progressive Firm. Some recruiters were not in favour of this idea because they didn't want to take orders from a woman, but to convince them it was argued that she would just act as a puppet and be the face of this so-called 'Progressive Firm'. This is a classic

example of 'tokenism'. Tokenism is the practice of doing something symbolically, like recruiting a small number of persons from an underrepresented community to give an appearance of inclusivity in the workforce. But tokenism does not contribute to diversity, as diversity is more than representation.

When we talk about India, the most underrepresented community that comes to our mind is the Scheduled Castes (SCs) and Scheduled Tribes (STs). During British rule, they were designated as Depressed Classes. They were so called because the English Society was divided into classes and not castes and depressed classes was a term used for persons who were poor and belonged to the lowest rungs of the society. So, belonging to the lower caste and living in a similar position, the SC/STs were perceived by Britishers as "depressed classes". Historically, the SC/STs have been oppressed and persecuted. They were looked down upon, beaten, flogged, and bullied by the higher castes. They had to live in inhumane and unsanitary conditions and were ostracized from society. As equality is an integral part of the Indian Constitution, providing the SC/STs an equal platform to grow is important but it wouldn't have served the purpose unless and until it was coupled with equity as equity helps in creating a levelled playing field for everyone. That is why special provisions and safeguards were provided for SCs and STs.

THE VARIOUS PROVISIONS FOR SCS/STS

Constitutional Provisions:-

Article 15¹ stipulates that "there should be no discrimination based on caste".

Article 15(4)² provides that, "the State can make any special provisions for the advancement of the Scheduled castes and Scheduled tribes".

¹ Constitution of India 1950, art. 15

² Constitution of India 1950, art. 15(4)

Article 16(4)³ provides that, “the State can make special provisions 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 service under the state”.

Article 17⁴ – “abolishes untouchability and makes it a punishable offence”.

Article 46⁵ provides that, “the State shall promote the educational and economic interests of the Scheduled Castes and Scheduled Tribes and also protect them from social injustice and all forms of exploitation”.

Article 330⁶ provides for, “the reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha”.

Article 332⁷ provides the same for Legislative Assemblies of the States.

Articles 243D⁸ and **243T**⁹ provide “reservation of seats for Scheduled Castes and Scheduled Tribes in Panchayat and Municipalities respectively”.

Articles 338¹⁰ and **338A**¹¹ provide for a National Commission for Scheduled Castes and National Commission for Scheduled Tribes respectively. Earlier **Article 338** provided for “a Special Officer for Scheduled Castes and Scheduled Tribes. It was the duty of the Officer to investigate all the matters related to the safeguards provided in the Constitution concerning the SCs and STs and report to the President about the working of those safeguards”.

5th Schedule deals with “the administration and control of Scheduled Areas and Scheduled Tribes in a State except for Assam, Meghalaya, Tripura, and Mizoram”.

³ Constitution of India 1950, art. 16(4)

⁴ Constitution of India 1950, art. 17

⁵ Constitution of India 1950, art. 46

⁶ Constitution of India 1950, art. 330

⁷ Constitution of India 1950, art. 332

⁸ Constitution of India 1950, art. 243D

⁹ Constitution of India 1950, art. 243T

¹⁰ Constitution of India 1950, art. 338

¹¹ Constitution of India 1950, art. 338A

6th schedule deals with “the administration of tribal areas in the States of Assam, Meghalaya, Tripura, and Mizoram”.

Legislative Provisions:-

Protection of Civil Rights Act 1955 (PCRA)¹²- It gives effect to Article 17 of the Constitution by determining the punishment for practising and preaching untouchability in any form and any disability arising out of it.

The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989¹³ - was enacted to prevent atrocities and hate crimes against SCs and STs. The Act created new types of offences which were not present in the Indian Penal Code (IPC) and PCRA.¹⁴ It defined various types of atrocities against SCs and STs. Provided stringent punishments for it.¹⁵ It provided relief and compensation to the victims.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013¹⁶ - prohibits manual scavenging in all forms and also talks about rehabilitating them.¹⁷ Violation of the provisions of this Act will attract imprisonment or a fine of Rs 50,000 or both.¹⁸ An offence under this Act has been made cognizable and non-bailable.

Executive Provisions:

Ministry of Tribal Affairs - the Ministry of Tribal Affairs was formed in 1999 after the bifurcation of the Ministry of Social Justice and Empowerment. The Ministry was created to provide a targeted approach to the socioeconomic development of Scheduled Tribes. Before its establishment, tribal affairs were conducted by different Ministries at different points in time. It was prudent to set up a Ministry exclusively for the Scheduled Tribes, that could act as the nodal

¹² Protection of Civil Rights Act 1955

¹³ Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989

¹⁴ Sethu Krishnan M, ‘SC/ST Prevention of Atrocities Act- Recent Issues and Court Rulings’ (*Clear IAS*, 3 March 2019) <<https://www.clearias.com/sc-st-prevention-of-atrocities-act/>> accessed 18 December 2022

¹⁵ *Ibid*

¹⁶ Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013

¹⁷ Prohibition of Employment and Manual Scavengers and their Rehabilitation Act 2013, s 8

¹⁸ *Ibid*

Ministry for overall policy planning, coordination, and monitoring of programs for the development of STs.

As mentioned above, there are various Constitutional, Legislative, and Executive provisions in place for the socio-economic upliftment and protection of Scheduled Castes and Scheduled Tribes. The main question here is, are these provisions mere tokens or have we been successful in implementing them and thereby creating a diverse, inclusive, and egalitarian society?

HOW EFFECTIVE HAVE THESE PROVISIONS PROVEN TO BE?

We will cover each provision one by one -

Article 15¹⁹: Recently there was an incident where a woman belonging to Scheduled Caste was appointed as a cook in a government school in Uttarakhand. The parents of the students belonging to the upper caste boycotted the midday meal and demanded the removal of the cook as they didn't want their kids to eat the food prepared by a Dalit.²⁰ This is not one of a kind incident but something that we hear in news quite often.

In another incident that took place in Lucknow, it was alleged that a delivery man belonging to Scheduled Caste was abused, beaten, and spat upon when he went to deliver food to the customer.²¹ The customer said that he won't accept the food touched by a Dalit. Article 15 specifically says that there should be no discrimination based on caste, yet there are such incidents faced by the scheduled caste community daily.

Article 15(4)²²: The provision for reservation has been provided to SCs and STs in higher educational institutions including Engineering and Medical Colleges to give effect to Article

¹⁹ Constitution of India 1950, art. 15

²⁰ Mohan Rajput, 'After students refuse to eat the food cooked by Dalit woman, she is fired for wrongful appointment' (*Hindustan Times*, 23 December 2021) <<https://www.hindustantimes.com/india-news/uttarakhand-after-students-refuse-to-eat-food-cooked-by-dalit-woman-she-is-fired-for-wrongful-appointment-101640199844816.html>> accessed 18 December 2022

²¹ Asad Rizvi, 'Dalit Zomato Delivery Agent spat at, beaten up by customer who refused to collect order' (*the Wire*, 21 June, 2021) <<https://thewire.in/caste/lucknow-dalit-zomato-delivery-agent-spat-at-beaten-up-by-customer-who-refused-to-collect-order>> accessed 19 December 2022

²² Constitution of India 1950, art. 15(4)

15(4). The Gross Enrollment Ratio (GER) of SCs and STs at the undergraduate level is 23% and 17.2% respectively, which is way less than the National average of 26.3%.²³ The inference that can be drawn here is that reservation has not successfully translated into a high enrollment rate for SC and ST students.

Article 16(4)²⁴: Article 16(4) provides reservations to SCs and STs in public employment but has it served its purpose? First, let us check out the rate of employment of SCs and STs in various professions:

- According to a survey conducted by the Ministry of Human Resources and Development, the percentage of Teachers belonging to SCs is 8.3% and those belonging to STs are 2.2% of the total number of Teachers in Higher Educational Institutions.²⁵
- According to the data published in Lok Sabha, 10 States/U.T.s including Haryana, Odisha, West Bengal, and Punjab have zero ST judges in district and subordinate courts.²⁶ Similarly, 12 States/U.T.s including Goa and West Bengal have zero SC judges in district and subordinate courts.²⁷
- Even if they get a post or they graduate from college and become doctors, lawyers, civil servants, etc, they are still judged by society and they are forced to prove their mettle.
- Tina Dabi, an All-India Rank 1 holder in Civil Services Examination went through the same predicament. Her success and merit were doubted even when she cracked the toughest examination and bagged the first rank.

²³ Sonia Agarwal, 'With fewer SC/STs enrolling in college, House panel pulls up UGC for 'under-utilised' measure' (*The Print*, 18 February 2021) <<https://theprint.in/india/education/with-fewer-sc-sts-enrolling-in-college-house-panel-pulls-up-ugc-for-under-utilised-measures/607310/>> accessed 19 December 2022

²⁴ Constitution of India 1950, art. 15(4)

²⁵ Vikas Pathak, 'Only 4.9% of higher education teachers are Muslims' (*The Hindu*, 12 January 2018) <<https://www.thehindu.com/news/national/only-49-of-higher-education-teachers-muslims/article22431446.ece>> accessed 19 December 2022

²⁶ Vignesh Radhakrishnan, 'No ST/SC/OBC judges in lower judiciary of many States and U.T.s' (*The Hindu*, 1 August 2022) <<https://www.thehindu.com/data/data-no-stscobc-judges-in-lower-judiciary-of-many-states-and-uts/article65710922.ece>> accessed 18 December 2022

²⁷ *Ibid*

- Recently a professor of Lucknow University belonging to a Scheduled Caste was abused by a section of students in broad daylight.²⁸

There is no doubt that reservation has been helpful but it has not been able to bring concrete changes in the lives of SC/STs and has done next to nothing in improving their lives economically and socially.

Article 17²⁹: We know that Article 17 and the Protection of Civil Rights Act prohibit and penalize untouchability. This provision has helped in opening up temples and public places for SC/STs but it has not been able to eliminate untouchability. As mentioned earlier, not eating the food cooked by a Dalit woman or not taking the food delivered by a Dalit man, or simply not sitting together and eating with them, are all examples of untouchability. According to the Mysore High Court, “the subject matter of Article 17 is not untouchability in its literal or grammatical sense but the practice as it had developed historically in the country. It refers to the social disabilities imposed on certain classes of persons because of their birth in a certain caste”.³⁰

Article 46³¹: The Global Multidimensional Poverty Index (GMPI) report states that five out of six people living in multidimensional poverty in India are from disadvantaged tribes and castes.³² ST (50.6%) had the highest poverty level, followed by SC (33.3%) and OBC (27.2%). According to the 2011 Census, “the literacy rate of SCs is 66.1% and that of STs is 59% which is way less than the overall literacy rate of 73%”.³³ The literacy rate of females belonging to the Scheduled Caste is 56.05% and that of the Scheduled Tribe is 50%. On the economic front- “71%

²⁸ Pathikrit Chakraborty, ‘Dalit Professor once again assaulted by students in Lucknow University’ (*Times of India*, 18 May 2022) <https://timesofindia.indiatimes.com/city/lucknow/uttar-pradesh-dalit-professor-once-again-assaulted-by-students-in-lucknow-university/articleshow/91646480.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 18 December 2022

²⁹ Constitution of India 1950, art. 17

³⁰ M Laxmikanth, *Indian Polity* (4th edn, Mc Graw Hill Education India 2014) 7.8

³¹ Constitution of India 1950, art. 46

³² Wahid Bhat, ‘Poverty Level is highest among SC, ST and OBCs in India’ (*Ground Report*, 24 November 2021) <[³³ Rema Nagarajan, ‘SC/ST take rapid strides, close literacy gap’ \(*Times of India*, 10 November 2013\) <<https://timesofindia.indiatimes.com/india/sc/sts-take-rapid-strides-close-literacy-gap/articleshow/25536193.cms>> accessed 18 December 2022](https://groundreport.in/poverty-level-is-highest-among-sc-st-and-obcs-in-india/#:~:text=Ground%20Report%20%7C%20New%20Delhi%3A%20Poverty,%25)%20and%20OBC%20(27.2%25).> accessed 18 December 2022</p></div><div data-bbox=)

of the Scheduled Caste farmers are agricultural labourers and the same for Scheduled Tribes is 47%, they are working for wages on the land they do not own".³⁴ Educational development and financial stability are two vital parameters on which the development of any community is quantified but both these parameters show no drastic improvement in the case of SC/STs.

Articles 330³⁵ & 332³⁶: We have the provision of reservation for seats in Parliament and Legislative assemblies but they only provide a seat to the SC/STs, it does not take them to a position of power or influence. There are only a few legislators from scheduled castes and scheduled tribes that get appointed to Parliamentary Committees and scrutinize bills and policies or get access to decision-making bodies. Most of the time members of SC/STs are given high positions just as tokens.

Articles 338³⁷ & 338A³⁸: Let us now focus on the Commissions established for SC/STs - The National Commission for Scheduled Castes (NCSC) has been effective in dealing with service safeguards but less effective in dealing with welfare issues affecting the SCs and also the atrocities committed against them.³⁹ Efforts have been made by it for the implementation of reservation and representation of SCs in public employment, but that can be considered as political empowerment only.

On other substantive issues, it has not taken concrete steps like evolving new strategies and policies for the welfare of Dalits or taking an active approach to preventing atrocities against them. On these fronts, the Commission has failed the community. The National Commission for Scheduled Tribes (NCST) also lacks on similar grounds. The major reasons behind their failure are that their recommendations are advisory and that is why they shy away from deeply analyzing the larger social realities. They consider themselves only accountable for safeguarding

³⁴ Harry Stevens, 'Dalit farmers may fail to benefit from agricultural sops announced by govt' (*Hindustan Times*, 13 February 2018) <<https://www.hindustantimes.com/india-news/dalit-farmers-may-fail-to-benefit-from-agricultural-sops-announced-by-govt/story-jd3JzyY6qxRgq8adu0hwdK.html>> accessed 18 December 2022

³⁵ Constitution of India 1950, art. 330

³⁶ Constitution of India 1950, art. 332

³⁷ Constitution of India 1950, art. 338

³⁸ Constitution of India 1950, art. 338A

³⁹ Zoya Hasan, 'Tokenism or Empowerment? Policies and Institutions for disadvantaged Communities', in Wendy Doniger & Ors (eds) *Pluralism and Democracy in India: Debating the Hindu Right* (Oxford Academic 2015)

existing provisions and not constructing new strategies to reduce the discrimination against SC/STs. They are least effective in dealing with atrocities because they report to those institutions which are directly or indirectly involved in the perpetuation of these crimes.

THE SC/ST (PREVENTION OF ATROCITIES) ACT

When we talk about atrocities against SC/STs, the most important piece of legislation that comes to our mind is the SC/ST (Prevention of Atrocities) Act. The rationale behind this Act was to create a legal framework with stringent penal provisions to deter others from committing offences and atrocities against SC/STs and safeguard their rights. Despite all that, it cannot be called successful legislation. Many times it has been misused against innocent people. The Supreme Court has also said that the SC/ST act has become an instrument of “blackmail” and is being used by some to exact “vengeance” and satisfy vested interests.⁴⁰

The Supreme Court in *Dr. Subhash Kashinath Mahajan v The State of Maharashtra* diluted the provisions of the SC/ST Act. The Supreme Court, by observing “rampant misuse” of the stringent provisions of the Act, gave protection to civil servants. It mandated that in the case of a public servant, an arrest can only be made after the approval of the appointing authority and in the case of a non-public servant, after the approval of the Senior Superintendent of Police. It also made a preliminary inquiry mandatory before registering a case and also laid down provisions for anticipatory bail.

The judgement led to widespread protests by the SC/ST community. Therefore, the Parliament made amendments to the SC/ST Act to undo the harm that the Kashinath Mahajan judgement did. A new Section 18-A was inserted to nullify the safeguards provided in the ruling, like the reintroduction of a bar on anticipatory bail to those accused under the Act. In 2020 the amendment was upheld by the Supreme Court.

⁴⁰ Sethu Krishnan M (n 1)

Despite these provisions, the data presented by National Crime Records Bureau (NCRB) paints a grim picture. According to the NCRB report, India reported six crimes against Dalits every hour in 2021, with the total number of cases increasing to 50,900 from 50,291 in 2020.⁴¹

The conviction rate has increased from 26.4% to 30.1% which is still very low. The crime against STs has increased by 9.3% to a total of 8,272 cases in the year.

The pendency of cases under the SC/ST Act is 96.5% which is more than last year's (2020) rate of 94%.⁴² At the end of the year, 177,379 cases were pending trial under the special legislation. This confirms that major caste crimes take years to reach the final stage in courts and also the difficulty faced by the community in proving crimes committed by the upper caste. We all remember the Hathras rape case, where the victim had stated in her dying declaration who the culprits were, but still, no concrete steps were taken to redress the matter instead her body was cremated by the Police in the dead of the night.

On one hand, this Act has been misused and on the other hand, it has not been beneficial to the very community for whose protection it was created.

THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013

The other issue concerning SC/ST is manual scavenging. Manual scavenging means cleaning sewers and removing human excreta from the toilets without safety equipment.⁴³ Manual scavenging is an inhumane act and a violation of the law. It is also hazardous to health and violation of human rights and human dignity.

⁴¹ Nikhil Rampal, 'Madhya Pradesh and Rajasthan have highest crime rate against Dalits. Here's why.' (*The Print*, 1 September 2022) <<https://theprint.in/india/madhya-pradesh-rajasthan-have-highest-crime-rate-against-dalits-heres-why/1110399/>> accessed 18 December 2022

⁴² Dhruvo Jyoti, 'Crimes against Dalits, tribals increased in Covid pandemic year: NCRB' (*Hindustan Times*, 16 September 2021) <<https://www.hindustantimes.com/india-news/crimes-against-dalits-tribals-increased-in-covid-pandemic-year-ncrb-101631731260293.html>> accessed 18 December 2022

⁴³ Hency Thacker, 'Manual Scavenging – A Law Without Enforcement' (*The CSR Journal*, 11 March, 2022) <<https://thecsrjournal.in/manual-scavenging-a-law-without-enforcement/>> accessed 18 December 2022

- The SC/STs are mainly employed as manual scavengers. Even after the passing of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, there has been the employment of people as manual scavengers. The Indian Railways is the biggest employer of manual scavengers in the country but it does not keep them on the government payroll. They are employed by contractors to clean the human excreta from the railway tracks. Ironically, a government agency is employing manual scavengers on a contract basis.
- This Act has not been very helpful in protecting people from the health hazards of manual scavenging, according to data published by the Ministry of Social Justice and Empowerment shows that manual scavenging has led to 376 deaths in the last five years.⁴⁴ The social stigma behind this inhumane job is very high, which makes the process of rehabilitation difficult.
- A new bill has been introduced in Parliament to make amendments to the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. The amendment is well intended but its implementation will put it to a real test.

MINISTRY OF TRIBAL AFFAIRS

Ministry of Tribal Affairs with its varied schemes and programs has been working to improve the condition of Scheduled Tribes. One of its flagship schemes is Eklavya Model Residential Schools (EMRS) for tribal students. It has also set up the National Education Society for Tribal Students (NESTS) to manage these schools in 2018. According to a recent report by The Hindu, there are 378 functional EMRSs having 4000 teachers but according to the guidelines, there should be 30 teachers in each school which equals 11340 teachers.⁴⁵ There is a huge backlog that needs to be filled up urgently. Nevertheless, the Ministry has done commendable work at streamlining various schemes that were being carried out by different departments.

⁴⁴ *Ibid*

⁴⁵ Abhinay Lakshman, 'Eklavya Model Residential Schools face teacher shortage' (*The Hindu*, 16 September 2022) <<https://www.thehindu.com/education/eklavya-model-residential-schools-face-teacher-shortage/article65895973.ece>> accessed 18 December 2022

CONCLUSION

After assessing the ground realities of these provisions, we can say that they have brought the members of the SC/ST communities to the forefront but not in a substantial way but only at a superficial level. The tokenism aspect still lingers in some ways. These provisions were well intended but the implementation requires the active support of not only the State machinery but also the citizenry, which has been missing. Gandhi Ji, in his struggle for independence, had done extensive work to eradicate untouchability from India. He made it his mission to eliminate this evil norm and sensitize people about this issue. Untouchability was made an offence punishable by law under the Constitution but it still exists in some form. The reason why this provision has not been very effective is the zeal and the spirit with which Gandhi Ji pursued the mission of making India free from untouchability has been missing.

One aspect in which these provisions have completely failed the SC/STs is protecting them from atrocities and safeguarding their lives. According to the data mentioned above, it is quite clear that legislations related to the protection of SC/STs need major revamping and the NCSC and NCST should be entrusted with more powers than giving merely advisory recommendations. It is correct that to improve the conditions of SC/STs, the provision of representation by way of the reservation is necessary but they do not guarantee better social or financial stature. Besides these provisions, there is a need to change the mindset, and this can be done with the help of civil society, by involving them and the representatives of these communities in devising welfare plans for their upliftment. It can be said that India has managed to move a bit away from tokenism but not way beyond it, as more concrete steps are required to be taken to set us free from the shackles of this deep-rooted discrimination.